

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 1, 2010

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 and Torrico)
(Coauthor: Senator DeSaulnier)

February 17, 2010

An act to amend Sections ~~31460 and 31461~~ 31460, 31461, 31468, and 31522.5 of, to add Sections 7500.5, 31460.2, 31461.8, 31522.8, 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

(1) *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 findings expressing the public purpose that would be served by the enactment of this bill.

This

(2) The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts, as defined, to provide retirement benefits to its employees. Existing law generally defines the term "district" for purposes of CERL, by reference to a specified entity or county that elects to provide retirement benefits under CERL. CERL authorizes the board of the retirement systems of Orange County and San Bernardino County to appoint specified management, investment, and legal personnel and provides that these appointees are classified as employees of the retirement board rather than as county employees, subject to the civil service system.

This bill would revise the definition of "district" for purposes of CERL to include any retirement system that, by resolution, makes that retirement system subject to the CERL. This bill would require that new

district to elect to have either specified management, investment, and legal personnel appointed as employees of the retirement board, rather than as county employees, or elect to have all personnel appointed to administer that retirement system appointed as employees of the retirement system, subject to specified conditions and with specified benefits, rather than as county employees.

(3) 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.
6 (2) Employees partner with their public agency employers to
7 fund this benefit.
8 (3) Any manipulation of those benefits creates harm for the
9 employees, beneficiaries, employers, and taxpayers and should
10 not be permitted.
11 (b) The Legislature further finds and declares that:
12 (1) The efficacy of the retirement systems is threatened by the
13 behavior of those who seek to unfairly and unjustifiably enhance
14 or “spike” their pensions.
15 (2) Neither the Legislature nor the courts ever anticipated a
16 circumstance where the application of the retirement law would
17 result in a method that permits inequitable application of
18 compensation rules in order to enhance an individual’s retirement
19 allowance.
20 (3) It is the responsibility of the Legislature to provide guidance
21 to every retirement system so that each system can determine the
22 proper elements that go into calculating a member’s retirement
23 benefit as recognized by the laws governing each retirement
24 system.

1 (4) Retirement systems must employ sound principles that
2 provide consistent treatment of compensation earnable throughout
3 a member's career and consistent treatment of compensation among
4 all classes of employees.

5 (5) In order to provide consistent treatment across the retirement
6 systems, the reporting procedures used by each retirement system
7 and its participating employers must be sufficiently precise so as
8 to enable the retirement system to distinguish between items of
9 remuneration that are and are not properly included in a member's
10 final compensation.

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

14 (d) The Legislature further finds and declares that the procedures
15 contained in this act provide the appropriate method for resolving
16 the inequitable application of compensation rules, and therefore,
17 provide for the consistent administration of state and local
18 retirement systems that is in the public's best interest.

19 SEC. 2. Section 7500.5 is added to the Government Code, to
20 read:

21 7500.5. (a) In order to safeguard the integrity and soundness
22 of public retirement systems, ensure prompt delivery of benefits
23 and related services to the participants and their beneficiaries, and
24 minimize employer expenses, state and local public retirement
25 systems shall administer retirement benefits in accordance with
26 the principles articulated in this section. Nothing in this section
27 shall be construed to limit the Legislature's authority to adopt more
28 restrictive benefit provisions applicable to a state or local public
29 retirement system.

30 (b) The board of each state and local public retirement system
31 shall establish, by statute or regulation, accountability provisions
32 that shall include an audit process to ensure compliance with the
33 principles articulated in the provisions of this section. The
34 accountability provisions shall be enforceable by the imposition
35 of monetary penalties or fees, including, but not limited to,
36 untimely or inaccurate submissions of any information that the
37 board may require in the administration of the system.

38 (c) Any payrate, salary, special compensation, or other
39 remuneration determined by the board of a state or local public
40 retirement system to have been paid for the principal purpose of

1 enhancing a member's retirement benefits under that system shall
2 not be included in compensation earnable. Where the board of a
3 state or local public retirement system determines that payrate,
4 salary, special compensation, or other remuneration was paid for
5 the principal purpose of enhancing a member's benefit, the member
6 or the employer may present evidence to the contrary. Upon receipt
7 of sufficient evidence to the contrary, a board may reverse its
8 determination that payrate, salary, special compensation, or other
9 remuneration was paid for the principal purpose of enhancing a
10 member's retirement benefits.

11 (d) Cash conversions of accrued employee benefits in amounts
12 that exceed the amount that is both earned and payable to the
13 member during the member's applicable final compensation
14 measurement period shall not be credited to, or included in,
15 compensation earnable by any state or local public retirement
16 system.

