

AMENDED IN SENATE JUNE 8, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2233**

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**Introduced by Committee on Public Employees, Retirement and Social Security (Negrete McLeod (Chair), Levine (Vice Chair), Chan, Correa, and Kehoe)**

February 18, 2004

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An act to amend Sections 22171, 22650, 22651, 22661, 22663, 22705.5, 22714, 23203, ~~24114, 24221, and 44987~~ of 23300, 23812, 24114, 24214, 24221, 25000.9, 26004, 26140, 27400, 27401, 27406, and 44987 of, and to add Sections 22007.5 and 26002.5 to, the Education Code, relating to state teachers' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2233, as amended, Committee on Public Employees, Retirement and Social Security. State teachers' retirement.

(1) The Teachers' Retirement Law establishes the Defined Benefit Program of the State Teachers' Retirement Plan.

This bill would make technical changes to various provisions of that law.

(2) *Existing law prescribes the rights and benefits of the spouse, surviving spouse, or former spouse of a member of the Defined Benefit Program, or a participant of the Cash Balance Benefit Program, of the State Teachers' Retirement Plan. Existing law, as of January 1, 2005, grants registered domestic partners the same rights, benefits, and protections and subjects them to the same responsibilities, duties, and obligations as are granted to or imposed upon spouses.*

*This bill would specify that the provisions of the Teachers’ Retirement Law applicable to a spouse, surviving spouse, or former spouse also apply to a registered domestic partner, surviving domestic partner, or former domestic partner, except as specified.*

*(3) The Teachers’ Retirement Law requires a beneficiary designation by a member of the Defined Benefit Program to be witnessed by 2 witnesses.*

*This bill would eliminate that requirement.*

*(4) Existing law authorizes members of the Defined Benefit Program of the State Teachers’ Retirement Plan who retire prior to January 1, 2011, at a specified age or at a specified age with 30 years of service, to elect to receive a specified lump-sum payment upon retirement and an actuarially reduced monthly allowance.*

*This bill would authorize any member who retires prior to that date to make that election. The bill would also specify the method to be used by the Teachers’ Retirement Board to calculate the member’s actuarially reduced monthly allowance, that results in no net actuarial impact to the program.*

*(5) Existing law requires the governing board of a school district to grant an employee a leave of absence to enable the employee to serve as an elected officer of an employee organization.*

*This bill would make technical changes to that provision.*

~~(3)~~

*(6) This bill would declare that any act that amends or repeals any of the sections amended by this act shall prevail over this act.*

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

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

- 1 SECTION 1. *Section 22007.5 is added to the Education*
- 2 *Code, to read:*
- 3 *22007.5. Except as excluded by Sections 22661 and 23812,*
- 4 *any reference to a “spouse” in this part includes a person who is*
- 5 *the registered domestic partner of a member, as established*
- 6 *pursuant to Section 297 or 299.2 of the Family Code.*
- 7 SEC. 2. *Section 22171 of the Education Code is amended to*
- 8 *read:*
- 9 22171. (a) “Spouse” means a person who was continuously
- 10 married to the member for the period beginning at least 12 months



1 prior to the death of the member, unless a child is born to the  
2 member and his or her spouse within the 12-month period or unless  
3 the spouse is carrying the member's unborn child.

4 (b) "Spouse" also means a person who was married to the  
5 member for less than 12 months, if the member's death was  
6 accidental, or for the period beginning prior to the occurrence of  
7 the injury or diagnosis of the illness that resulted in death.

8 (1) A member's death is defined as accidental only if he or she  
9 received bodily injuries through violent, external, or accidental  
10 means and died as a direct result of the bodily injuries and  
11 independent of all other causes.

12 (2) This subdivision does not apply if, at the time of the  
13 marriage, the member could not have reasonably been expected to  
14 live for 12 months, due to a known illness.

15 (c) *Except as excluded by Sections 22661 and 23812, "spouse"*  
16 *also means a person who is the registered domestic partner of a*  
17 *member, as established pursuant to Section 297 or 299.2 of the*  
18 *Family Code.*

19 SEC. 3. *Section 22650 of the Education Code is amended to*  
20 *read:*

21 22650. (a) This chapter establishes the power of a court in a  
22 dissolution of marriage or legal separation action with respect to  
23 community property rights in accounts with the plan under this  
24 part and establishes and defines the rights of nonmember spouses  
25 and nonmember registered domestic partners in the plan under this  
26 part.

27 (b) *For purposes of this chapter, any reference to "dissolution*  
28 *of marriage or legal separation" includes the termination or*  
29 *dissolution of a domestic partnership, nullity of a domestic*  
30 *partnership, or the legal separation of partners in a domestic*  
31 *partnership, as provided in Section 299 of the Family Code.*

32 SEC. 4. *Section 22651 of the Education Code is amended to*  
33 *read:*

34 22651. (a) For purposes of this chapter and Section 23300,  
35 "nonmember spouse" means a member's spouse or former  
36 spouse, and also includes a member's registered domestic partner  
37 or former registered domestic partner, who is being or has been  
38 awarded a community property interest in the service credit,  
39 accumulated retirement contributions, accumulated Defined



1 Benefit Supplement account balance, or benefits of the member  
2 under this part. ~~A~~

3 (b) A nonmember spouse shall not be considered a member  
4 based upon his or her receipt of any of the following being awarded  
5 to the nonmember spouse as a result of legal separation or  
6 dissolution of marriage: a separate account of service credit and  
7 accumulated retirement contributions, a retirement allowance, or  
8 an interest in the member's retirement allowance under the  
9 Defined Benefit Program; or a separate account based on the  
10 member's Defined Benefit Supplement account balance, a  
11 retirement benefit, or an interest in the member's retirement  
12 benefit under the Defined Benefit Supplement Program.

