

AMENDED IN ASSEMBLY APRIL 29, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1987

Introduced by Assembly Member Ma

(Principal coauthor: Assembly Member Buchanan)

(Principal coauthors: Senators Correa and Simitian)

(Coauthors: Assembly Members Furutani, Harkey, and Torrico)

(Coauthor: Senator DeSaulnier)

February 17, 2010

An act to ~~add Section 7500.5 to~~ amend Sections 31460 and 31461 of, to add Sections 7500.5, 31460.2, 31461.8, 31539.5, 31540, 31541, 31569, 31680.10, 45309.6, 45309.7, 50871.6, and 50871.7 to, and to repeal and add Section 31539 of, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 1987, as amended, Ma. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law, which applies to specified school employees, and the retirement laws for county employees and city employees also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would generally provide, effective July 1, 2011, that any change in salary, compensation, or remuneration principally for the purpose of enhancing a member’s benefits would not be included in the calculation of a member’s final compensation for purposes of determining that member’s defined benefit. The bill would require the board of each state and local public retirement system to establish, by regulation, accountability provisions that would include an ongoing audit process to ensure that a change in a member’s salary, compensation, or remuneration is not made principally for the purpose of enhancing a member’s retirement benefits. This bill would limit the calculation of a member’s final compensation to an amount not to exceed the average increase in compensation received within the final compensation period and the 2 preceding years by employees in the same or a related group as that member. This bill would also require a board of each state and local public retirement system to establish, by regulation, a requirement that a retired person may not perform services for any employer covered by a state or local retirement system until that person has been separated from service for a period of at least 180 days. *This bill would provide for the implementation of the changes under the applicable retirement laws that apply to counties and cities.*

This bill includes ~~Legislative~~ legislative findings expressing the public purpose that would be served by the enactment of this bill and expresses ~~the Legislature’s intent to enact legislation that would ensure that these provisions are implemented by all state and local public retirement systems.~~

This bill would, except as otherwise specified, provide that its provisions would become operative on July 1, 2011. This bill would further provide that its provisions would not become operative unless SB 1425 of the 2009–10 Regular Session is also enacted and takes effect on or before January 1, 2011.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares that:
- 2 (1) State and local public retirement boards have been authorized
- 3 under the law to administer retirement systems that provide
- 4 adequate, secure retirement benefits to participants who dedicate
- 5 their life’s work to public service, and their beneficiaries.

1 (2) Employees partner with their public agency employers to
2 fund this benefit.

3 (3) Any manipulation of those benefits creates harm for the
4 employees, beneficiaries, employers, and taxpayers and should
5 not be permitted.

6 (b) The Legislature further finds and declares that:

7 (1) The efficacy of the retirement systems is threatened by the
8 behavior of those who seek to unfairly and unjustifiably enhance
9 or “spike” their pensions.

10 (2) Neither the Legislature nor the courts ever anticipated a
11 circumstance where the application of the retirement law would
12 result in a method that permits inequitable application of
13 compensation rules in order to enhance an individual’s retirement
14 allowance.

15 (3) It is the responsibility of the Legislature to provide guidance
16 to every retirement system so that each system can determine the
17 proper elements that go into calculating a member’s retirement
18 benefit as recognized by the laws governing each retirement
19 system.

20 (4) Retirement systems must employ sound principles that
21 provide consistent treatment of compensation earnable throughout
22 a member’s career and consistent treatment of compensation among
23 all classes of employees.

24 (5) In order to provide consistent treatment across the retirement
25 systems, the reporting procedures used by each retirement system
26 and its participating employers must be sufficiently precise so as
27 to enable the retirement system to distinguish between items of
28 remuneration that are and are not properly included in a member’s
29 final compensation.

30 (c) The Legislature further finds and declares that consistent
31 administration of state and local public retirement systems is a
32 matter of statewide concern.

33 (d) The Legislature further finds and declares that the procedures
34 contained in this act provide the appropriate method for resolving
35 the inequitable application of compensation rules, and therefore,
36 provide for the consistent administration of state and local
37 retirement systems that is in the public’s best interest.

