

Assembly Bill No. 224

Passed the Assembly August 29, 2005

Chief Clerk of the Assembly

Passed the Senate August 23, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 22115.2, 22134, 22134.5, 22135, 22212.5, 22223, 22662, 22663, 22703, 22705, 22705.5, 22713, 22803, 23001, 23104, 23202, 23300, 24001, 24005, 24101, 24105, 24204, 24208, 24214, 24216, 24219, 24306.5, 24306.7, 24307, 24311, 24312, 24400, 24613, 24701, 24704, 24750, 24751, 26401, 27100, and 45134 of the Education Code, relating to teachers' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 224, Negrete McLeod. Teachers' retirement.

(1) Existing law requires the Teachers' Retirement Board to report to the Governor and the Legislature on the purchasing power of benefits under the Defined Benefit Program of the State Teachers' Retirement Plan no later than April 1, of each year. Existing law permits the Teachers' Retirement Board to fix compensation for certain positions notwithstanding specified authority granted to the Department of Personnel Administration. Existing law permits a member of the Defined Benefit Program of the State Teachers' Retirement Plan who is retired for service to terminate the retirement allowance upon written request to the system.

This bill would, among other things, change the date that the Teachers' Retirement Board is required to report to the Governor, as described above, to June 1. The bill would broaden the authority of the Teachers' Retirement Board to fix compensation for certain positions, as described above. The bill would further specify the procedure by which a member may terminate a retirement allowance upon written request.

(2) The Teachers' Retirement Law defines "final compensation" as the highest average annual compensation earnable during any 12 consecutive months for purposes of calculating various benefits, and specifies that the last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

This bill would delete that latter provision that requires the member to make a designation.

(3) The Teachers' Retirement Law authorizes the governing board of a school district, community college district, or county superintendent of schools to establish regulations allowing an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time and receive service credit if certain requirements are satisfied, as specified.

This bill would provide that a member who retires or separates from service prior to the end of the school year is in violation of those provisions and the member's service credit for that period of the contract will be computed in accordance with other provisions.

(4) The Teachers' Retirement Law authorizes certain members who are employed by a community college district that provides the Cash Balance Benefit Program to elect to become participants of that program, as specified.

This bill would provide that if an employee was excluded from participation in the Cash Balance Benefit Program for that service, the employee may elect to become a participant provided specified conditions regarding employment are met. The bill would also make various technical changes to the Teachers' Retirement Law.

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

SECTION 1. Section 22115.2 of the Education Code is amended to read:

22115.2. "Concurrent membership" means membership in the Defined Benefit Program by an individual who is credited with service that is not used as a basis for benefits under any other public retirement system and is also a member of the California Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco Employees' Retirement System. A member with concurrent membership shall have the right to the following:

(a) Have final compensation determined pursuant to subdivision (c) of Section 22134.

(b) Redeposit accumulated retirement contributions pursuant to Section 23201.

(c) Apply for retirement pursuant to paragraph (2) of subdivision (a) of Section 24201.

SEC. 2. Section 22134 of the Education Code is amended to read:

22134. (a) “Final compensation” means the highest average annual compensation earnable by a member during any period of three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed during the same pay period with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member’s retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member’s final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances,

family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 3. Section 22134.5 of the Education Code is amended to read:

22134.5. (a) Notwithstanding Section 22134, "final compensation" means the highest average annual compensation earnable by a member during any period of 12 consecutive months while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of 12 consecutive months, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed during the same pay period with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(e) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances,

family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(f) This section shall apply to the following:

(1) A member who has 25 or more years of credited service, excluding service credited pursuant to the following:

(A) Section 22714.

(B) Section 22714.5.

(C) Section 22715.

(D) Section 22717, except as provided in subdivision (b) of Section 22121.

(E) Section 22826.

(2) A nonmember spouse, if the member had 25 or more years of credited service, as calculated in paragraph (1), on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

SEC. 4. Section 22135 of the Education Code is amended to read:

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, "final compensation" means the highest average annual compensation earnable by an active member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the plan's Defined Benefit Program.

(b) Section 22134, except subdivision (a) of that section, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22134 or "final compensation" with respect to a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means any of the following:

(1) All teachers and substitute teachers in positions requiring certification qualifications who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct instruction. For the purpose of

determining continuity of employment within the meaning of this subdivision, an authorized leave of absence for sabbatical or illness or other collectively bargained or employer-approved leaves shall not constitute a break in service.