13 *SEC. 5. Section 22661 of the Education Code is amended to*  
14 *read:*

15 22661. (a) The nonmember spouse who is awarded a separate  
16 account under this part shall have the right to a refund of the  
17 accumulated retirement contributions in the account under the  
18 Defined Benefit Program, and a return of the Defined Benefit  
19 Supplement account balance, of the nonmember spouse under this  
20 part.

21 (b) The nonmember spouse shall file an application on a form  
22 provided by the system to obtain a refund or lump-sum payment.

23 (c) The refund of accumulated retirement contributions and the  
24 return of the accumulated Defined Benefit Supplement account  
25 balance under this part are effective when the system deposits in  
26 the United States mail an initial warrant drawn in favor of the  
27 nonmember spouse and addressed to the latest address for the  
28 nonmember spouse on file with the system. ~~H~~

29 (d) *If* the nonmember spouse has elected on a form provided by  
30 the system to transfer all or a specified portion of the accumulated  
31 retirement contributions or accumulated Defined Benefit  
32 Supplement account balance that are eligible for direct  
33 trustee-to-trustee transfer to the trustee of a qualified plan under  
34 Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A.  
35 Sec. 402), deposit in the United States mail of a notice that the  
36 requested transfer has been made constitutes a refund of the  
37 nonmember spouse's accumulated retirement contributions or  
38 accumulated Defined Benefit Supplement account balance. *This*  
39 *subdivision shall not apply to a nonmember domestic partner;*  
40 *consistent with Section 402 of the Internal Revenue Code.*



1 ~~(d)~~

2 (e) The nonmember spouse is deemed to have permanently  
3 waived all rights and benefits pertaining to the service credit,  
4 accumulated retirement contributions, and accumulated Defined  
5 Benefit Supplement account balance under this part when the  
6 refund and lump-sum payment become effective.

7 ~~(e)~~

8 (f) The nonmember spouse may not cancel a refund or  
9 lump-sum payment under this part after it is effective.

10 ~~(f)~~

11 (g) The nonmember spouse shall not have a right to elect to  
12 redeposit the refunded accumulated retirement contributions  
13 under this part after the refund is effective, to redeposit under  
14 Section 22662 or purchase additional service credit under Section  
15 22663 after the refund becomes effective, or to redeposit the  
16 accumulated Defined Benefit Supplement account balance after  
17 the lump-sum payment becomes effective.

18 ~~(g)~~

19 (h) If the total service credit in the separate account of the  
20 nonmember spouse under the Defined Benefit Program, including  
21 service credit purchased under Sections 22662 and 22663, is less  
22 than two and one-half years, the board shall refund the  
23 accumulated retirement contributions in the account.

24 *SEC. 6.* Section 22663 of the Education Code is amended to  
25 read:

26 22663. The nonmember spouse who is awarded a separate  
27 account under this part has the right to purchase additional service  
28 credit in accordance with the determination of the court pursuant  
29 to Section 22652.

30 (a) The nonmember spouse may purchase only the service  
31 credit that the court, pursuant to Section 22652, has determined to  
32 be the community property interest of the nonmember spouse.

33 (b) The nonmember spouse shall inform the system in writing  
34 of his or her intent to purchase additional service credit within 180  
35 days after the date the judgment or court order addressing the right  
36 of the nonmember spouse to purchase additional service credit is  
37 entered. The nonmember spouse shall elect to purchase additional  
38 service credit on a form provided by the system within 30 days  
39 after the system mails an election form and billing.



1 (c) If the nonmember spouse elects to purchase additional  
2 service credit, he or she shall pay, prior to retirement under this  
3 part, all contributions with respect to the additional service at the  
4 contribution rate for additional service credit in effect at the time  
5 of election and regular interest from July 1 of the year following  
6 the year upon which contributions are based.

7 (1) (A) The nonmember spouse shall purchase additional  
8 service credit by paying the required contributions and interest in  
9 one lump sum, or in not more than 120 monthly installments,  
10 provided that no installment, except the final installment, is less  
11 than twenty-five dollars (\$25). Regular interest shall be charged on  
12 the monthly, unpaid balance if the nonmember spouse pays in  
13 installments.

14 (B) If any payment due, because of the election, is not received  
15 at the system's office in Sacramento within 120 days of its due  
16 date, the election shall be canceled and any payments made under  
17 the election shall be returned to the nonmember spouse.

18 (2) The contributions shall be based on the member's  
19 compensation earnable in the most recent school year during  
20 which the member was employed, preceding the date of separation  
21 established by the court pursuant to Section 22652.

22 (3) All payments of contributions and interest shall be received  
23 by the system before the effective date of the retirement of the  
24 nonmember spouse.

25 (d) The nonmember spouse does not have a right to purchase  
26 additional service credit under this part after the effective date of  
27 a refund of the accumulated retirement contributions in the  
28 separate account of the nonmember spouse.

29 (e) The member does not have a right to purchase the  
30 community property interest of the nonmember spouse of  
31 additional service credit under this part whether or not the  
32 nonmember spouse elects to purchase the additional service credit.  
33 However, any additional service credit eligible for purchase that  
34 is not explicitly awarded to the nonmember spouse by the  
35 judgment or court order shall be deemed the exclusive property of  
36 the member.

37 ~~SEC. 2.~~

38 *SEC. 7.* Section 22705.5 of the Education Code is amended to  
39 read:



1 22705.5. Service subject to coverage by the San Francisco  
2 City and County Employees' Retirement System pursuant to  
3 Section 24701 is excluded from coverage in the Defined Benefit  
4 Program. The member shall retain the right to receive a retirement  
5 allowance for creditable service that is subject to coverage under  
6 the Defined Benefit Program unless he or she withdraws his or her  
7 accumulated retirement contributions for that service.