38 SEC. 2. Section 7500.5 is added to the Government Code, to
39 read:

1 7500.5. (a) In order to safeguard the integrity and soundness
2 of public retirement systems, ~~assure~~ *ensure* prompt delivery of
3 benefits and related services to the participants and their
4 beneficiaries, and minimize employer expenses, state and local
5 public retirement systems shall administer retirement benefits in
6 accordance with the principles articulated in this section. Nothing
7 in this section shall be construed to limit the Legislature's authority
8 to adopt more restrictive benefit provisions applicable to a state
9 or local public retirement system.

10 (b) The board of each state and local public retirement system
11 shall establish, by statute or regulation, accountability provisions
12 that shall include an audit process to ensure compliance with the
13 principles articulated in the provisions of this section. The
14 accountability provisions shall be enforceable by the imposition
15 of monetary penalties or fees, including, but not limited to,
16 untimely or inaccurate submissions of any information that the
17 board may require in the administration of the system.

18 (c) Any payrate, salary, special compensation, or other
19 remuneration determined by the board of a state or local public
20 retirement system to have been paid for the principal purpose of
21 enhancing a member's retirement benefits under that system shall
22 not be included in compensation earnable. Where the board of a
23 state or local public retirement system determines that payrate,
24 salary, special compensation, or other remuneration was paid for
25 the principal purpose of enhancing a member's benefit, the member
26 or the employer may present evidence to the contrary. Upon receipt
27 of sufficient evidence to the contrary, a board may reverse its
28 determination that payrate, salary, special compensation, or other
29 remuneration was paid for the principal purpose of enhancing a
30 member's retirement benefits.

31 (d) Cash conversions of accrued employee benefits in amounts
32 that exceed the amount that is both earned and payable to the
33 member during the member's applicable final compensation
34 measurement period shall not be credited to, or included in,
35 compensation earnable by any state or local public retirement
36 system.

37 (e) Final settlement ~~or termination~~ pay or any similar payment
38 that is received by a member ~~in anticipation of retirement, or~~
39 ~~separation from employment, or upon retirement or separation~~

1 *from employment*, shall not be included in compensation earnable
2 by any state or local public retirement system.

3 (f) A retired person, who has not reinstated following retirement,
4 shall have a separation in service for a period of at least 180 days
5 before performing service for any employer covered by the state
6 or local retirement system from which he or she retired, whether
7 as an employee, through a third party, or as an independent
8 contractor. This requirement shall apply to all persons who retire
9 on and after January 1, 2011.

10 (g) Any increase in compensation earnable for an employee
11 who is not in a group or class shall not exceed, during the final
12 compensation period as well as two years immediately preceding
13 the final compensation period, the average increase in
14 compensation earnable during the same period for all similarly
15 situated members in the closest related group or class of that same
16 employer.

17 (h) For the purposes of implementing this section, all state or
18 local public retirement systems shall have terms or definitions
19 consistent with the following:

20 (1) "A group or class" means a number of employees of the
21 same employer considered together because they share job
22 similarities, work location, collective bargaining unit, or other
23 logical work grouping. Under no circumstance shall one employee
24 be considered a group or class.

25 (2) "Payrate" or "salary" means the normal monthly rate of pay
26 or monthly base pay of the member paid in cash and pursuant to
27 publicly available pay schedules to similarly situated members of
28 the same group or class for services rendered on a full-time basis
29 during normal working hours.

30 (3) "Payrate" or "salary" for a member who is not in a group
31 or class means the monthly rate of pay or monthly base pay, paid
32 in cash and pursuant to publicly available pay schedules, for
33 services rendered on a full-time basis during normal working hours,
34 subject to the limitations of subdivision (g).

35 (4) "Special compensation" includes a payment received for
36 special skills, knowledge, abilities, work assignment, workdays
37 or hours, or other work conditions.

38 (5) "Compensation earnable" includes payrate, salary, special
39 compensation, or other remuneration, or any combination of the
40 foregoing, of the member.