(2) Other certificated personnel who spend, during the last 10 years of their employment with the same employer that immediately precedes their retirement, 60 percent or more of their contract time each year providing direct services to pupils, including, but not limited to, librarians, counselors, nurses, speech therapists, resource specialists, audiologists, audiometrists, hygienists, optometrists, psychologists, driver safety instructors, and personnel on special assignment to perform school attendance and adjustment services.

(d) As used in this section, “classroom teacher” does not include any of the following:

(1) Certificated employees whose job descriptions require an administrative credential.

(2) Certificated employees whose job descriptions include responsibility for supervision of certificated staff.

(3) Certificated employees who serve as advisers, coordinators, consultants, or developers or planners of curricula, instructional materials, or programs, who spend, during the last 10 years of their employment with the same employer that immediately precedes their retirement, less than 60 percent of their contract time in direct instruction.

(4) Certificated employees whose job descriptions require provision of direct instruction or services, but who are functioning in nonteaching assignments.

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer that has, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written agreement with an exclusive representative, that makes this section applicable to all of its classroom teachers, as defined in subdivision (c).

(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for

all increases in allowances provided by this section and related administrative costs; and a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the plan's Defined Benefit Program, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is a member of the Public Employees' Retirement System pursuant to Section 22508, that he or she may, within 60 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this plan's Defined Benefit Program. However, only service credited under the Defined Benefit Program subsequent to the date of that election shall be subject to this section.

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the applicability of this section to a member

pursuant to the criteria set forth in this section when a retirement, disability, or family allowance becomes payable.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payments not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

SEC. 5. Section 22212.5 of the Education Code is amended to read:

22212.5. (a) This section shall apply to the following positions in the system: chief executive officer, system actuary, chief investment officer, and other investment officers and portfolio managers whose positions are designated managerial pursuant to Section 18801.1 of the Government Code.

(b) Notwithstanding Sections 19816, 19825, 19826, 19829, and 19832 of the Government Code, the board shall fix the compensation for the positions specified in subdivision (a). In so doing, the board shall be guided by the principles contained in Sections 19826 and 19829 of the Government Code, consistent with its fiduciary responsibility to its members to recruit and retain highly qualified and effective employees for these positions.

(c) When a position specified in subdivision (a) is filled through a general civil service appointment, it shall be filled from an eligible list based on an examination that was held on an open basis, and tenure in those positions shall be subject to the provisions of Article 2 (commencing with Section 19590) of Chapter 7 of Part 2 of Division 5 of Title 2 of the Government Code. In addition to the causes for action specified in that article, the board may take action under the article for causes related to its fiduciary responsibility to its members, including the employee's failure to meet specified performance objectives.

(d) An individual who held a position designated in subdivision (a) for less than five years may not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person, except the state, by making any formal or informal appearance

before or by making any oral or written communication to the board, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

SEC. 6. Section 22223 of the Education Code is amended to read:

22223. The members of the board who are not active members of the Defined Benefit Program or active participants of the Cash Balance Benefit Program and who are appointed by the Governor pursuant to Section 22200 shall receive one hundred dollars (\$100) for every day of actual attendance at meetings of the board or any meeting of any committee of the board of which the person is a member, and that is conducted for the purpose of carrying out the powers and duties of the board, together with their necessary traveling expenses incurred in connection with performance of their official duties.

SEC. 7. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under the Defined Benefit Program may redeposit accumulated retirement contributions previously refunded to the member in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may redeposit under the Defined Benefit Program only those accumulated retirement contributions that were previously refunded to the member and in which the court has determined the nonmember spouse has a community property interest.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order that specifies the redeposit rights of the nonmember spouse is entered. The nonmember spouses' election to redeposit shall be made on a form provided by the system within 30 days after the system mails an election form and the billing.

(c) If the nonmember spouse elects to redeposit under the Defined Benefit Program, he or she shall repay all or a portion of

the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse and shall pay regular interest from the date of the refund to the date payment of the redeposit is completed.

(d) All payments shall be received by the system before the effective date of the nonmember spouse's retirement under this part. If any payment due because of the election is not received at the system's headquarters office, as established pursuant to Section 22375, within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall not have a right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 8. Section 22663 of the Education Code is amended to read:

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

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

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

(c) If the nonmember spouse elects to purchase additional service credit, he or she shall pay, prior to retirement under this part, all contributions with respect to the additional service at the

contribution rate for additional service credit in effect at the time of election and regular interest from July 1 of the year following the year upon which contributions are based.