8 ~~SEC. 3.~~

9 *SEC. 8.* Section 22714 of the Education Code is amended to  
10 read:

11 22714. (a) Whenever the governing board of a school district  
12 or a community college district or a county office of education, by  
13 formal action, determines pursuant to Section 44929 or 87488 that  
14 because of impending curtailment of or changes in the manner of  
15 performing services, the best interests of the district or county  
16 office of education would be served by encouraging certificated  
17 employees or academic employees to retire for service and that the  
18 retirement will result in a net savings to the district or county office  
19 of education, an additional two years of service credit shall be  
20 granted under this part to a member of the Defined Benefit  
21 Program if all of the following conditions exist:

22 (1) The member is credited with five or more years of service  
23 credit and retires for service under Chapter 27 (commencing with  
24 Section 24201) during a period of not more than 120 days or less  
25 than 60 days, commencing no sooner than the effective date of the  
26 formal action of the employer that shall specify the period.

27 (2) The employer transfers to the retirement fund an amount  
28 determined by the Teachers' Retirement Board to equal the  
29 actuarial equivalent of the difference between the allowance the  
30 member receives after receipt of service credit pursuant to this  
31 section and the amount the member would have received without  
32 the service credit and an amount determined by the Teachers'  
33 Retirement Board to equal the actuarial equivalent of the  
34 difference between the purchasing power protection supplemental  
35 payment the member receives after receipt of service credit  
36 pursuant to this section and the amount the member would have  
37 received without the service credit. The payment for purchasing  
38 power shall be deposited in the Supplemental Benefit Maintenance  
39 Account established by Section 22400 and shall be subject to  
40 Section 24415. The transfer to the retirement fund shall be made



1 in a manner and a time period, not to exceed eight years, that is  
2 acceptable to the Teachers' Retirement Board. The employer shall  
3 transfer the required amount for all eligible employees who retire  
4 pursuant to this section.

5 (3) The employer transmits to the retirement fund the  
6 administrative costs incurred by the system in implementing this  
7 section, as determined by the Teachers' Retirement Board.

8 (4) The employer has considered the availability of teachers or  
9 academic employees to fill the positions that would be vacated  
10 pursuant to this section.

11 (b) (1) The school district shall demonstrate and certify to the  
12 county superintendent that the formal action taken would result in  
13 a net savings to the district.

14 (2) The county superintendent shall certify to the Teachers'  
15 Retirement Board that the result specified in paragraph (1) can be  
16 demonstrated. The certification shall include, but not be limited to,  
17 the information specified in subdivision (b) of Section 14502.

18 (3) The school district shall reimburse the county  
19 superintendent for all costs to the county superintendent that result  
20 from the certification.

21 (c) (1) The county office of education shall demonstrate and  
22 certify to the Superintendent of Public Instruction that the formal  
23 action taken would result in a net savings to the county office of  
24 education.

25 (2) The Superintendent of Public Instruction shall certify to the  
26 Teachers' Retirement Board that the result specified in paragraph  
27 (1) can be demonstrated. The certification shall include, but not be  
28 limited to, the information specified in subdivision (b) of Section  
29 14502.

30 (3) The Superintendent of Public Instruction may request  
31 reimbursement from the county office of education for all  
32 administrative costs that result from the certification.

33 (d) (1) The community college district shall demonstrate and  
34 certify to the chancellor's office that the formal action taken would  
35 result in a net savings to the district.

36 (2) The chancellor shall certify to the Teachers' Retirement  
37 Board that the result specified in paragraph (1) can be  
38 demonstrated. The certification shall include, but not be limited to,  
39 the information specified in subdivision (c) of Section 84040.5.



1 (3) The chancellor may request reimbursement from the  
2 community college district for all administrative costs that result  
3 from the certification.

4 (e) The opportunity to be granted service credit pursuant to this  
5 section shall be available to all members employed by the school  
6 district, community college district, or county office of education  
7 who meet the conditions set forth in this section.

8 (f) The amount of service credit shall be two years.

9 (g) Any member of the Defined Benefit Program who retires  
10 under this part for service under Chapter 27 (commencing with  
11 Section 24201) with service credit granted under this section and  
12 who subsequently reinstates shall forfeit the service credit granted  
13 under this section.

14 (h) Any member of the Defined Benefit Program who retires  
15 under this part for service under Chapter 27 (commencing with  
16 Section 24201) with service credit granted under this section and  
17 who takes any job with any school district in the state less than one  
18 year after receiving the credit shall forfeit the ongoing benefit he  
19 or she receives from the additional service credit granted under this  
20 section.

21 (i) Any member of the Defined Benefit Program who retires  
22 under this part for service under Chapter 27 (commencing with  
23 Section 24201) with service credit granted under this section and  
24 who takes any job with the school district that granted the member  
25 the service credit less than five years after receiving the credit shall  
26 forfeit the ongoing benefit he or she receives from the additional  
27 service credit granted under this section.

28 (j) This section does not apply to any member otherwise  
29 eligible if the member receives any unemployment insurance  
30 payments arising out of employment with an employer subject to  
31 this part during a period extending one year beyond the effective  
32 date of the formal action, or if the member is not otherwise eligible  
33 to retire for service.

34 ~~SEC. 4.~~

35 *SEC. 9.* Section 23203 of the Education Code is amended to  
36 read:

37 23203. (a) A member who elects to redeposit refunded  
38 accumulated retirement contributions shall pay, prior to  
39 retirement, all contributions and interest as determined under  
40 Section 23200.



