

AMENDED IN SENATE APRIL 17, 2006

AMENDED IN SENATE MARCH 27, 2006

AMENDED IN SENATE JULY 6, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 146**

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**Introduced by Assembly Member Nunez**

January 13, 2005

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An act to amend Section 19999.3 of, and to add Sections 20037.6, 20677.5, and 20683.1 to, the Government Code, relating to state employees, making an appropriation therefor, *and declaring the urgency thereof*, to take effect immediately, ~~usual and current expenses~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 146, as amended, Nunez. State employees: memorandum of understanding: State Bargaining Unit 2.

(1) Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions that require the expenditure of funds of a memorandum of understanding entered into between the state employer and State Bargaining Unit 2, the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, and would provide that the provisions of any memorandum of understanding that require the expenditure of funds

shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

The bill would provide that provisions of the memorandum of understanding approved by this bill that ~~requires~~ *require* the expenditure of funds will not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would authorize the state employer and the affected employee organization to reopen negotiations on all or part of the memorandum of understanding if the Legislature does not approve or fully fund any provision of the memorandum of understanding that requires the expenditure of funds.

(2) Existing law provides that state employees, as defined, who become new members of the Public Employees' Retirement System, during their first 24 months of employment, do not make contributions to the system or receive service credit for their service, and the state employer shall not make contributions on their behalf. These members are instead required to contribute 5% of their monthly compensation, as specified, to an alternate retirement program, administered by the Department of Personnel Administration, and these contributions cease when these state employees begin making their own contributions to the system.

This bill would require that state employees who are hired on or after July 1, 2006, who are members of State Bargaining Unit 2, shall contribute 6% of their monthly compensation, as specified, to the alternative retirement program, as described above.

(3) The Public Employees' Retirement Law provides a comprehensive set of rights and benefits based upon age, service credit, and final compensation. Existing law defines final compensation variously for different member classifications and bargaining units and, in this regard, defines final compensation for a state member for the purpose calculating retirement benefits as the highest annual average compensation earnable by the member during a designated 12-month period.

This bill would provide that final compensation for a person who becomes a state member, as specified, on or after July 1, 2006, and who is represented by State Bargaining Unit 2, means the highest annual average compensation earnable by the member during a designated 36-month period.

(4) The Public Employees’ Retirement Law provides that the contribution rate for a state miscellaneous or state industrial member whose service is not included in the federal system is 6% of the compensation in excess of \$317 per month for service rendered on or after July 1, 1976. Existing law provides that the contribution rate for a state miscellaneous or state industrial member whose service has been included in the federal system is 5% of compensation in excess of \$513 per month for service rendered on or after July 1, 1976. Existing law provides that the contribution rate for specified state safety members whose service is not included in the federal system is 6% of the compensation in excess of \$317 per month.

This bill would increase the contributions rates by 1% for the membership classifications described above that are represented by State Bargaining Unit 2, beginning with the July 2006 pay period.

(5) The annual Budget Act appropriates specified amounts from the General Fund, unallocated special funds, and unallocated nongovernmental cost funds, for state employee compensation.

This bill would appropriate \$13,048,000 from those funds for state employee compensation, in augmentation of the Budget Act of 2005.

(6) This bill would declare that it is to take effect immediately as an ~~appropriation for the usual and current expenses of the state~~ *urgency statute*.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares that the  
2 purpose of this act is to approve the provisions of an agreement  
3 pursuant to Section 3517.6 of the Government Code entered into  
4 by the state employer and State Bargaining Unit 2, the California  
5 Attorneys, Administrative Law Judges and Hearing Officers in  
6 State Employment (CASE) that requires the expenditure of  
7 funds.

8 SEC. 2. The provisions of the memorandum of understanding  
9 prepared pursuant to Section 3517.5 of the Government Code  
10 and entered into by the state employer and State Bargaining Unit  
11 2 (CASE), on October 21, 2005, and that require the expenditure  
12 of funds, are hereby approved for the purposes of Section 3517.6  
13 of the Government Code.

1 SEC. 3. The provisions of the memorandum of understanding  
2 approved by Section 2 of this act that are scheduled to take effect  
3 on or after July 1, 2005, and that require the expenditure of  
4 funds, shall not take effect unless funds for these provisions are  
5 specifically appropriated by the Legislature. If the Legislature  
6 does not approve or fully fund any provision of the memorandum  
7 of understanding that requires the expenditure of funds, either  
8 party may reopen negotiations on all or part of the memorandum  
9 of understanding.