1 *SEC. 3. Section 31460 of the Government Code is amended to*
 2 *read:*

3 31460. (a) “Compensation” means the remuneration paid in
 4 ~~cash out of county or district funds, plus any amount deducted~~
 5 ~~from a member’s wages for participation in a deferred~~
 6 ~~compensation plan established pursuant to Chapter 8 (commencing~~
 7 ~~with Section 18310) of Part 1 of Division 5 of Title 2 or pursuant~~
 8 ~~to Article 1.1 (commencing with Section 53212) of Chapter 2 of~~
 9 ~~Part 1 of Division 2 of Title 5, but does not include the monetary~~
 10 ~~value of board, lodging, fuel, laundry, or other advantages~~
 11 ~~furnished to a member; out of funds controlled by the county or~~
 12 ~~district in payment for the member’s services performed during~~
 13 ~~normal working hours or for time during which the member is~~
 14 ~~excused from work because of any of the following:~~

15 (1) Sick leave.

16 (2) Industrial disability leave, during which benefits are payable
 17 pursuant to Section 4850 of the Labor Code.

18 (3) Vacation.

19 (4) Compensatory time off.

20 (5) Leave of absence.

21 (b) When compensation is reported to the board, the county or
 22 district shall identify the pay period in which the compensation
 23 was earned regardless of when reported or paid. Compensation
 24 shall be reported in accordance with Section 31461 and shall not
 25 exceed compensation earnable, as defined in Section 31461.

26 (c) Compensation shall not include the monetary value of board,
 27 lodging, fuel, laundry, or other advantages furnished to a member.

28 (d) The board may assess a reasonable amount to cover the
 29 cost of audit, adjustment, or correction, where it determines that
 30 a county or district knowingly failed to comply with subdivision
 31 (b). A county or district will be found to have knowingly failed to
 32 comply with subdivision (b) if the board determines that the
 33 employer either:

34 (1) Knew or should have known that the compensation reported
 35 was not compensation earnable, as defined in Section 31461.

36 (2) Failed to identify the pay period in which compensation
 37 earnable was earned as required.

38 (e) A county or district shall not pass on to an employee any
 39 costs assessed pursuant to subdivision (d).

1 SEC. 4. Section 31460.2 is added to the Government Code, to
2 read:

3 31460.2. "Labor policy or agreement" means any written
4 policy, agreement, memorandum of understanding, legislative
5 action of the board of supervisors or the district board, or any
6 other document used by the county or district to specify the payrate,
7 special compensation, and benefits of represented and
8 unrepresented employees.

9 SEC. 5. Section 31461 of the Government Code is amended to
10 read:

11 31461. (a) "Compensation earnable" by a member means the
12 ~~average compensation as determined by the board, for the period~~
13 ~~under consideration upon the basis of the average number of days~~
14 ~~ordinarily worked by persons in the same grade or class of positions~~
15 ~~during the period, and at the same rate of pay. The computation~~
16 ~~for any absence shall be based on the compensation of the position~~
17 ~~held by the member at the beginning of the absence. Compensation,~~
18 ~~as defined in Section 31460, that has been deferred shall be deemed~~
19 ~~"compensation earnable" when earned, rather than when paid~~
20 ~~payrate and special compensation of the member, as defined by~~
21 ~~subdivisions (b) and (c).~~

22 (b) (1) "Payrate" means the normal monthly rate of pay or
23 monthly base pay of the member paid in cash to similarly situated
24 members of the same group or class of employment for services
25 rendered on a full-time basis during normal working hours.
26 "Payrate" for a member who is not in a group or class means the
27 monthly rate of pay or base pay of the member, paid in cash and
28 pursuant to publicly available pay schedules, for services rendered
29 on a full-time basis during normal working hours. "Payrate"
30 includes:

31 (A) Any amount deducted from a member's salary for any of
32 the following:

33 (i) Participation in a deferred compensation plan established
34 pursuant to Article 1.1 (commencing with Section 53212) of
35 Chapter 2 of Part 1 of Division 2 of Title 5.

36 (ii) Payment for participation in a retirement plan that meets
37 the requirements of Section 457 of the Internal Revenue Code.

38 (iii) Payment into a money purchase pension plan and trust that
39 meets the requirements of Section 401(a) of the Internal Revenue
40 Code.