1 (b) If the system is unable to inform the member or beneficiary  
2 of the amount required to redeposit the refunded accumulated  
3 retirement contributions prior to the effective date of the  
4 applicable allowance, the member or beneficiary may make the  
5 required payment within 30 working days after the date of mailing  
6 of the statement of contributions and interest required or the  
7 effective date of the appropriate allowance, whichever is later. The  
8 payment shall be paid in full before a member or beneficiary  
9 receives any adjustment in the appropriate allowance due because  
10 of that payment.

11 (c) Redeposit of refunded accumulated retirement  
12 contributions shall be made in one sum, or in not more than 120  
13 monthly installments, not to exceed ten years, provided that no  
14 installment, except the final installment, is less than twenty-five  
15 dollars (\$25).

16 ~~SEC. 5.~~

17 *SEC. 10. Section 23300 of the Education Code is amended to*  
18 *read:*

19 23300. (a) A member of the Defined Benefit Program may  
20 designate a beneficiary to receive benefits payable under this part  
21 upon the member's death. A beneficiary designation may not be  
22 made in derogation of a community property interest of a  
23 nonmember spouse, as defined by Section 25000.9, with respect  
24 to service or contributions credited under this part, unless the  
25 nonmember spouse has previously obtained an alternative order  
26 pursuant to Section 2610 of the Family Code.

27 (b) A member's beneficiary designation for benefits payable  
28 under the Defined Benefit Program, including a designation made  
29 pursuant to Section 24300, shall also apply to benefits payable  
30 under the Defined Benefit Supplement Program. A beneficiary  
31 designation shall be in writing on a form prescribed by the system;  
32 *and executed by the member, and witnessed by two witnesses who*  
33 ~~are not designated as a beneficiary for benefits payable under~~  
34 ~~either the Defined Benefit Program or the Defined Benefit~~  
35 ~~Supplement Program.~~

36 (c) A beneficiary designation may not be valid unless it is  
37 received in the office of the system in Sacramento prior to the  
38 member's death.

39 (d) A member may change or revoke a beneficiary designation  
40 at any time by making a new designation pursuant to this section.



1 (e) This section ~~may~~ *is not* be applicable to the designation of  
2 an option beneficiary or an annuity beneficiary under this part.

3 (f) An option beneficiary may designate a death beneficiary  
4 who would, upon the death of the option beneficiary, be entitled  
5 to receive the option beneficiary's accrued monthly allowance.

6 *SEC. 11. Section 23812 of the Education Code is amended to*  
7 *read:*

8 23812. (a) The surviving spouse of a deceased member who  
9 previously lost entitlement to benefits prescribed by this part due  
10 to remarriage shall be entitled to resume payment of the benefits  
11 effective either on January 1, 2000, or the first day of the month  
12 following receipt by the board of a written application for  
13 resumption of benefits, whichever date is later. The amount of the  
14 benefits payable shall be calculated as though the benefits had been  
15 paid without interruption from the date of remarriage through the  
16 benefits resumption effective date.

17 (b) The board shall be under no requirement to identify, locate,  
18 or notify a remarried spouse of a deceased member who previously  
19 lost entitlement as a result of remarriage about the resumption of  
20 benefits provided in this section. The board shall be under no  
21 requirement to provide the name or address or any other  
22 information concerning any remarried spouse of a deceased  
23 member to any person, agency, or entity for the purpose of  
24 notifying those who may be eligible for the resumption of benefits  
25 under this section.

26 (c) Nothing in this section shall be construed to imply or  
27 interpreted to mean that the benefits addressed shall be required to  
28 be paid retroactively.

29 (d) *This section does not apply to the surviving domestic*  
30 *partner of a member.*

31 *SEC. 12. Section 24114 of the Education Code is amended to*  
32 *read:*

33 24114. (a) A member retired for disability under this part  
34 may be employed or self-employed in any capacity,  
35 notwithstanding Section 22132, but may not make contributions  
36 to the retirement fund with respect to the Defined Benefit Program  
37 or accrue service credit under this part based on earnings from any  
38 employment.

39 (b) A member retired for disability under this part may earn in  
40 any one calendar year up to the limitation specified in subdivision



1 (c) without a reduction in his or her disability retirement  
2 allowance.

3 (c) The limitation that shall apply to the earnings of a member  
4 retired for disability under this part shall be fifteen thousand  
5 dollars (\$15,000), in any one calendar year, adjusted annually by  
6 the board effective each January 1 by the amount of increase in the  
7 All Urban California Consumer Price Index using December 1989  
8 as the base.

9 (d) If a member retired for disability under this part earns in  
10 excess of the limitation specified in subdivision (c) from all  
11 employment in any calendar year, notwithstanding Section 22132,  
12 his or her retirement allowance shall be reduced by the amount of  
13 the excess earnings. The amount of the reduction may be equal to  
14 the monthly allowance payable but may not exceed the amount of  
15 the annual allowance payable under this part for the calendar year  
16 in which the excess compensation was earned.

17 (e) The earnings limitation specified in this section does not  
18 apply to a member retired for disability under this part who is  
19 participating in an approved rehabilitation program pursuant to  
20 Section 24111.

21 (f) This section does not apply to a member retired for  
22 disability under this part who began receiving a disability  
23 retirement allowance prior to October 16, 1992.

24 ~~SEC. 6.~~

25 *SEC. 13. Section 24214 of the Education Code, as amended*  
26 *by Section 2 of Chapter 903 of the Statutes of 2002, is amended to*  
27 *read:*

28 24214. (a) A member retired for service under this part may  
29 perform the activities identified in paragraphs (1) to (9), inclusive,  
30 of subdivision (a), or subdivision (b), of Section 22119.5 as an  
31 employee of an employer, as an employee of a third party, or as an  
32 independent contractor within the California public school  
33 system, but the member may not make contributions to the  
34 retirement fund or accrue service credit based on compensation  
35 earned from that service.