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

(B) If any payment due, because of the election, is not received at the system's headquarters office, as established pursuant to Section 22375, within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

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

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

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

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

SEC. 9. Section 22703 of the Education Code is amended to read:

22703. (a) Service shall be credited to the Defined Benefit Program, except as provided in subdivision (b).

(b) A member's creditable service that exceeds 1.000 in a school year shall not be credited to the Defined Benefit Program.

Commencing July 1, 2002, contributions by the employer that are deposited in the Teachers' Retirement Fund and the member on creditable compensation paid to the member for that service, exclusive of contributions pursuant to Section 22951, shall be credited to the Defined Benefit Supplement Program.

(c) In lieu of any other benefits provided by this part, any member who performed service prior to July 1, 1956, shall receive retirement benefits for that service at least equal to the benefits that the member would have received for that service under the provisions of this part as they existed on June 30, 1956. This subdivision shall not apply to service that is credited in the San Francisco Employees' Retirement System.

(d) The amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2003.

SEC. 10. Section 22705 of the Education Code is amended to read:

22705. No service shall be included under this part for which a member of the Defined Benefit Program is entitled to receive a retirement benefit in a lump sum or installment payments, for other than military service, from any public retirement system other than this system, or under the American Gratuities Act No. 4151 relating to service in the Philippine Islands under which 15 or more years of creditable service has accrued, or the San Francisco Employees' Retirement System. If a retired member under this part becomes entitled to that retirement benefit, his or her retirement allowance shall be reduced thereafter to exclude the service upon which the retirement benefit is based, without other change in his or her retirement status. This section shall not apply to any retirement benefit received from a defined contribution plan that is qualified under Section 401(a), Section 403(b), or Section 457 of the Internal Revenue Code.

SEC. 11. Section 22705.5 of the Education Code is amended to read:

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

SEC. 12. Section 22713 of the Education Code is amended to read:

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time, and receive the service credit the member would have received if the member had been employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but may not be limited to, the following:

(1) The option to reduce the member's workload shall be exercised at the request of the member and may be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed on a full-time basis to perform creditable service subject to coverage under the Defined Benefit Program and have a minimum of 10 years of credited service, including five years of credited service for full-time employment immediately preceding the reduction in workload.

(3) The member may not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals, other approved leaves of absence, and unpaid absences from the performance of creditable service for personal reasons do not constitute a break in service. For purposes of this subdivision, the period of time during which a member is retired for service shall constitute a break in service and a member who reinstates from retirement

shall be required to be employed on a full-time basis to perform creditable service for at least five school years immediately preceding the reduction in workload.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations may not exceed 10 years.

(6) The reduced workload shall be equal to at least one-half of the time the employer requires for full-time employment in accordance with Section 22138.5 pursuant to the member's contract of employment during his or her last school year of full-time employment preceding the reduction in workload.

(7) The member shall be paid creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer, in conjunction with the administrative staff of the State Teachers' Retirement Plan and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.

(d) For each school year the member's workload is reduced pursuant to this section, the member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed if the member had performed creditable service on a full-time basis and if that service was subject to coverage under the Defined Benefit Program.

(e) For each school year the member's workload is reduced pursuant to this section, the employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member if the member had performed creditable service on a full-time basis and if that service was subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

(g) A member who retires or otherwise separates from service prior to the end of the school year shall be in violation of this section and the member's service credit for that period of the contract shall be computed in accordance with Section 22701.

SEC. 13. Section 22803 of the Education Code is amended to read:

22803. (a) A member may elect to receive credit for any of the following:

(1) Service performed in a teaching position in a publicly supported and administered university or college in this state not covered by another public retirement system.

(2) Service performed in a certificated teaching position in a child care center operated by a county superintendent of schools or a school district in this state.

(3) Service performed in a teaching position in the California School for the Deaf or the California School for the Blind, or in special classes maintained by the public schools of this state for the instruction of the deaf, the hard of hearing, the blind, or the semisighted.

(4) Service performed in a certificated teaching position in a federally supported and administered Indian school in this state.

(5) Time served, not to exceed two years, in a certificated teaching position in a job corps center administered by the United States government in this state if the member was employed to perform creditable service subject to coverage under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program within six months following the date of termination of service in the job corps.