17 (e) Final settlement pay or any similar payment that is received
18 by a member upon retirement or separation from employment,
19 shall not be included in compensation earnable by any state or
20 local public retirement system.

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

28 (g) Any increase in compensation earnable for an employee
29 who is not in a group or class shall not exceed, during the final
30 compensation period as well as two years immediately preceding
31 the final compensation period, the average increase in
32 compensation earnable during the same period for all similarly
33 situated members in the closest related group or class of that same
34 employer.

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

38 (1) "A group or class" means a number of employees of the
39 same employer considered together because they share job
40 similarities, work location, collective bargaining unit, or other

1 logical work grouping. Under no circumstance shall one employee
2 be considered a group or class.

3 (2) “Payrate” or “salary” means the normal ~~monthly~~ rate of pay
4 or ~~monthly~~ base pay of the member paid in cash and pursuant to
5 publicly available pay schedules to similarly situated members of
6 the same group or class for services rendered on a full-time basis
7 during normal working hours.

8 (3) “Payrate” or “salary” for a member who is not in a group
9 or class means the ~~monthly~~ rate of pay or ~~monthly~~ base pay, paid
10 in cash and pursuant to publicly available pay schedules, for
11 services rendered on a full-time basis during normal working hours,
12 subject to the limitations of subdivision (g).

13 (4) “Special compensation” includes a payment received for
14 special skills, knowledge, abilities, work assignment, workdays
15 or hours, or other work conditions.

16 (5) “Compensation earnable” includes payrate, salary, special
17 compensation, or other remuneration, or any combination of the
18 foregoing, of the member.

19 SEC. 3. Section 31460 of the Government Code is amended
20 to read:

21 31460. (a) “Compensation” means the remuneration paid out
22 of funds controlled by the county or district in payment for the
23 member’s services performed during normal working hours or for
24 time during which the member is excused from work because of
25 any of the following:

- 26 (1) Sick leave.
- 27 (2) ~~Industrial-Service connected~~ disability leave, during which
28 benefits are payable pursuant to Section 4850 of the Labor Code.
- 29 (3) Vacation.
- 30 (4) Compensatory time off.
- 31 (5) Leave of absence.

32 (b) When compensation is reported to the board, the county or
33 district shall identify the pay period in which the compensation
34 was earned regardless of when reported or paid. Compensation
35 shall be reported in accordance with Section 31461 and shall not
36 exceed compensation earnable, as defined in Section 31461.

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

39 (d) The board may assess a reasonable amount to cover the cost
40 of audit, adjustment, or correction, where it determines that a

1 county or district knowingly failed to comply with subdivision
2 (b). A county or district will be found to have knowingly failed to
3 comply with subdivision (b) if the board determines that the
4 employer either:

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

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

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

11 SEC. 4. Section 31460.2 is added to the Government Code, to
12 read:

13 31460.2. "Labor policy or agreement" means any written
14 policy, agreement, memorandum of understanding, legislative
15 action of the board of supervisors or the district board, or any other
16 document used by the county or district to specify the payrate,
17 special compensation, and benefits of represented and
18 unrepresented employees.

19 SEC. 5. Section 31461 of the Government Code is amended
20 to read:

21 31461. (a) "Compensation earnable" by a member means the
22 payrate and special compensation of the member, as defined by
23 subdivisions (b) and (c).

24 (b) (1) "Payrate" or "salary" means the normal ~~monthly~~ rate
25 of pay or ~~monthly~~ base pay of the member paid in cash to similarly
26 situated members of the same group or class of employment for
27 services rendered on a full-time basis during normal working hours.

28 "Payrate" or "salary" for a member who is not in a group or class
29 means the ~~monthly~~ rate of pay or base pay of the member, paid in
30 cash and pursuant to publicly available pay schedules, for services
31 rendered on a full-time basis during normal working hours.

32 "Payrate" or "salary" includes:

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

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

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

1 (iii) Payment into a money purchase pension plan and trust that
2 meets the requirements of Section 401(a) of the Internal Revenue
3 Code.

4 (iv) Participation in a flexible benefits program.

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

9 ~~(C)~~

10 (B) Member contributions that meet the requirements of Section
11 414(h)(2) of the Internal Revenue Code.

12 ~~(D)~~

13 (C) Any disability or workers' compensation payments to safety
14 members in accordance with Section 4850 of the Labor Code.