36 (b) The rate of pay for service performed by a member retired  
37 for service under this part as an employee of the employer may not  
38 be less than the minimum, nor exceed that paid by the employer  
39 to other employees performing comparable duties.



1 (c) A member retired for service under this part may not be  
2 required to reinstate for performing the activities identified in  
3 paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision  
4 (b), of Section 22119.5, as an employee of an employer, as an  
5 employee of a third party, or as an independent contractor within  
6 the California public school system.

7 (d) A member retired for service under this part may earn  
8 compensation for performing activities identified in paragraphs  
9 (1) to (9), inclusive, of subdivision (a), or subdivision (b), of  
10 Section 22119.5 in any one school year up to the limitation  
11 specified in subdivision (f) as an employee of an employer, as an  
12 employee of a third party, or an independent contractor, within the  
13 California public school system, without a reduction in his or her  
14 retirement allowance.

15 (e) (1) The postretirement compensation limitation provisions  
16 set forth in this section are not applicable to compensation earned  
17 by a member retired for service under this part who has returned  
18 to work after the date of retirement and, for a period of at least 12  
19 consecutive months, has not performed the activities identified in  
20 paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision  
21 (b), of Section 22119.5 as an employee of an employer, as an  
22 employee of a third party, or as an independent contractor within  
23 the California public school system.

24 (2) The postretirement compensation limitation provisions set  
25 forth in this section are not applicable to compensation earned for  
26 the performance of the activities described in subdivision (a) for  
27 which the employer is not eligible to receive state apportionment  
28 or to compensation that is not creditable pursuant to Section  
29 22119.2.

30 (f) The limitation that shall apply to the compensation for  
31 performance of the activities identified in paragraphs (1) to (9),  
32 inclusive, of subdivision (a), or subdivision (b), of Section  
33 22119.5 by a member retired for service under this part either as  
34 an employee of an employer, an employee of a third party, or as an  
35 independent contractor, shall, in any one school year, be an amount  
36 calculated by the board each July 1 equal to twenty-two thousand  
37 dollars (\$22,000) ~~multiplied~~ *adjusted* by the percentage ~~increase~~  
38 *change* in the average *compensation* ~~earnable salary~~ of active  
39 members of the Defined Benefit Program, as determined by the



1 system, from the 1998–99 fiscal year to the fiscal year ending in  
2 the previous calendar year.

3 (g) If a member retired for service under this part earns  
4 compensation for performing activities identified in paragraphs  
5 (1) to (9), inclusive, of subdivision (a), or subdivision (b), of  
6 Section 22119.5 in excess of the limitation specified in subdivision  
7 (f), as an employee of an employer, as an employee of a third party,  
8 or as an independent contractor, within the California public  
9 school system, and if that compensation is not exempt from that  
10 limitation under subdivision (e) or any other provisions of law, the  
11 member’s retirement allowance shall be reduced by the amount of  
12 the excess compensation. The amount of the reduction may be  
13 equal to the monthly allowance payable but shall not exceed the  
14 amount of the annual allowance payable under this part for the  
15 fiscal year in which the excess compensation was earned.

16 (h) The amendments to this section enacted during the 1995–96  
17 Regular Session shall be deemed to have become operative on July  
18 1, 1996.

19 (i) This section shall be repealed on January 1, 2008, unless  
20 later enacted legislation extends or deletes that date.

21 *SEC. 14. Section 24214 of the Education Code, as amended*  
22 *by Section 21 of Chapter 859 of the Statutes of 2003, is amended*  
23 *to read:*

24 24214. (a) A member retired for service under this part may  
25 perform the activities identified in paragraphs (1) to (9), inclusive,  
26 of subdivision (a), or subdivision (b), of Section 22119.5 as an  
27 employee of an employer, as an employee of a third party, or as an  
28 independent contractor within the California public school  
29 system, but the member may not make contributions ‘to the  
30 retirement fund or accrue service credit based on compensation  
31 earned from that service.

32 (b) The rate of pay for service performed by a member retired  
33 for service under this part as an employee of the employer may not  
34 be less than the minimum, nor exceed that paid by the employer  
35 to other employees performing comparable duties.

36 (c) A member retired for service under this part may not be  
37 required to reinstate for performing the activities identified in  
38 paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision  
39 (b), of Section 22119.5, as an employee of an employer, as an



1 employee of a third party, or as an independent contractor within  
2 the California public school system.

3 (d) A member retired for service under this part may earn  
4 compensation for performing activities identified in paragraphs  
5 (1) to (9), inclusive, of subdivision (a), or subdivision (b), of  
6 Section 22119.5 in any one school year up to the limitation  
7 specified in subdivision (f) as an employee of an employer, as an  
8 employee of a third party, or an independent contractor, within the  
9 California public school system, without a reduction in his or her  
10 retirement allowance.

11 (e) The postretirement compensation limitation provisions set  
12 forth in this section are not applicable to compensation earned for  
13 the performance of the activities described in subdivision (a) for  
14 which the employer is not eligible to receive state apportionment  
15 or to compensation that is not creditable pursuant to Section  
16 22119.2.