10 SEC. 4. Notwithstanding Section 3517.6 of the Government  
11 Code, the provisions of any memorandum of understanding that  
12 require the expenditure of funds shall become effective even if  
13 the provisions of the memorandum of understanding are  
14 approved by the Legislature in legislation other than the annual  
15 Budget Act.

16 SEC. 5. Section 19999.3 of the Government Code is amended  
17 to read:

18 19999.3. (a) The Legislature finds and declares that this  
19 chapter is intended to provide an alternate retirement program for  
20 new state employees who are members of the Public Employees'  
21 Retirement System pursuant to Section 20281.5 and who, during  
22 the 24 months of employment following the date they qualify for  
23 membership in the system pursuant to that section, do not make  
24 contributions into the defined benefit retirement program.

25 (b) The Legislature hereby authorizes the development of a  
26 retirement program under the Deferred Compensation Plan, the  
27 tax-deferred Savings Plan, or any other acceptable defined  
28 contribution plan.

29 (c) The state employees described in subdivision (a) who are  
30 employed in positions that are subject to the federal system, as  
31 defined in Section 20033, shall contribute to the retirement  
32 program 5 percent of compensation, as set forth in Part 3  
33 (commencing with Section 20000), in excess of five hundred  
34 thirteen dollars (\$513) per month paid that member for service  
35 rendered. The state employer shall pick up the contribution, as  
36 authorized by Section 414(h) of the Internal Revenue Code, and  
37 shall deduct the contribution from the employee's compensation.  
38 The contributions required by this subdivision shall cease when  
39 the state employee begins making contributions to the defined  
40 benefit retirement program.

1 (d) State employees hired on or after July 1, 2006, who are  
2 represented by State Bargaining Unit 2 and are employed in  
3 positions that are subject to the federal system, as defined in  
4 Section 20033, shall contribute to the retirement program 6  
5 percent of compensation, as set forth in Part 3 (commencing with  
6 Section 20000), in excess of five hundred thirteen dollars (\$513)  
7 per month paid that member for service rendered. The state  
8 employer shall pick up the contribution, as authorized by Section  
9 414 (h) of the Internal Revenue Code, and shall deduct the  
10 contribution from the employee's compensation. The  
11 contributions required by this subdivision shall cease when the  
12 state employee begins making contributions to the defined  
13 benefit retirement program.

14 (e) (1) "State employees," as used in this section, include  
15 employees, as defined in Section 19815.

16 (2) This section shall not apply to employees of the California  
17 State University, the University of California, or the legislative or  
18 judicial branch.

19 (f) If the retirement program authorized by this section is  
20 inconsistent with federal laws or rules or becomes unnecessary  
21 under state or federal law, this section shall become inoperative.

22 SEC. 6. Section 20037.6 is added to the Government Code, to  
23 read:

24 20037.6. (a) Notwithstanding Sections 20035 and 20037,  
25 final compensation for a person who becomes a state member of  
26 the system on or after July 1, 2006, and is represented by State  
27 Bargaining Unit 2, means the highest average annual  
28 compensation earnable by the member during the consecutive  
29 36-month period immediately preceding the effective date of his  
30 or her retirement, or the date of his or her last separation from  
31 state service if earlier, or during any other period of 36  
32 consecutive months during his or her state membership that the  
33 member designates on the application for retirement.

34 (b) This section applies to service credit accrued while a  
35 member of State Bargaining Unit 2.

36 (c) This section does not apply to:

37 (1) Former state employees who return to state employment  
38 on or after July 1, 2006.

1 (2) State employees hired prior to July 1, 2006, who were  
2 subject to Section 20281.5 during the first 24 months of state  
3 employment.

4 (3) State employees hired prior to July 1, 2006, who become  
5 subject to representation by State Bargaining Unit 2 on or after  
6 July 1, 2006.

7 (4) State employees on an approved leave of absence who  
8 return to active employment on or after July 1, 2006.

9 SEC. 7. Section 20677.5 is added to the Government Code, to  
10 read:

11 20677.5. (a) Notwithstanding any provisions of Section  
12 20677.4 to the contrary, effective with the beginning of the July  
13 2006 pay period, the normal rate of contribution for state  
14 miscellaneous or state industrial members who are subject to  
15 Section 21354.1, and are represented by State Bargaining Unit 2,  
16 shall be:

17 (1) Seven percent of the compensation in excess of three  
18 hundred seventeen dollars (\$317) per month paid to a member  
19 whose service is not included in the federal system.