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

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

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

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

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

38 (4) The monetary value of any service or noncash advantage
39 furnished by the employer to the member, except as expressly and
40 specifically provided in this chapter, shall not be "special

1 compensation” unless regulations promulgated by the board
2 specifically determine that value to be “special compensation.”
3 *compensation.*”

4 (5) (A) The board shall promulgate regulations that delineate
5 more specifically what shall be excluded from “special
6 compensation” as used in this section. A uniform allowance, the
7 monetary value of employer-provided uniforms, holiday pay, and
8 premium pay for hours worked within the normally scheduled or
9 regular working hours that are in excess of the statutory maximum
10 workweek or work period applicable to the employee under the
11 Fair Labor Standards Act (29 U.S.C. Sec. 201 et seq.) and those
12 items of remuneration identified by the board and consistent with
13 Ventura County Deputy Sheriffs’ Assn. v. Board of Retirement
14 (1997) 16 Cal.4th 483 and In re Retirement Cases (2003) 110
15 Cal.App.4th 426 and any settlement agreements thereto, shall be
16 included as “special compensation.”

17 (B) This paragraph shall not be construed to prevent a county
18 or district and a recognized bargaining unit from agreeing, pursuant
19 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), to eliminate, as “special
22 compensation” those items of remuneration as previously identified
23 by the board, consistent with Ventura County Deputy Sheriffs’
24 Assn. v. Board of Retirement (1997) 16 Cal.4th 483 and In re
25 Retirement Cases (2003) 110 Cal.App.4th 426 and any settlement
26 agreements thereto.

27 (6) “Special compensation” does not include any of the
28 following:

29 (A) Final settlement pay.

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

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

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

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

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

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

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

24 (2) This subdivision shall not be construed to prevent a county
 25 or district and a recognized bargaining unit from agreeing, pursuant
 26 to a memorandum of understanding made under the
 27 Meyers-Milias-Brown Act (Chapter 10 (commencing with Section
 28 3500) of Division 4 of Title 1), to further eliminate, as “special
 29 compensation” those items of final settlement pay as previously
 30 delineated by the board, consistent with the decisions in *Ventura*
 31 *County Deputy Sheriffs’ Assn. v. Board of Retirement* (1997) 16
 32 *Cal.4th 483* and *In re Retirement Cases* (2003) 110 Cal.App.4th
 33 426 and any settlement agreements thereto.

34 (g) *Nothing in this section shall be construed to require a county*
 35 *or district to include as compensation earnable any remuneration,*
 36 *whether payrate or special compensation, that the county or district*
 37 *did not include prior to January 1, 2011.*

38 SEC. 6. Section 31461.8 is added to the Government Code, to
 39 read:

1 31461.8. (a) ~~If~~ *Consistent with Section 31461.6, if* the
2 compensation of a member is a factor in any computation to be
3 made under this chapter, there shall be excluded from those
4 computations any compensation based on overtime put in by a
5 member whose service retirement allowance is a fixed percentage
6 of final compensation for each year of credited service. For the
7 purposes of this chapter, overtime is the aggregate service
8 performed by an employee as a member in all categories of
9 employment in excess of the hours of work considered normal for
10 employees on a full-time basis, and for which monetary
11 compensation is paid.

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

18 *SEC. 7. Section 31468 of the Government Code is amended to*
19 *read:*

20 31468. (a) “District” means a district, formed under the laws
21 of the state, located wholly or partially within the county other
22 than a school district.

23 (b) “District” also includes any institution operated by two or
24 more counties, in one of which there has been adopted an ordinance
25 placing this chapter in operation.

26 (c) “District” also includes any organization or association
27 authorized by Chapter 26 of the Statutes of 1935, as amended by
28 Chapter 30 of the Statutes of 1941, or by Section 50024, which
29 organization or association is maintained and supported entirely
30 from funds derived from counties, and the board of any retirement
31 system is authorized to receive the officers and employees of that
32 organization or association into the retirement system managed
33 by the board.

34 (d) “District” also includes, but is not limited to, any sanitary
35 district formed under Part 1 (commencing with Section 6400) of
36 Division 6 of the Health and Safety Code.

37 (e) “District” also includes any city, public authority, public
38 agency, and any other political subdivision or public corporation
39 formed or created under the constitution or laws of this state and
40 located or having jurisdiction wholly or partially within the county.

1 (f) “District” also includes any nonprofit corporation or
2 association conducting an agricultural fair for the county pursuant
3 to a contract between the corporation or association and the board
4 of supervisors under the authority of Section 25905.