17 (f) The limitation that shall apply to the compensation for  
18 performance of the activities identified in paragraphs (1) to (9),  
19 inclusive, of subdivision (a), or subdivision (b), of Section  
20 22119.5 by a member retired for service under this part either as  
21 an employee of an employer, an employee of a third party, or as an  
22 independent contractor, shall, in any one school year, be an amount  
23 calculated by the board each July 1 equal to twenty-two thousand  
24 dollars (\$22,000) ~~multiplied~~ *adjusted* by the percentage ~~increase~~  
25 *change* in the average compensation earnable of active members  
26 of the Defined Benefit Program, as determined by the system,  
27 from the 1998–99 fiscal year to the fiscal year ending in the  
28 previous calendar year.

29 (g) If a member retired for service under this part earns  
30 compensation for performing activities identified in paragraphs  
31 (1) to (9), inclusive, of subdivision (a), or subdivision (b), of  
32 Section 22119.5 in excess of the limitation specified in subdivision  
33 (f), as an employee of an employer, as an employee of a third party,  
34 or as an independent contractor, within the California public  
35 school system, the member's retirement allowance shall be  
36 reduced by the amount of the excess compensation. The amount  
37 of the reduction may be equal to the monthly allowance payable  
38 but may not exceed the amount of the annual allowance payable  
39 under this part for the fiscal year in which the excess compensation  
40 was earned.



1 (h) The language of this section derived from the amendments  
2 to the section of this number added by Chapter 394 of the Statutes  
3 of 1995, enacted during the 1995–96 Regular Session, is deemed  
4 to have become operative on July 1, 1996.

5 (i) This section shall become operative on January 1, 2008.

6 *SEC. 15.* Section 24221 of the Education Code is amended to  
7 read:

8 24221. (a) A member who retires for service ~~on or after~~  
9 ~~January 1, 2004, and prior to January 1, 2011, and who has reached~~  
10 ~~either the age of 60 years and three months within the month he or~~  
11 ~~she retires or the age of 60 years if he or she has at least 30 years~~  
12 ~~of credited service prior to January 1, 2011,~~ may elect, on a form  
13 prescribed by the system, to receive a lump-sum payment and an  
14 actuarially reduced monthly ~~benefit~~ *allowance* pursuant to this  
15 section in lieu of the monthly allowance that would otherwise be  
16 payable to the member pursuant to this chapter. The election under  
17 this section shall be made at the time the member files his or her  
18 application for service retirement allowance as provided in  
19 Section 24204.

20 (b) A member who makes the election described in subdivision  
21 (a) shall receive a one-time, lump-sum payment in an amount that  
22 equals or does not exceed the lesser of the following amounts:

23 (1) The actuarial present value of the ~~difference between~~  
24 ~~amount by which (A) the monthly benefit unmodified allowance~~  
25 ~~payable to the member pursuant to this chapter, and exceeds (B)~~  
26 ~~an amount equal to 2 percent of the member's final compensation~~  
27 ~~multiplied by the number of years of credited service and divided~~  
28 ~~by 12.~~

29 (2) Fifteen percent of the actuarial present value of the monthly  
30 ~~benefit unmodified allowance~~ payable to the member under this  
31 chapter.

32 (c) Notwithstanding any other provision of this part, a member  
33 who makes the election described in subdivision (a) shall receive  
34 a monthly *unmodified* allowance, pursuant to this chapter, that  
35 shall be actuarially reduced to reflect the lump-sum amount paid  
36 under subdivision (b). *The actuarially reduced unmodified*  
37 *allowance may be modified pursuant to Section 24300.*

38 (d) A member may not apply a lump-sum payment made  
39 pursuant to this section for the purposes of redepositing previously  
40 refunded retirement contributions pursuant to Chapter 19



1 (commencing with Section 23200) or purchasing service credit  
2 pursuant to Chapter 14 (commencing with Section 22800),  
3 Chapter 14.2 (commencing with Section 22820) or Chapter 14.5  
4 (commencing with Section 22850). The Legislature hereby finds  
5 and declares that if a member who elects to receive a partial  
6 lump-sum payment also elects to redeposit previously refunded  
7 contributions or purchase service credit as a result of the receipt of  
8 the lump-sum payment, the Defined Benefit Program may  
9 experience a net actuarial impact.

10 (e) *An election pursuant to subdivision (a) may have no net*  
11 *actuarial impact to the Defined Benefit Program. The board shall*  
12 *adopt present value factors to establish a corresponding*  
13 *actuarially reduced monthly allowance that result in no net*  
14 *actuarial impact to the Defined Benefit Program.* The Legislature  
15 reserves the right to modify the provisions of this section to further  
16 the objective of permitting eligible members to receive a  
17 lump-sum distribution of a portion of their benefits, with a  
18 corresponding actuarial reduction in their monthly allowance, so  
19 that there is no net actuarial impact to the Defined Benefit  
20 Program.

21 ~~SEC. 7.~~

22 *SEC. 16. Section 25000.9 of the Education Code is amended*  
23 *to read:*

24 25000.9. For purposes of this chapter and Section 23300,  
25 “nonmember spouse” means a member’s spouse or former  
26 spouse, *and also includes a member’s registered domestic partner*  
27 *or former registered domestic partner*, who is being or has been  
28 awarded a community property interest in the service credit,  
29 accumulated retirement contributions, accumulated Defined  
30 Benefit Supplement account balance, or benefits of the member  
31 under this part. A nonmember spouse may not be considered a  
32 member based upon his or her receipt of any of the following being  
33 awarded to the nonmember spouse as a result of legal separation  
34 ~~or~~, *dissolution of marriage, or dissolution of domestic*  
35 *partnership:*

36 (a) A separate account of service credit and accumulated  
37 retirement contributions, a retirement allowance, or an interest in  
38 the member’s retirement allowance under the Defined Benefit  
39 Program.



1 (b) A separate account based on the member's Defined Benefit  
2 Supplement account balance, a retirement benefit, or an interest in  
3 the member's retirement benefit under the Defined Benefit  
4 Supplement Program.