(6) Time spent on a sabbatical leave, approved by an employer in this state, after July 1, 1956.

(7) Time spent on an approved leave, approved by an employer in this state, to participate in any program under the federal Mutual Educational and Cultural Exchange Program.

(8) Time spent on an approved maternity or paternity leave of two years or less in duration, regardless of whether or not the leave was taken before or after the addition of this subdivision.

(9) Time spent on an approved leave, up to four months in any 12-month period, for family care or medical leave purposes, as

defined by Section 12945.2 of the Government Code, as it read on the date leave was granted, excluding maternity and paternity leave.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), inclusive, of subdivision (a) if the member has received or is eligible to receive credit for the same service or time in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 14. Section 23001 of the Education Code is amended to read:

23001. Each county superintendent, district superintendent, chancellor of a community college district, or other employing agency that reports directly to the system shall draw requisitions for contributions required by Sections 22901 and 22950 in favor of the State Teachers' Retirement System, and the requisitions, when allowed and signed by the county auditor, shall constitute a warrant against the county treasury. The county superintendent, district superintendent, chancellor of a community college district, or other employing agency thereupon shall forward the warrants to the board in the system's headquarters office, as established pursuant to Section 22375. The amounts received shall be deposited immediately in the State Treasury to the Teachers' Retirement Fund.

SEC. 15. Section 23104 of the Education Code is amended to read:

23104. (a) Deposit in the United States mail of an initial warrant drawn as directed by the member as a refund of contributions upon termination of employment, and addressed to the address directed by the member, constitutes a return of the member's accumulated retirement contributions under this part.

(b) If the member has elected on a form provided by the system to transfer all or a specified portion of the accumulated retirement contributions that are eligible for direct

trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the member's accumulated retirement contributions under this part.

(c) For refunds not involving direct trustee-to-trustee transfers, if the member returns the total gross distribution amount to the system's headquarters office, as established pursuant to Section 22375, within 30 days from the mailing date, the refund shall be canceled and the person shall be restored as a member of the Defined Benefit Program with all the rights and privileges under this part restored.

(d) For refunds involving direct trustee-to-trustee transfers, if the member returns the warrant drawn to the trustee of the qualified plan and, if applicable, any additional amounts necessary to equal, but in no event to exceed, the total gross distribution amount to the system's headquarters office, as established pursuant to Section 22375, within 30 days from the mailing date, the refund shall be canceled and the person shall be restored as a member of the Defined Benefit Program with all the rights and privileges under this part restored.

SEC. 16. Section 23202 of the Education Code is amended to read:

23202. (a) An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the effective date of the member's retirement under this part.

(b) An election to redeposit accumulated retirement contributions returned to the member shall be considered as an election to repay accumulated retirement contributions previously returned, up to but not exceeding the amount required to restore the total service credit returned, under the provisions of this chapter.

(c) If any payment due because of this election is not received at the system's headquarters office, as established pursuant to Section 22375, within 120 days of its due date, the election shall be canceled. Upon the cancellation of election, the member shall receive credit for the payments made under the election or, at the request of the member, those payments shall be returned.

(d) If the election is canceled, the member may at any time prior to the effective date of retirement under this part, again elect to redeposit accumulated retirement contributions previously withdrawn or returned, in accordance with Section 23200 and all the laws, rules, and regulations pertaining thereto.

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

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

(b) A member's beneficiary designation for benefits payable under the Defined Benefit Program, including a designation made pursuant to Section 24300, shall also apply to benefits payable under the Defined Benefit Supplement Program. A beneficiary designation shall be in writing on a form prescribed by the system and executed by the member.

(c) A beneficiary designation shall not be valid unless it is received in the system's headquarters office, as established pursuant to Section 22375, prior to the member's death.

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

(e) This section is not applicable to the designation of an option beneficiary or an annuity beneficiary under this part.

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

SEC. 18. Section 24001 of the Education Code is amended to read:

24001. (a) A member may apply for a disability allowance under the Defined Benefit Program if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual performance of service subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments

shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has neither attained normal retirement age, nor possesses sufficient unused sick leave days to receive creditable compensation on account of sick leave to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in the Defined Benefit Program commenced and remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability allowance under this part if the reason that the member is credited with less than four years of actual service performed subject to coverage under the Defined Benefit Program is due to an on-the-job injury or a disease that occurred while the member was employed and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member under this part who has less than five years of credited service to a disability allowance if the following conditions are met:

(1) The member has at least one year of credited service performed in this state.