1 (iv) *Participation in a flexible benefits program.*

2 (B) *Any payment in cash by the member's employer to one other*
3 *than an employee for the purpose of purchasing an annuity contract*
4 *for a member under an annuity plan that meets the requirements*
5 *of Section 403(b) of the Internal Revenue Code.*

6 (C) *Employer "pick up" of member contributions that meets*
7 *the requirements of Section 414(h)(2) of the Internal Revenue*
8 *Code.*

9 (D) *Any disability or workers' compensation payments to safety*
10 *members in accordance with Section 4850 of the Labor Code.*

11 (2) *The computation for any leave without pay of a member*
12 *shall be based on the compensation earnable by him or her at the*
13 *beginning of the absence.*

14 (3) *The computation for time prior to entering county or district*
15 *service shall be based on the compensation earnable by him or*
16 *her in the position first held by him or her in that service.*

17 (c) (1) *"Special compensation" of a member includes any*
18 *payment received for special skills, knowledge, abilities, work*
19 *assignment, workdays or hours, or other work conditions.*

20 (2) *"Special compensation" shall be limited to that cash*
21 *remuneration in addition to payrate received by a member pursuant*
22 *to a labor policy or agreement or as otherwise required by state*
23 *or federal law to similarly situated members of a group or class*
24 *of employment. If an individual is not part of a group or class,*
25 *"special compensation" shall be limited to that cash remuneration,*
26 *in addition to payrate, that the board determines is received by*
27 *similarly situated members in the closest related group or class,*
28 *subject to the limitations of paragraph (2) of subdivision (e).*

29 (3) *"Special compensation" shall be for services rendered*
30 *during normal working hours and, when reported to the board,*
31 *the county or district shall identify the pay period in which the*
32 *special compensation was earned and shall report special*
33 *compensation separately from payrate.*

34 (4) *The monetary value of any service or noncash advantage*
35 *furnished by the employer to the member, except as expressly and*
36 *specifically provided in this chapter, shall not be "special*
37 *compensation" unless regulations promulgated by the board*
38 *specifically determine that value to be "special compensation."*

39 (5) (A) *The board shall promulgate regulations that delineate*
40 *more specifically what shall be excluded from "special*

1 compensation” as used in this section. A uniform allowance, the
2 monetary value of employer-provided uniforms, holiday pay, and
3 premium pay for hours worked within the normally scheduled or
4 regular working hours that are in excess of the statutory maximum
5 workweek or work period applicable to the employee under the
6 Fair Labor Standards Act (29 U.S.C. Secs. 201 to 219, inclusive)
7 and those items of remuneration identified by the board and
8 consistent with *Ventura County Deputy Sheriffs’ Assn. v. Board*
9 *of Retirement* (1997) 16 Cal.4th 483 and *In re Retirement Cases*
10 (2003) 110 Cal.App.4th 426 and any settlement agreements thereto,
11 shall be included as “special compensation.”

12 (B) This paragraph shall not be construed to prevent a
13 modification of the term “special compensation,” to the extent
14 that term includes those items of remuneration identified by the
15 board, consistent with *Ventura County Deputy Sheriffs’ Assn. v.*
16 *Board of Retirement* (1997) 16 Cal.4th 483 and *In re Retirement*
17 *Cases* (2003) 110 Cal.App.4th 426 and any settlement agreements
18 thereto, by a resolution adopted by a majority vote of the board,
19 pursuant to a memorandum of understanding made under the
20 *Meyers-Milias-Brown Act* (Chapter 10 (commencing with Section
21 3500) of Division 4 of Title 1).

22 (6) “Special compensation” does not include any of the
23 following:

24 (A) Final settlement pay.

25 (B) Payments made for additional services rendered outside of
26 normal working hours, whether paid in lump sum or otherwise.

27 (C) Payments that exceed that which is earned and payable in
28 a 12-month period for unused vacation, annual leave, personal
29 leave, sick leave, or compensatory time off whether paid in lump
30 sum or otherwise.

31 (D) Any other payments the board has affirmatively determined
32 to be excluded from “special compensation.”

33 (d) Notwithstanding any other provision of law, payrate and
34 special compensation schedules, ordinances, or similar documents
35 shall be public records available for public scrutiny.