5 (g) “District” also includes the Regents of the University of
6 California, but with respect only to employees who were employees
7 of a county in a county hospital, who became university employees
8 pursuant to an agreement for transfer to the regents of a county
9 hospital or of the obligation to provide professional medical
10 services at a county hospital, and who under that agreement had
11 the right and did elect to continue membership in the county’s
12 retirement system established under this chapter.

13 (h) “District” also includes the South Coast Air Quality
14 Management District, a new public agency created on February
15 1, 1977, pursuant to Chapter 5.5 (commencing with Section 40400)
16 of Part 3 of Division 26 of the Health and Safety Code.

17 (1) Employees of the South Coast Air Quality Management
18 District shall be deemed to be employees of a new public agency
19 occupying new positions on February 1, 1977. On that date, those
20 new positions are deemed not to have been covered by any
21 retirement system.

22 (2) No retirement system coverage may be effected for an
23 employee of the South Coast Air Quality Management District
24 who commenced employment with the district during the period
25 commencing on February 1, 1977, and ending on December 31,
26 1978, unless and until the employee shall have elected whether to
27 become a member of the retirement association established in
28 accordance with this chapter for employees of Los Angeles County
29 or the retirement association established in accordance with this
30 chapter for employees of San Bernardino County. The election
31 shall occur before January 1, 1980. Any employee who fails to
32 make the election provided for herein shall be deemed to have
33 elected to become a member of the retirement association
34 established in accordance with this chapter for the County of Los
35 Angeles.

36 (3) The South Coast Air Quality Management District shall
37 make application to the retirement associations established in
38 accordance with this chapter for employees of Los Angeles County
39 and San Bernardino County for coverage of employees of the South
40 Coast Air Quality Management District.

1 (4) An employee of the South Coast Air Quality Management
2 District who commenced employment with the district during the
3 period commencing on February 1, 1977, and ending on December
4 31, 1978, and who has not terminated employment before January
5 1, 1980, shall be covered by the retirement association elected by
6 the employee pursuant to paragraph (2). That coverage shall be
7 effected no later than the first day of the first month following the
8 date of the election provided for in paragraph (2).

9 (5) Each electing employee shall receive credit for all service
10 with the South Coast Air Quality Management District. However,
11 the elected retirement association may require, as a prerequisite
12 to granting that credit, the payment of an appropriate sum of money
13 or the transfer of funds from another retirement association in an
14 amount determined by an enrolled actuary and approved by the
15 elected retirement association's board. The amount to be paid shall
16 include all administrative and actuarial costs of making that
17 determination. The amount to be paid shall be shared by the South
18 Coast Air Quality Management District and the employee. The
19 share to be paid by the employee shall be determined by good faith
20 bargaining between the district and the recognized employee
21 organization, but in no event shall the employee be required to
22 contribute more than 25 percent of the total amount required to be
23 paid. The elected retirement association's board may not grant that
24 credit for that prior service unless the request for that credit is
25 made to, and the required payment deposited with, the elected
26 retirement association's board no earlier than January 1, 1980, and
27 no later than June 30, 1980. The foregoing shall have no effect on
28 any employee's rights to reciprocal benefits under Article 15
29 (commencing with Section 31830).

30 (6) An employee of the South Coast Air Quality Management
31 District who commenced employment with the district after
32 December 31, 1978, shall be covered by the retirement association
33 established in accordance with this chapter for employees of San
34 Bernardino County. That coverage shall be effected as of the first
35 day of the first month following the employee's commencement
36 date.

37 (7) Notwithstanding paragraphs (2) and (4) above, employees
38 of the South Coast Air Quality Management District who were
39 employed between February 1, 1977, and December 31, 1978, and
40 who terminate their employment between February 1, 1977, and

1 January 1, 1980, shall be deemed to be members of the retirement
2 association established in accordance with this chapter for the
3 employees of Los Angeles County commencing on the date of
4 their employment with the South Coast Air Quality Management
5 District.

6 (i) “District” also includes any nonprofit corporation that
7 operates one or more museums within a county of the 15th class,
8 as described by Sections 28020 and 28036 of the Government
9 Code, as amended by Chapter 1204 of the Statutes of 1971,
10 pursuant to a contract between the corporation and the board of
11 supervisors of the county, and that has entered into an agreement
12 with the board and the county setting forth the terms and conditions
13 of the corporation’s inclusion in the county’s retirement system.

14 (j) “District” also includes any economic development
15 association funded in whole or in part by a county of the 15th class,
16 as described by Sections 28020 and 28036 of the Government
17 Code, as amended by Chapter 1204 of the Statutes of 1971, and
18 that has entered into an agreement with the board of supervisors
19 and the county setting forth the terms and conditions of the
20 association’s inclusion in the county’s retirement system.