(2) The disability is the direct result of an unlawful act of bodily injury that was perpetrated on his or her person by another human being while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

(3) The member provides documentation of the unlawful act in the form of an official police report or official employer incident report.

SEC. 19. Section 24005 of the Education Code is amended to read:

24005. (a) A disability allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for disability allowance is filed on a form provided by the system.

(2) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the system's headquarters office, as established pursuant to Section 22375, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If the member is employed to perform creditable service subject to coverage under the Defined Benefit Program at the time the disability allowance is approved under this part, the member shall notify the system in writing, within 90 days, of the last day on which the member will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of approval of the disability allowance, the member's application for a disability allowance shall be rejected and a disability allowance shall not be payable to the member.

SEC. 20. Section 24101 of the Education Code is amended to read:

24101. (a) A member may apply for a disability retirement under this part if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed in this state.

(3) At least one year (1.000) of credited service was earned subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year (1.000) of credited service was earned subsequent to the date on which the member's disability retirement was terminated.

(5) At least one year (1.000) of credited service was earned subsequent to the most recent refund of accumulated retirement contributions.

(6) The member is not applying for a disability retirement because of a physical or mental condition known to exist at the time the most recent membership in the Defined Benefit Program commenced and that remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability retirement if the reason that the member has performed less than four years of actual service is due to an on-the-job injury or a disease while in employment subject to coverage by the Defined Benefit Program and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member under this part who has less than five years of credited service to a disability retirement allowance if the following conditions are met:

(1) The member has at least one year of credited service performed in this state.

(2) The disability is a direct result of an unlawful act of bodily injury that was perpetrated on his or her person by another human being while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

(3) The member provides documentation of the unlawful act in the form of an official police report or official employer incident report.

SEC. 21. Section 24105 of the Education Code is amended to read:

24105. (a) A disability retirement allowance under this part shall become effective upon any date designated by the member, provided that all of the following conditions are met:

(1) An application for disability retirement is filed on a form provided by the system.

(2) The effective date is later than the last day of service for which compensation is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received at the system's headquarters office, as established pursuant to Section 22375, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If a member's application for disability retirement under this part does not contain an election of either an unmodified allowance or an allowance modified under an option and if the member subsequently submits an election, but not within the 30-day period established pursuant to Section 24301, the board shall set a benefit effective date which is no earlier than the first day of the month in which the subsequent election is received by the system. If the member fails to submit an election pursuant to Section 24301 and within six months of the date the acknowledgment notice is mailed pursuant to Section 24301, the member's application for disability retirement under this part shall be rejected.

(c) If the member is employed to perform creditable service subject to coverage under the Defined Benefit Program at the time the disability retirement is approved, the member shall notify the system in writing, within 90 days, of the last day on which the member will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of the approval of disability retirement, the member's application for disability retirement shall be rejected and a disability retirement allowance shall not be payable to the member.

SEC. 22. Section 24204 of the Education Code is amended to read:

24204. A service retirement allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(a) An application for service retirement allowance is filed on a form provided by the system, which is executed no earlier than six months before the effective date of retirement allowance.

(b) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(c) The effective date is no earlier than the first day of the month in which the application is received at the system's headquarters office, as established pursuant to Section 22375.

(d) Either of the following conditions exists:

(1) The effective date is no earlier than one year following the date on which the retirement allowance was terminated under Section 24208, or subdivision (a) of Section 24117.

(2) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(e) A member who files an application prior to the effective date of retirement may change or cancel his or her retirement application, as long as the form provided by the system is received in the system's headquarters office, established pursuant to Section 22375, no later than the last day of the month in which the retirement date is effective.

SEC. 23. Section 24208 of the Education Code is amended to read:

24208. (a) A member retired for service under this part may terminate the retirement allowance upon written request to the system effective upon a date designated by the member, subject to the following conditions:

(1) The request for termination of the retirement allowance is filed on a form provided by the system, and the form is executed no earlier than six months before the effective date of the termination.

(2) The effective date of the termination of the retirement allowance is no earlier than the first day of the month in which the request for termination is received in the system's headquarters office, as established pursuant to Section 22375.

(b) A member who files a request for termination of the retirement allowance may cancel the termination upon written

request to the system, provided that the cancellation request is received in the system's headquarters office, as established pursuant to Section 22375, no later than the last day of the month in which the termination is effective.

