
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2021 - 2022 Regular

Bill No: AB 1971 **Hearing Date:** June 29, 2022
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Urgency: No **Fiscal:** No
Consultant: Glenn Miles

SUBJECT: County Employees Retirement Law of 1937

KEY ISSUE

Should the state authorize '37 Act county retirement systems to provide the following?

- Service credit buyback for family leave.
- Continued service credit for periods a member is subject to mandatory furloughs.
- Exemption from post-retirement working restrictions for volunteer service on boards and commissions.
- Retroactive adjustments to members' allowances when a member retires for service but subsequently files for a disability retirement which the system approves.

ANALYSIS

Existing law:

- 1) Establishes the County Employees Retirement Law of 1937 (CERL or '37 Act) which governs 20 independent county retirement associations and provides for retirement systems for county and district employees in those counties adopting its provisions. Currently, 20 counties operate retirement systems under the CERL. CERL systems are regulated by, and administer, the CERL, also commonly referred to as the "'37 Act." (Government Code § 31450 et seq.)
- 2) Provides that a member who returns to active service following an uncompensated leave of absence due to illness or parental leave, as specified, may receive service credit for the period of the absence upon payment of contributions (including interest) that the member would have paid during that period had the member not been absent, and prescribes the options available to make contributions for purposes of receiving the service credit, among other provisions. (GC § 31646)
- 3) Authorizes a member, if eligible, to apply for service retirement *after* filing an application for disability retirement allowance subject to board discretion and a determination of the member's entitlement to a disability retirement. If the retirement board finds that a member is eligible for a disability retirement, the board shall make appropriate adjustments to the member's disability retirement allowance retroactive to the effective date of the disability retirement. Among other provisions, the CERL does not permit a member to receive more than one type of retirement allowance for the same period of time, nor may a beneficiary

receive benefits that the beneficiary would not otherwise have been entitled to receive. (GC § 31725.7)

- 4) Provides for optional settlements in which a member or retired member may, until the system makes the first payment of any retirement allowance and in lieu of the retirement allowance for the member's life alone, elect to have an unmodified allowance or the actuarial equivalent of their retirement allowance, as specified, applied to a lesser retirement allowance payable throughout the member's life, also as specified. This also applies to a member who applies for a disability retirement and is subsequently granted a service retirement pending a determination of entitlement to disability. (GC § 31760)

This bill:

Service Credit Buyback for Family Leave

- 1) Authorizes a '37 Act member who returns to active service following an uncompensated leave of absence on account of the serious illness of a family member when the absence is eligible for coverage under state and federal family leave acts, as specified, to receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had the contributions been on deposit, if the member was not absent.
- 2) Defines "leave of absence on account of illness of a family member" to mean any time, up to one year, during which a member is granted an approved leave to care for a seriously ill family member and returns to employment at the end of the approved leave for a period of time at least equal to that leave.
- 3) Permits a member to pay the contributions required to receive the service credit in a lump sum or on a monthly basis for a period of not more than the length of the period for which the member claims service credit.
- 4) Prohibits service credit for any period of such an absence in excess of 12 consecutive months.
- 5) Provides that these provisions shall not be operative until the board of supervisors, by resolution adopted by majority vote, make the provisions applicable to that county and apply the provisions to leave that commences after the adoption by the board of supervisors.

Service Credit During Mandatory Furloughs

- 6) Authorizes the retirement board to grant a member who is subject to a temporary mandatory furlough the same service credit and compensation earnable or pensionable compensation to which the member would have been entitled in the absence of the temporary mandatory furlough.
- 7) Permits, *but does not require*, the retirement board to condition this grant on the receipt of additional member or employer contributions, or both as applicable, that the retirement board

determines are necessary to fund any benefits granted under this section on an actuarially sound basis.

- 8) Defines “temporary mandatory furlough” to mean the time during which a member is directed to be absent from work without pay for up to one quarter of the member’s normal working hours, provided that these reduced working hours shall not be in place for longer than two years.