5 *SEC. 17. Section 26002.5 is added to the Education Code, to*  
6 *read:*

7 *26002.5. Except as excluded in Sections 26004 and 27406,*  
8 *any reference to a "spouse" in this part includes a person who is*  
9 *the registered domestic partner of a member, as established*  
10 *pursuant to Section 297 or 299.2 of the Family Code.*

11 *SEC. 18. Section 26004 of the Education Code is amended to*  
12 *read:*

13 26004. Notwithstanding any other provision of law:

14 (a) The benefits payable to any participant or beneficiary under  
15 this part shall be subject to the limitations imposed by Section 415  
16 of Title 26 of the United States Code.

17 (b) The amount of compensation that is taken into account in  
18 computing benefits under this part for a plan year shall not exceed  
19 the annual compensation limit applicable to that plan year in  
20 accordance with Section 401(a)(17) of Title 26 of the United States  
21 Code as that section read on the effective date of this section and  
22 as that section may be amended after that date. The determination  
23 of compensation for a 12-month period shall be subject to the  
24 annual compensation limit in effect for the calendar year in which  
25 the 12-month period begins. In a determination of average  
26 compensation over more than one 12-month period, the amount of  
27 compensation taken into account for each 12-month period shall  
28 be subject to the respective annual compensation limit applicable  
29 to that period.

30 (c) Distributions from the plan under this part shall be made in  
31 accordance with Section 401(a)(9) of Title 26 of the United States  
32 Code, including the incidental death benefit requirements of  
33 Section 401(a)(9)(G) and the regulations thereunder. The required  
34 beginning date of benefit payments that represent the entire  
35 interest of the participant shall be as follows:

36 (1) In the case of a lump-sum distribution of a retirement  
37 benefit, disability benefit, or termination benefit, the lump-sum  
38 payment shall be made not later than April 1 of the calendar year  
39 following the later of the calendar year in which the participant  
40 attains the age of 70<sup>1</sup>/<sub>2</sub> years or the calendar year in which the



1 participant terminates all employment subject to coverage by the  
2 plan.

3 (2) In the case of a retirement benefit or disability benefit that  
4 is to be paid in the form of an annuity, payment of the annuity shall  
5 begin not later than April 1 of the calendar year following the later  
6 of the calendar year in which the participant attains the age of 70<sup>1</sup>/<sub>2</sub>  
7 years or the calendar year in which the participant terminates  
8 employment in all positions subject to coverage by the plan, with  
9 the annuity to continue over the life of the participant or the life of  
10 the participant and the participant's option beneficiary, or over a  
11 period not to exceed the life expectancy of the participant or the  
12 life expectancy of the participant and the participant's option  
13 beneficiary.

14 (3) In the case of a death benefit, distributions shall commence  
15 no later than the date provided in Section 27001.

16 (d) If a person becomes entitled to a distribution from the plan  
17 under this part that constitutes an eligible rollover distribution  
18 within the meaning of Section 401(a)(31) of Title 26 of the United  
19 States Code, the person may elect under terms and conditions  
20 established by the board to have the distribution or a portion  
21 thereof paid directly to a plan that constitutes an eligible retirement  
22 plan within the meaning of Section 401(a)(31), as specified by that  
23 person. Upon the exercise of the election by a person with respect  
24 to a distribution or a portion thereof, the distribution from the plan  
25 of the amount so designated, once distributable under the terms of  
26 the plan, shall be made in the form of a direct rollover to the  
27 eligible retirement plan so specified. *This subdivision does not*  
28 *apply to the surviving domestic partner of a member, consistent*  
29 *with Section 402 of the Internal Revenue Code.*

30 (e) The amount of any benefit from the plan under this part  
31 ~~which~~ *that* is determined on the basis of actuarial assumptions  
32 shall be based on actuarial assumptions adopted by the board  
33 pursuant to Section 26213 as a plan amendment with respect to the  
34 Cash Balance Benefit Program and those assumptions shall  
35 preclude employer discretion and comply with Section 401(a)(25)  
36 of Title 26 of the United States Code.

37 *SEC. 19. Section 26140 of the Education Code is amended to*  
38 *read:*

39 26140. (a) "Spouse" means the person married to the  
40 participant on the date the participant files a beneficiary



1 designation, or an application for a benefit, or on the date of the  
2 participant's death.

3 (b) *Except as excluded in Sections 26004 and 27406, "spouse"*  
4 *also includes the person who is the registered domestic partner of*  
5 *the participant, as established pursuant to Section 297 or 299.2 of*  
6 *the Family Code, on the date the participant files a beneficiary*  
7 *designation or an application for a benefit, or on the date of the*  
8 *participant's death.*

9 SEC. 20. Section 27400 of the Education Code is amended to  
10 read:

11 27400. (a) This chapter establishes the power of a court in a  
12 dissolution of marriage or legal separation action with respect to  
13 community property rights in benefits under this part and defines  
14 the rights of nonparticipant spouses in the Cash Balance Benefit  
15 Program.