SEC. 24. Section 24214 of the Education Code, as amended by Section 22 of Chapter 912 of the Statutes of 2004, is amended to read:

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

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

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

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

(e) (1) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned by a member retired for service under this part who has returned to work after the date of retirement and, for a period of at least 12 consecutive months, has not performed the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an

employee of a third party, or as an independent contractor within the California public school system. For the purpose of this paragraph, the period of 12 consecutive months begins from the effective date of the member's most recent retirement.

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

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

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

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

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

SEC. 25. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42122) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time position, if the vacancy occurred due to circumstances beyond the control of the employer.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in any school district, community college district, or county office of education in the state.

(e) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

SEC. 26. Section 24219 of the Education Code is amended to read:

24219. Members who were retired under a previously existing local teachers' retirement system or the San Francisco Employees' Retirement System prior to July 1, 1972, who have not retired under this part for the local system service performed prior to July 1, 1972, shall have that portion of the retirement allowance computed under the law in effect on June 30, 1972, whenever they retire in the future.

SEC. 27. Section 24306.5 of the Education Code is amended to read:

24306.5. (a) A member who retired for service under Option 2 or Option 3 with an effective date prior to January 1, 1991, may elect to change Option 2 to Option 6 or Option 3 to Option 7 under all of the following conditions:

(1) The election is made during the six-month period commencing July 1, 1994, and ending December 31, 1994.

(2) The same beneficiary under Option 2 or Option 3 is named as beneficiary under Option 6 or Option 7.

(3) The change in options is consistent with Sections 22453 and 24305.

(4) The option beneficiary is not afflicted with any known terminal illness and the retired member shall state under penalty

of perjury that to the best of his or her knowledge the option beneficiary is not afflicted with any known terminal illness.

(5) The option beneficiary has not predeceased the retired member as of the effective date of the change in options.

(b) The change in options shall be effective on the date the election is signed, provided that the election is received at the system's headquarters office, as established pursuant to Section 22375, within 30 days after the date of the signature.

(c) If an election to change options is made pursuant to this section, the modified allowance shall be reduced in a manner determined by the board to ensure that no additional liability shall be incurred by the plan pursuant to this section.

SEC. 28. Section 24306.7 of the Education Code is amended to read:

24306.7. (a) Any member who retired for service under Option 4 or Option 5 with an effective date prior to January 1, 1991, may elect to change Option 4 to Option 6 or Option 5 to Option 7 if all of the following conditions are met:

(1) The election is made during the three-month period commencing January 1, 1999, and ending March 31, 1999.

(2) The same beneficiary under Option 4 or Option 5 is named as beneficiary under Option 6 or Option 7.

(3) The change in options is consistent with Sections 22453 and 24305.

(4) The option beneficiary is not afflicted with any known terminal illness.

(5) The option beneficiary has not predeceased the retired member as of the effective date of the change in option.

(6) The election to change the option under this section is received in the system's office in Sacramento at least 30 days prior to the death of the option beneficiary.

(b) Failure to satisfy all of the conditions in subdivision (a) shall render the change of election invalid.

(c) The change in options under this section shall be effective on the date the election is signed, provided all the conditions set forth in subdivision (a) are satisfied and the election is received at the system's headquarters office, as established pursuant to Section 22375, within 30 days after the date of the signature.

(d) The selection of a new joint and survivor option under this section is subject to a further modification of the modified

retirement allowance. In no event may a retired member elect a joint and survivor option that would result in any additional liability to the fund.

SEC. 29. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 24203 may make a preretirement election of an option, as provided in Section 24300, without right of revocation or change after the effective date of retirement, except as provided in this part. The preretirement election of an option shall become effective as of the date of the member's signature on a properly executed form prescribed by the system, subject to the following requirements:

(1) The form includes the signature of the member's spouse, if applicable, which is dated, and the date of that signature is within 30 days of the member's signature.

(2) The date the form is received at the system's headquarters office, as established pursuant to Section 22375, is within 30 days of the date of the member's signature and within 30 days of the date of spouse's signature, if applicable.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary as named in the prior preretirement election, as an option under Option 8.

(c) Upon the member's death prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, under the assumption that the member retired for service pursuant to Chapter 27 (commencing with Section 24201) on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to

receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851 shall be paid to the beneficiary in a lump sum.