36 (e) (1) As used in this part, “group or class of employment”
37 means a number of employees considered together because they
38 share job similarities, work location, collective bargaining unit,
39 or other logical work-related grouping. Under no circumstances
40 shall one employee be considered a group or class.

1 (2) *Increases in compensation earnable granted to any employee*
2 *who is not in a group or class shall be limited during the final*
3 *compensation period applicable to the employee, as well as the*
4 *two years immediately preceding the final compensation period,*
5 *to the average increase in compensation earnable during the same*
6 *period reported by the employer for all similarly situated members*
7 *in the closest related group or class who are in the same*
8 *membership classification.*

9 (f) (1) *As used in this part, “final settlement pay” means any*
10 *pay or cash conversions of employee benefits that are in excess of*
11 *compensation earnable, that are granted or awarded to a member*
12 *in connection with a separation from employment. The board shall*
13 *promulgate regulations to the extent necessary to delineate more*
14 *specifically what constitutes final settlement pay consistent with*
15 *the decision of the court in Ventura County Deputy Sheriffs’ Assn.*
16 *v. Board of Retirement (1997) 16 Cal.4th 483 and In re Retirement*
17 *Cases (2003) 110 Cal.App.4th 426, and any settlement agreements*
18 *thereto.*

19 (2) *This subdivision shall not be construed to prevent a*
20 *modification of the term “final settlement pay,” to the extent that*
21 *term includes items of final settlement pay as delineated by the*
22 *board, consistent with the decisions in Ventura County Deputy*
23 *Sheriffs’ Assn. v. Board of Retirement (1997) 16 Cal.4th 483 and*
24 *In re Retirement Cases (2003) 110 Cal.App.4th 426 and any*
25 *settlement agreements thereto, by a resolution adopted by a*
26 *majority vote of the board, pursuant to a memorandum of*
27 *understanding made under the Meyers-Milias-Brown Act (Chapter*
28 *10 (commencing with Section 3500) of Division 4 of Title 1).*

29 SEC. 6. *Section 31461.8 is added to the Government Code, to*
30 *read:*

31 31461.8. (a) *If the compensation of a member is a factor in*
32 *any computation to be made under this chapter, there shall be*
33 *excluded from those computations any compensation based on*
34 *overtime put in by a member whose service retirement allowance*
35 *is a fixed percentage of final compensation for each year of*
36 *credited service. For the purposes of this chapter, overtime is the*
37 *aggregate service performed by an employee as a member in all*
38 *categories of employment in excess of the hours of work considered*
39 *normal for employees on a full-time basis, and for which monetary*
40 *compensation is paid.*

1 (b) If a member concurrently renders service in two or more
2 positions, one or more of which is full time, service in the part-time
3 position shall constitute overtime. If two or more positions are
4 permanent and full time, the position with the highest payrate or
5 base pay shall be reported to the retirement system. This provision
6 shall apply only to service rendered on or after January 1, 2011.

7 SEC. 7. Section 31539 of the Government Code is repealed.

8 ~~31539.~~ (a) ~~The board of retirement may, in its discretion,~~
9 ~~correct any error made in the calculation of a retired member's~~
10 ~~monthly allowance or any other benefits under this chapter, if~~
11 ~~either of the following exist:~~

12 ~~(1) The error in the calculation of the member's monthly~~
13 ~~allowance or other benefits under this chapter was made as a result~~
14 ~~of fraudulent reports for compensation made, or caused to be made,~~
15 ~~by the member for his or her own benefit.~~

16 ~~(2) The member caused his or her final compensation to be~~
17 ~~improperly increased or otherwise overstated at the time of~~
18 ~~retirement and the system applied that overstated amount as the~~
19 ~~basis for calculating the member's monthly retirement allowance~~
20 ~~or other benefits under this chapter.~~

21 ~~(b) The retirement allowance or other benefits under this chapter~~
22 ~~with respect to a retired member described in subdivision (a) shall~~
23 ~~be adjusted prospectively to the amount that would have been~~
24 ~~payable if the overstatement of the member's final compensation~~
25 ~~had not occurred.~~