20 (2) Six percent of compensation in excess of five hundred  
21 thirteen dollars (\$513) per month paid to that member whose  
22 service has been included in the federal system.

23 (b) If the provisions of this section are in conflict with the  
24 provisions of a memorandum of understanding reached pursuant  
25 to Section 3517.5, the memorandum of understanding shall be  
26 controlling without further legislative action, except that if the  
27 provisions of a memorandum of understanding require the  
28 expenditure of funds, the provisions shall not become effective  
29 unless and until approved by the Legislature in the annual Budget  
30 Act.

31 (c) The Director of the Department of Personnel  
32 Administration may establish the normal rate of contribution for  
33 a state employee who is excepted from the definition of "state  
34 employee" in subdivision (c) of Section 3513, and an officer or  
35 employee of the executive branch of state government who is not  
36 a member of the civil service. The normal rate of contribution  
37 shall be the same for all members identified in this subdivision.  
38 The contribution rate shall be effective the beginning of the pay  
39 period indicated by the Director of the Department of Personnel

1 Administration but shall be no earlier than the beginning of the  
2 pay period following the date the board receives notification.

3 SEC. 8. Section 20683.1 is added to the Government Code, to  
4 read:

5 20683.1. (a) For each state safety member subject to Section  
6 21369 or 21369.1 who are represented by State Bargaining Unit  
7 2, the normal rate of contribution shall be 7 percent of  
8 compensation in excess of three hundred seventeen dollars  
9 (\$317) per month paid to a member whose service is not included  
10 in the federal system beginning with the July 2006 pay period. If  
11 the provisions of this section are in conflict with the provisions of  
12 a memorandum of understanding reached pursuant to Section  
13 3517.5, the memorandum of understanding shall be controlling  
14 without further legislative action, except that if those provisions  
15 of the memorandum of understanding require the expenditure of  
16 funds, those provisions shall not become effective unless  
17 approved by the Legislature in the annual Budget Act.

18 (b) The Director of the Department of Personnel  
19 Administration may establish the normal rate of contribution for  
20 a state employee who is excepted from the definition of “state  
21 employee” in subdivision (c) of Section 3513, and an officer or  
22 employee of the executive branch of state government who is not  
23 a member of the civil service. The normal rate of contribution  
24 shall be the same for all members identified in this subdivision.  
25 The contribution rate shall be effective the beginning of the pay  
26 period indicated by the Director of the Department of Personnel  
27 Administration but shall be no earlier than the beginning of the  
28 pay period following the date the board receives notification.

29 SEC. 9. The sum of thirteen million forty-eight thousand  
30 dollars (\$13,048,000) is hereby appropriated for expenditure in  
31 the 2005–06 fiscal year in augmentation of, and for the purpose  
32 of state employee compensation, as provided in, Items  
33 9800-001-0001, 9800-001-0494, and 9800-001-0988 of Section  
34 2.00 of the Budget Act of 2005 to implement the provisions of  
35 the memorandum of understanding approved by this act in  
36 accordance with the following schedule:

37 (a) Four million, seven hundred twelve thousand dollars  
38 (\$4,712,000) from the General Fund in augmentation of Item  
39 9800-001-0001.

1 (b) Five million, three hundred thirty-five thousand dollars  
2 (\$5,335,000) from unallocated special funds in augmentation of  
3 Item 9800-001-0494.

4 (c) Three million, one thousand dollars (\$3,001,000) from  
5 other unallocated nongovernmental cost funds in augmentation of  
6 Item 9800-001-0988.

7 ~~SEC. 10. This act makes an appropriation for the usual  
8 current expenses of the state within the meaning of Article IV of  
9 the Constitution and shall go into immediate effect.~~

10 *SEC. 10. This act is an urgency statute necessary for the  
11 immediate preservation of the public peace, health, or safety  
12 within the meaning of Article IV of the Constitution and shall go  
13 into immediate effect. The facts constituting the necessity are:*

14 *In order for the provisions of this act to be applicable as soon  
15 as possible for the 2005–06 fiscal year, and thereby facilitate the  
16 orderly administration of state government at the earliest  
17 possible time, it is necessary that this act take effect immediately.*