16 (b) *For purposes of this chapter, any reference to "dissolution*  
17 *of marriage or legal separation" also includes the termination or*  
18 *dissolution of a domestic partnership, nullity of a domestic*  
19 *partnership, or the legal separation of the partners in a domestic*  
20 *partnership, as provided in Section 299 of the Family Code.*

21 SEC. 21. Section 27401 of the Education Code is amended to  
22 read:

23 27401. For purposes of this chapter, "nonparticipant spouse"  
24 means ~~the~~ *a participant's spouse or former spouse, and also*  
25 *includes a participant's registered domestic partner or former*  
26 *registered domestic partner, who is being or has been awarded a*  
27 *community property interest in the benefits determined by*  
28 *reference to the amounts credited to a participant's employee and*  
29 *employer accounts or the participant's annuity. A nonparticipant*  
30 *spouse who is awarded separate nominal accounts is not a*  
31 *participant in the Cash Balance Benefit Program. A nonparticipant*  
32 *spouse who receives or is awarded an interest in a participant's*  
33 *annuity is not a participant in the Cash Balance Benefit Program.*

34 SEC. 22. Section 27406 of the Education Code is amended to  
35 read:

36 27406. The nonparticipant spouse who is awarded separate  
37 nominal accounts with respect to the Cash Balance Benefit  
38 Program shall have the right to a lump-sum distribution of  
39 amounts credited to the account.



1 (a) The nonparticipant spouse shall file an application on a  
2 form provided by the system to obtain the distribution.

3 (b) The distribution is effective when the system deposits in the  
4 United States mail a warrant drawn in favor of the nonparticipant  
5 spouse and addressed to the latest address for the nonparticipant  
6 spouse on file with the system. ~~¶~~

7 (c) *If* the nonparticipant spouse has elected on a form provided  
8 by the system to transfer all or a specified portion of the accounts  
9 that are eligible for direct trustee-to-trustee transfer under Section  
10 401(a)(31) of Title 26 of the United States Code to the trustee of  
11 a qualified plan under Section 402 of Title 26 of the United States  
12 Code, deposit in the United States mail of a notice that the  
13 requested transfer has been made constitutes a distribution of the  
14 nonparticipant spouse's credit balance from the separate nominal  
15 accounts. *This subdivision shall not apply to a nonparticipant*  
16 *domestic partner, consistent with Section 402 of the Internal*  
17 *Revenue Code.*

18 ~~(e)~~

19 (d) The nonparticipant spouse is deemed to have permanently  
20 waived all rights to an annuity when the distribution becomes  
21 effective.

22 ~~(d)~~

23 (e) The nonparticipant spouse may not cancel a distribution  
24 after the distribution is effective.

25 ~~(e)~~

26 (f) The nonparticipant spouse shall have no right to elect to  
27 redeposit the distribution after the distribution is effective.

28 *SEC. 23.* Section 44987 of the Education Code is amended to  
29 read:

30 44987. (a) The governing board of a school district shall  
31 grant to any employee, upon request, a leave of absence without  
32 loss of compensation for the purpose of enabling the employee to  
33 serve as an elected officer of any local school district public  
34 employee organization, or any statewide or national public  
35 employee organization with which the local organization is  
36 affiliated.

37 The leave shall include, but is not limited to, absence for  
38 purposes of attendance by the employee at periodic, stated,  
39 special, or regular meetings of the body of the organization on  
40 which the employee serves as an officer. Compensation during the



1 leave shall include retirement fund contributions required of the  
2 school district as employer. The required employer *contribution*  
3 *rate shall be the* rate adopted by the Teachers' Retirement Board  
4 as a plan amendment with respect to the Defined Benefit Program  
5 as provided in Section 22711. The employee shall earn full service  
6 credit during the leave of absence and shall pay member  
7 contributions as prescribed by Section 22711. The maximum  
8 amount of the service credit earned may not exceed twelve  
9 calendar years. Any employee who serves as a full-time officer of  
10 a public employee organization is not eligible for disability  
11 benefits under the State Teachers' Retirement Plan while on the  
12 leave of absence.

13 Following the school district's payment of the employee for the  
14 leave of absence, the school district shall be reimbursed by the  
15 employee organization of which the employee is an elected officer  
16 for all compensation paid the employee on account of the leave.  
17 Reimbursement by the employee organization shall be made  
18 within 10 days after its receipt of the school district's certification  
19 of payment of compensation to the employee.

20 The leave of absence without loss of compensation provided for  
21 by this section is in addition to the released time without loss of  
22 compensation granted to representatives of an exclusive  
23 representative by subdivision (c) of Section 3543.1 of the  
24 Government Code.

25 For purposes of this section, "school district" also means  
26 "county superintendent of schools."

27 (b) An employee who after August 31, 1978, was absent on  
28 account of elected-officer service, shall receive full service credit  
29 in the State Teachers' Retirement Plan; provided that, not later  
30 than April 30, 1981: (1) the employee makes a written request to  
31 the employer for a leave of absence for the period of the  
32 elected-officer service, and (2) the employee organization of  
33 which the employee is an elected officer pays to the employee's  
34 school district an amount equal to the required State Teachers'  
35 Retirement Plan member and employer retirement contributions,  
36 as prescribed by this section.

37 The school district, following this written request and payment,  
38 shall transmit the amount received to the State Teachers'  
39 Retirement System, informing it of the period of the employee's  
40 leave of absence. The State Teachers' Retirement System shall



1 credit the employee with all service credit earned for the period of  
2 the elected-officer leave of absence.

3 If the employee has been compensated by the school district for  
4 the period of the service, then, as a condition to the employee's  
5 entitlement to service credit for this period, the school district shall  
6 be reimbursed by the employee organization for the amount of the  
7 compensation.

8 The provisions of this subdivision shall apply retroactively to all  
9 service as an elective officer in a public employee organization  
10 occurring after August 31, 1978.

11 ~~SEC. 8.~~

12 *SEC. 24.* Any section of any act enacted by the Legislature  
13 during the second year of the 2003–04 Regular Session that  
14 amends, amends and renumbers, adds, repeals and adds, or repeals  
15 a statute that is amended by this act shall prevail over this act,  
16 whether that act is enacted prior or subsequent to the enactment of  
17 this act.