26 ~~(c) Adjustment of the member's retirement allowance or other~~
27 ~~benefits may also be implemented retroactively and include the~~
28 ~~collection or return of the overpayment of benefits. The board of~~
29 ~~retirement may direct staff to correct the overpayment of benefits~~
30 ~~by offsetting the amount to be recovered against future benefits.~~
31 ~~Adjustments to correct the overpayment of benefits may also be~~
32 ~~made by adjusting the allowance so that the retired member or the~~
33 ~~retired member and his or her beneficiary, as the case may be, will~~
34 ~~receive the actuarial equivalent of the allowance to which the~~
35 ~~member is entitled.~~

36 ~~(d) The rights and remedies provided in this section are in~~
37 ~~addition to any other rights and remedies any party may have at~~
38 ~~law or in equity. Nothing in this section shall preclude any party~~
39 ~~from instituting an action for declaratory or other relief in lieu of~~
40 ~~proceeding under this section.~~

1 ~~(e) The period of limitation of actions under this section shall~~
 2 ~~be 10 years and that period shall commence either from the date~~
 3 ~~of payment or upon discovery of the facts described in subdivision~~
 4 ~~(a), whichever date is later. The board shall determine the~~
 5 ~~applicability of the period of limitation in any case, and its~~
 6 ~~determination with respect to the running of any period of~~
 7 ~~limitation shall be conclusive and binding for purposes of~~
 8 ~~correcting the error.~~

9 *SEC. 8. Section 31539 is added to the Government Code, to*
 10 *read:*

11 *31539. (a) The obligations of the retirement system to its*
 12 *members continue throughout their respective memberships, and*
 13 *the obligations of the retirement system to and in respect to retired*
 14 *members continue throughout the lives of the respective retired*
 15 *members, and thereafter until all obligations to their respective*
 16 *beneficiaries under optional settlements have been discharged.*
 17 *The obligations of the county or district to the retirement system*
 18 *in respect to members employed by them, respectively, continue*
 19 *throughout the memberships of the respective members, and the*
 20 *obligations of the county or district to the retirement system in*
 21 *respect to retired members formerly employed by them,*
 22 *respectively, continue until all of the obligations of the retirement*
 23 *system in respect to those retired members, respectively, have been*
 24 *discharged. The obligations of any member to the retirement system*
 25 *continue throughout his or her membership, and thereafter until*
 26 *all of the obligations of the retirement system to or in respect to*
 27 *him or her have been discharged.*

28 *(b) For the purposes of payments into or out of the retirement*
 29 *fund for adjustment of errors or omissions, the period of limitation*
 30 *of actions shall be three years, and shall be applied as follows:*

31 *(1) In cases in which the retirement system makes an erroneous*
 32 *payment to a member or beneficiary, the system's right to collect*
 33 *shall expire three years from the date of payment.*

34 *(2) In cases in which the retirement system owes money to a*
 35 *member or beneficiary, the period of limitations shall not apply.*

36 *(c) Notwithstanding subdivision (b), in cases in which payment*
 37 *is erroneous because of the death of the retired member or*
 38 *beneficiary or because of the remarriage of the beneficiary, the*
 39 *period of limitation shall be 10 years and that period shall*
 40 *commence with the discovery of the erroneous payment.*

1 (d) Notwithstanding subdivision (b), where any payment has
2 been made as a result of fraudulent reports for compensation made,
3 or caused to be made, by a member for his or her own benefit or
4 the member causing his or her final compensation to be improperly
5 increased or otherwise overstated at the time of retirement, the
6 period of limitation shall be 10 years and that period shall
7 commence either from the date of payment or upon discovery of
8 the fraudulent reporting, whichever date is later.

9 (e) The board shall determine the applicability of the period of
10 limitations in any case, and its determination with respect to the
11 running of any period of limitation shall be conclusive and binding
12 for purposes of correcting the error or omission.

13 SEC. 9. Section 31539.5 is added to the Government Code, to
14 read:

15 31539.5. (a) Subject to subdivisions (c) and (d), the board
16 may, in its discretion and upon any terms it deems just, correct
17 the errors or omissions of any active or retired member, or any
18 beneficiary of an active or retired member, if all of the following
19 facts exist:

20 (1) The request, claim, or demand to correct the error or
21 omission is made by the party seeking correction within a
22 reasonable time after discovery of the right to make the correction,
23 which in no case shall exceed six months after discovery of this
24 right.