(d) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(e) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, as of the date the election was signed.

(f) A member who terminates the service retirement allowance pursuant to Section 24208 shall not be eligible to file a preretirement election of an option until one calendar year elapses from the date the allowance is terminated.

(g) The system shall inform members who are qualified to make a preretirement election of an option, through the annual statements of account, that the election of an option can be made.

(h) This section shall become operative on January 1, 2000.

SEC. 30. Section 24311 of the Education Code is amended to read:

24311. (a) A member who has a preretirement election of an option in effect on December 31, 1990, may change his or her preretirement election of Option 2, Option 3, Option 4, or Option 5, to either Option 6 or Option 7 without the allowance reduction prescribed in Sections 24309 and 24310, provided the change is made on or after January 1, 1991, and prior to the earlier of January 1, 1992, or the member's retirement under this part.

(b) If the member elects to change his or her option under this section, then the member shall retain the same option beneficiary as named in the prior preretirement election. The election to change the preretirement election under this section shall be void if not received in the system's headquarters office, as established pursuant to Section 22375, at least 30 days prior to the death of the option beneficiary.

SEC. 31. Section 24312 of the Education Code is amended to read:

24312. (a) A member who has a preretirement election of an option in effect on December 31, 1999, may change his or her preretirement election of Option 2, Option 3, Option 4, Option 5, Option 6 or Option 7 to Option 8 without the allowance reduction prescribed in Sections 24309 and 24310, provided the change is made on or after January 1, 2000, and prior to the earlier of July 1, 2000, or the member's effective date of retirement.

(b) If the member elects to change his or her option under this section then the member shall retain the same option and the same option beneficiary as named in the prior preretirement election of an option as one of the options under Option 8. The election to change the preretirement election under this section shall be void if not received in the system's headquarters office, as established pursuant to Section 22375, at least 30 days prior to the death of the option beneficiary.

(c) This section shall become operative on January 1, 2000.

SEC. 32. Section 24400 of the Education Code is amended to read:

24400. The Legislature recognizes that inflation erodes the purchasing power of benefits paid under the plan under this part. It is the intent of the Legislature to understand the degree of erosion of these benefits. The board shall report to the Governor and Legislature no later than June 1 of each year on the extent to which inflation has eroded the purchasing power of benefits provided under the Defined Benefit Program. The board shall indicate the amount of supplementary increases in retirement allowances required to preserve the purchasing power of benefits provided by the Defined Benefit Program. The board shall also determine and report on the increases.

SEC. 33. Section 24613 of the Education Code is amended to read:

24613. (a) Payment pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons under this part constitutes a complete discharge and release of the board, system, and plan from liability for that payment.

(b) Notwithstanding Sections 751 and 1100 of the Family Code relating to community property interests, whenever

payment or refund is made by this system to a member, former member, or beneficiary of a member pursuant to this part, the payment shall fully discharge the board, system, and plan from all adverse claims thereto unless, before payment is made, a written notice of adverse claim is received at the system's headquarters office, as established pursuant to Section 22375.

SEC. 34. Section 24701 of the Education Code is amended to read:

24701. Those credentialed members of the San Francisco Employees' Retirement System on June 30, 1972, who make an irrevocable election to be covered only by the State Teachers' Retirement Plan under this part for prior and future service performed in San Francisco, shall be allowed to be covered for other certificated service concurrently, where the provisions of the city and county charter permit. This shall not include any credited service, as defined in Section 22121.

SEC. 35. Section 24704 of the Education Code is amended to read:

24704. The San Francisco Employees' Retirement System shall provide concurrent retirement benefits for classified and other noncertificated service in the San Francisco system according to the provisions applicable to miscellaneous employees of the time of the concurrent retirement for:

(a) Members of that system who transfer to the Defined Benefit Program after June 30, 1972.

(b) Persons who were members of both the San Francisco system and the Defined Benefit Program on June 30, 1972.

(c) Any person who could have qualified under subdivision (b) if he or she had not taken a refund from either the San Francisco System or the Defined Benefit Program, but not both, provided the person qualifies for and redeposits prior to retirement.