Post-Retirement Service on Boards and Commissions

- 9) Specifies that these provisions apply to a ’37 Act retiree receiving a retirement benefit from a county retirement system and appointed or elected to a board or commission operating under a participating agency of the same county retirement system.
- 10) Allows a ’37 Act retiree to serve on a board or commission without reinstatement from retirement or loss or interruption of benefits under, as specified, provided the appointment or election is to a part-time board or commission.
- 11) Prohibits a ’37 Act retiree authorized to serve without reinstatement on a board or commission from acquiring benefits, service credit, or retirement rights with respect to the appointment or election.
- 12) Limits the authorization provided by this section to an appointment or election to a part-time board or commission for which any salary or stipend for serving does not exceed sixty thousand dollars (\$60,000) annually.

Adjustments for Change of Service Retirement to Subsequently Filed Disability Retirement and Related Option Benefit Election

- 13) Authorizes the retirement board to make appropriate adjustments to a ’37 Act retiree’s service retirement allowance where the retiree subsequently files an application for disability retirement and whom the board finds eligible for disability retirement, retroactive to the effective date of the member’s disability retirement application. Under existing law, this process exists for members who file their disability application first and then file for a service retirement pending the retirement board’s determination of the disability retirement application.
- 14) Permits a ’37 Act member who retired for service and subsequently applies for and receives approval for a disability retirement, to change the type of optional or unmodified allowance that the member elected at the time of the service retirement, as specified.

COMMENTS

1. Need for this bill?

According to the sponsor:

“AB 1971 includes various policy changes that modernize the CERL, including:

- To conform with CalPERS and CalSTRS practice, allowing for service purchase for all leaves that are covered under FMLA that are not due to the illness of the member rather than amending the law every time there is a change in the FMLA law.
- Providing retirement boards with authority to prevent temporary mandatory furloughs from impacting member benefits under specific circumstances. Like authority provided to CalPERS, this change will avoid inequities that can arise because of the timing of temporary mandatory furloughs in relation to members' planned retirements.
- Similar to existing Government Code statute for state boards and commissions, the bill clarifies that nonsalaried positions and per diems do not count as double dipping for members appointed to boards/ commissions under purview of a participating employer of a county system.
- Allowing members to change the optional allowance if they are subsequently granted disability retirement, regardless of when the member filed a Disability Retirement application."

2. Proponent Arguments

According to the Los Angeles County Employees Retirement Association:

"This bill also contains an important provision proposed by LACERA to SACRS that would equalize the treatment of members who apply for disability retirement after retiring for service with regard to changing their optional allowances. These amendments ensure efficient and effective administration of plan benefits for our members."

3. Opponent Arguments:

None received.

4. Recommended Amendments:

The committee recommends the following amendments to clarify that a '37 Act retiree may serve as a *non-salaried* member of a board or commission in the same county or participating agency as the retirement system notwithstanding existing prohibitions against post-retirement work and may only receive a per diem authorized to all members of the board or commission.

SEC. 3. Section 31680.16 is added to the Government Code, to read:

31680.16. (a) ~~This~~ ***Notwithstanding Section 31680.15, this*** section shall apply to a retired person who is receiving a retirement benefit from a county retirement system and is appointed or elected to a board or commission operating under a ***county or*** a participating agency of the same county retirement system.

(b) A person who is retired under this chapter may serve ~~on~~ ***as a non-salaried member of*** a board or commission without reinstatement from retirement or loss or interruption of benefits under this chapter or the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), provided the appointment or election is to a part-time board or commission. A retired person whose service without reinstatement is authorized by this subdivision shall not acquire benefits, service

credit, or retirement rights with respect to the appointment or election *but may receive any per diem authorized to all members of the board or commission.* ~~The authorization provided by this section is limited to an appointment or election to a part-time board or commission for which any salary or stipend for serving does not exceed sixty thousand dollars (\$60,000) annually.~~

5. Related/ Prior Legislation:

AB 1824 (Assembly Public Employment and Retirement Committee, 2022) would make several technical, noncontroversial, conforming changes to the respective code for the California State Teachers' Retirement System, the California Public Employees' Retirement System, and the '37 Act County Retirement systems. The author deemed the AB 1971 provisions as substantive, not technical, in nature. AB 1824 is pending consideration in the Senate Labor, Public Employment and Retirement Committee.

SUPPORT

State Association of County Retirement Systems (Sponsor)
Los Angeles County Employees Retirement Association

OPPOSITION

None received.

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