25 (2) The error or omission was the result of mistake,
26 inadvertence, surprise, or excusable neglect, as each of those terms
27 is used in Section 473 of the Code of Civil Procedure.

28 (3) The correction will not provide the party seeking correction
29 with a status, right, or obligation not otherwise available under
30 this part.

31 Failure by a member or beneficiary to make the inquiry that
32 would be made by a reasonable person in like or similar
33 circumstances does not constitute an "error or omission"
34 correctable under this section.

35 (b) Subject to subdivisions (c) and (d), the board shall correct
36 all actions taken as a result of errors or omissions of the county
37 or district, or this system.

38 (c) The duty and power of the board to correct mistakes, as
39 provided in this section, shall terminate upon the expiration of
40 obligations of this system to the party seeking correction of the

1 error or omission, as those obligations are defined by Section
2 31539.

3 (d) The party seeking correction of an error or omission
4 pursuant to this section has the burden of presenting documentation
5 or other evidence to the board establishing the right to correction
6 pursuant to subdivisions (a) and (b).

7 (e) Corrections of errors or omissions pursuant to this section
8 shall be such that the status, rights, and obligations of all parties
9 described in subdivisions (a) and (b) are adjusted to be the same
10 that they would have been if the act that would have been taken,
11 but for the error or omission, was taken at the proper time.
12 However, notwithstanding any of the other provisions of this
13 section, corrections made pursuant to this section shall adjust the
14 status, rights, and obligations of all parties described in
15 subdivisions (a) and (b) as of the time that the correction actually
16 takes place if the board finds any of the following:

17 (1) That the correction cannot be performed in a retroactive
18 manner.

19 (2) That even if the correction can be performed in a retroactive
20 manner, the status, rights, and obligations of all of the parties
21 described in subdivisions (a) and (b) cannot be adjusted to be the
22 same that they would have been if the error or omission had not
23 occurred.

24 (3) That the purposes of this part will not be effectuated if the
25 correction is performed in a retroactive manner.

26 SEC. 10. Section 31540 is added to the Government Code, to
27 read:

28 31540. (a) Each county or district, and the chief administrative
29 officer of the county or district, or any other person who its
30 governing body may designate shall report to the Retirement Board
31 in writing, in a manner prescribed by the board, within 30 days
32 of any of the following events:

33 (1) A new pay item is created.

34 (2) There has been a change in either an existing pay item or
35 the conditions under which the pay item is computed, accrued, or
36 paid.

37 (3) A change in status of any member resulting from transfer,
38 promotion, leave of absence, resignation, reinstatement, dismissal,
39 or death.

1 (4) Any other change that may impact the payrate or special
2 compensation of any member resulting from an agreement pursuant
3 to a memorandum of understanding between a county or district
4 and any of its recognized employee organizations, or a resolution
5 adopted by its board of supervisors with respect to nonrepresented
6 employees.

7 (5) Information concerning any member in the administration
8 of this system as requested by the board, or the services of the
9 county or district's officer and departments that the board may
10 request in connection with claims by members against this system.

11 (b) Upon notification pursuant to subdivision (a), the board
12 shall determine, within 90 days, whether the pay item is included
13 in compensation as defined in Section 31460 and compensation
14 earnable as defined in Section 31461. Any determination by the
15 board regarding an item of compensation may be appealed by the
16 county, district, or member.

17 (c) The board may assess a reasonable fee upon the county or
18 district that fails to provide information, as required by this section,
19 within applicable time limits.

20 SEC. 11. Section 31541 is added to the Government Code, to
21 read:

22 31541. (a) The board, during the course of an audit, may
23 require a county or district to provide information or make
24 available for examination or copying at a specified time and place,
25 or both, books, papers, any data, or records, including, but not
26 limited to, personnel and payroll records, as deemed necessary
27 by the board to determine the correctness of retirement benefits,
28 reportable compensation, and enrollment in and reinstatement to
29 this system.