SEC. 36. Section 24750 of the Education Code is amended to read:

24750. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco Employees' Retirement System, prior to July 1, 1972, and who have former Permanent Fund contributions only on deposit related to former local system service shall have those

accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit all or a portion of the accumulated retirement contributions required to bring the account into full balance with regular interest prior to retirement under this part.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

SEC. 37. Section 24751 of the Education Code is amended to read:

24751. Those members who took a refund of their accumulated retirement contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco Employees' Retirement System, prior to July 1, 1972, and who also took a refund of their Permanent Fund contributions from the State Teachers' Retirement System with respect to the Defined Benefit Program, and who redeposited their contributions in the local system but who did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System with respect to the Defined Benefit Program, shall redeposit all or a portion of the accumulated retirement contributions required to bring the account into full balance with regular interest from the date of refund to the date of payment. The redeposit may be made immediately upon notification by the system and shall be made prior to retirement under this part. The redeposit shall be made in a lump sum or by installment payments as specified by the chief executive officer.

SEC. 38. Section 26401 of the Education Code, as amended by Section 6 of Chapter 474 of the Statutes of 2004, is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service on a part-time basis for less than 50 percent of each full-time position by a school district or county office of education that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit

Program for that employer, provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) A member of the Defined Benefit Program who is employed pursuant to Section 87474, 87480, 87481, 87482, or 87482.5 by a community college district that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer, provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(c) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) Employers shall make available to employees specified in subdivisions (a) and (b) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the pay period following the pay period in which the election is made.

(e) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time position during one school year with the same employer, creditable service performed for that employer shall no longer be covered under the Cash Balance Benefit Program. Creditable service performed for that employer shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period following the change in the participant's basis of employment.

(f) If an election is made pursuant to subdivision (b) and the participant's basis of employment with the community college district changes to employment that is subject to mandatory

membership in the Defined Benefit Program pursuant to Section 22501, 22502, or 22504 during one school year with the same employer, creditable service performed for that employer shall no longer be covered under the Cash Balance Benefit Program. Creditable service performed for that employer shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period following the change in the participant's basis of employment.

(g) (1) If an employee was excluded from participation in the Cash Balance Benefit Program pursuant to Section 26401.5, as that section read on December 31, 2000, for the same service, the employee may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer, provided all of the following conditions are met:

(A) The employment is pursuant to Section 87474, 87480, 87481, 87482, or 87482.5.

(B) The employer offers the Cash Balance Benefit Program.

(C) The creditable service is not also subject to mandatory membership in the Defined Benefit Program.

(2) Employers shall make available to employees forms provided by the system for making an election regarding participation and shall maintain the written election by the employee in the employer files. The election shall become effective on the first day of the pay period following the pay period in which the election is made.

SEC. 39. Section 27100 of the Education Code is amended to read:

27100. A participant may at any time designate or change the designation of one or more primary beneficiaries and one or more contingent beneficiaries to receive any lump-sum death benefit that may be payable under the plan. The beneficiary for the lump-sum death benefit under this part may be a person, trust, or the estate of the participant. The beneficiary shall be designated on a form prescribed by the system that is received in the system's headquarters office, as established pursuant to Section 22375, before the participant's death.

SEC. 40. Section 45134 of the Education Code is amended to read:

45134. (a) Notwithstanding any other provisions of law, no minimum or maximum age limits shall be established for the

employment or continuance in employment of persons as part of the classified service.

(b) Any person possessing all of the minimum qualifications for any employment shall be eligible for appointment to that employment, and no rule or policy, either written or unwritten, heretofore or hereafter adopted, shall prohibit the employment or continued employment, solely because of the age of any person in any school employment who is otherwise qualified.

(c) No person shall be employed in school employment while he or she is receiving a retirement allowance under any retirement system by reason of prior school employment, except that a person may be hired:

(1) Pursuant to Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code.

(2) As an aide in one of the following circumstances:

(A) An aide is needed in a class with a high pupil-teacher ratio.

(B) An aide is needed to provide one-on-one instruction in remedial classes or for underprivileged students.

A person working as an aide pursuant to this subdivision shall not receive service credits for purposes of the State Teachers' Retirement System.

(d) The provisions of subdivision (c) shall be inapplicable to persons who were employed in the classified service of any school district as of September 18, 1959, and who are still in the employ of the same district on the effective date of this subdivision, and the rights of those persons shall be fixed and determined as of September 18, 1959, and no such person shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he or she would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefor, be reinstated to such rights as he or she would have had had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

SEC. 41. Any section of any act enacted by the Legislature during the 2005 calendar year that takes effect on or before January 1, 2006, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

Approved _____, 2005

Governor