30 (b) Data filed with the board by the county or district or any
31 member or beneficiary is confidential, and no individual record
32 shall be divulged by any official or employee having access to it
33 to any person other than the member to whom the information
34 relates or his or her authorized representative or the county or
35 district by which he or she is employed. The information shall be
36 used by the board for the sole purpose of carrying into effect the
37 provisions of this part. Any information that is requested for
38 retirement purposes by any public agency shall be treated as
39 confidential by the agency.

1 (c) For purposes of this section, “authorized representative”
 2 includes the spouse or beneficiary of a member when no contrary
 3 appointment has been made and when, in the opinion of the board,
 4 the member is prevented from appointing an authorized
 5 representative because of mental or physical incapacity or death.

6 SEC. 12. Section 31569 is added to the Government Code, to
 7 read:

8 31569. Any county or district that fails to enroll an employee
 9 into membership when he or she becomes eligible, or within 90
 10 days thereof, when the employer knows or can reasonably be
 11 expected to have known of that eligibility shall be required to pay
 12 all arrears costs for member contributions and administrative
 13 costs of five hundred dollars (\$500) per member as a
 14 reimbursement to the system’s current year budget.

15 SEC. 13. Section 31680.10 is added to the Government Code,
 16 to read:

17 31680.10. Except as provided in Section 31680.1, any person,
 18 who has been retired for service on or after January 1, 2011, as
 19 a member of a county retirement system established under this
 20 chapter, may not be reemployed in any capacity either as an
 21 employee, an independent contractor, or an employee of a third
 22 party without reinstatement by a district or county operating a
 23 county retirement system established under this chapter unless at
 24 least 180 days have elapsed since the person’s date of retirement.

25 SEC. 14. Section 45309.6 is added to the Government Code,
 26 to read:

27 45309.6. (a) A city retirement board established pursuant to
 28 this chapter shall be in full compliance with the provisions of
 29 Section 7500.5 by July 1, 2011.

30 (b) A city retirement system established pursuant to this chapter
 31 shall adopt any regulations necessary to implement the
 32 requirements of Section 7500.5.

33 SEC. 15. Section 45309.7 is added to the Government Code,
 34 to read:

35 45309.7. (a) A city retirement board established pursuant to
 36 this chapter may adopt regulations regarding the employment of
 37 retirees who were members of a retirement system established
 38 pursuant to this chapter.

39 (b) Notwithstanding subdivision (a), on or after January 1,
 40 2011, a person who has been retired under a retirement system

1 established pursuant to this chapter may not be employed in any
2 capacity by the city establishing that retirement system unless one
3 of the following events has occurred:

4 (1) He or she has been reinstated from retirement.

5 (2) At least 180 days have elapsed since his or her retirement
6 date.

7 SEC. 16. Section 50871.6 is added to the Government Code,
8 to read:

9 50871.6. (a) A retirement board established pursuant to this
10 chapter shall be in full compliance with the provisions of Section
11 7500.5 by July 1, 2011.

12 (b) A retirement system established pursuant to this chapter
13 shall adopt any regulations necessary to implement the
14 requirements of Section 7500.5.

15 SEC. 17. Section 50871.7 is added to the Government Code,
16 to read:

17 50871.7. (a) A retirement board established pursuant to this
18 chapter may adopt regulations regarding the employment of
19 retirees who were members of a retirement system established
20 pursuant to this chapter.

21 (b) Notwithstanding subdivision (a), on or after January 1,
22 2011, a person who has been retired under a retirement system
23 established pursuant to this chapter may not be employed in any
24 capacity by the city establishing that retirement system unless one
25 of the following events has occurred:

26 (1) He or she has been reinstated from retirement.

27 (2) At least 180 days have elapsed since his or her retirement
28 date.

29 ~~SEC. 3.~~

30 SEC. 18. Except as otherwise specifically provided, the
31 provisions of this act shall become operative on July 1, 2011.

32 ~~SEC. 4.~~

33 SEC. 19. This bill shall become operative only if Senate Bill
34 1425 of the 2009–10 Regular Session is enacted and takes effect
35 on or before January 1, 2011.

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