21 (k) “District” also includes any special commission established
22 in the Counties of Tulare and San Joaquin as described by Section
23 14087.31 of the Welfare and Institutions Code, pursuant to a
24 contract between the special commission and the county setting
25 forth the terms and conditions of the special commission’s
26 inclusion in the county’s retirement system with the approval of
27 the board of supervisors and the board of retirement.

28 (l) (1) “District” also includes the retirement system established
29 under this chapter in Orange County.

30 (2) “District” also includes the retirement system established
31 under this chapter in San Bernardino County at such time as the
32 board of retirement, by resolution, makes this section applicable
33 in that county.

34 (3) *“District” also includes any retirement system established*
35 *under this chapter at such time as the board of retirement, by*
36 *resolution, makes this section applicable in that county. Adoption*
37 *of the resolution shall first be approved in a memorandum of*
38 *understanding made under the Meyers-Milias-Brown Act and*
39 *executed by the board of supervisors and the employee*

1 *representatives of the majority of represented general employees*
2 *of the retirement system.*

3 *SEC. 8. Section 31522.5 of the Government Code is amended*
4 *to read:*

5 31522.5. (a) In a county in which the board of retirement has
6 appointed personnel pursuant to Section 31522.1, the board of
7 retirement may appoint an administrator, an assistant administrator,
8 a chief investment officer, senior management employees next in
9 line of authority to the chief investment officer, subordinate
10 administrators, senior management employees next in line of
11 authority to subordinate administrators, and legal counsel.

12 (b) Notwithstanding any other provision of law, the personnel
13 appointed pursuant to this section may not be county employees
14 but shall be employees of the retirement system, subject to terms
15 and conditions of employment established by the board of
16 retirement. Except as specifically provided in this subdivision, all
17 other personnel shall be county employees for purposes of the
18 county's employee relations resolution, or equivalent local rules,
19 and the terms and conditions of employment established by the
20 board of supervisors for county employees, including those set
21 forth in a memorandum of understanding.

22 (c) Except as otherwise provided by Sections 31529.9 and
23 31596.1, the compensation of personnel appointed pursuant to this
24 section shall be an expense of administration of the retirement
25 system, pursuant to Section 31580.2.

26 (d) The board of retirement and board of supervisors may enter
27 into any agreements as may be necessary and appropriate to carry
28 out the provisions of this section.

29 (e) Section 31522.2 is not applicable to any retirement system
30 that elects to appoint personnel pursuant to this section.

31 (f) This section shall apply only in Orange County.

32 (g) This section shall apply to the retirement system established
33 under this chapter in San Bernardino County at such time as the
34 board of retirement, by resolution, makes this section applicable
35 in that county.

36 (h) *This section shall apply only to a retirement system electing*
37 *to become a district pursuant to the authority granted in paragraph*
38 *(3) of subdivision (l) of Section 31468 at such time as the board*
39 *of retirement, by resolution, makes that section applicable in that*
40 *county.*

1 *SEC. 9. Section 31522.8 is added to the Government Code, to*
2 *read:*

3 *31522.8. (a) The board of retirement may elect to appoint*
4 *personnel, or may authorize the retirement administrator to appoint*
5 *personnel, to administer the system as provided in this section.*

6 *(b) (1) Notwithstanding any other law, the personnel appointed*
7 *pursuant to this section shall not be county employees but shall*
8 *be employees of the retirement system, subject to terms and*
9 *conditions of employment established by the board of retirement.*

10 *(2) All persons who were appointed as county employees to*
11 *retirement system personnel positions pursuant to Sections*
12 *31522.1, 31522.2, or 31522.3 shall cease to be county employees*
13 *and shall become retirement system employees at their existing or*
14 *equivalent classifications as of the date the board of retirement*
15 *makes this section applicable in the county pursuant to subdivision*
16 *(f). All of the following shall apply to those persons who become*
17 *retirement system employees pursuant to this paragraph:*

18 *(A) Employment seniority of a retirement system employee,*
19 *including an employee's continuous service date used for purposes*
20 *of retirement or other benefits, as calculated and used under the*
21 *county system in effect prior to the date this section becomes*
22 *applicable, shall be calculated and used in the same manner by*
23 *the retirement system at the time the county employees become*
24 *retirement system employees, subject to any subsequent revisions*
25 *the retirement board may make pursuant to regulations governing*
26 *terms and conditions of employment.*

27 *(B) Retirement system employees shall have the same status*
28 *they had as probationary, permanent, or regular employees under*
29 *the county system in effect on the date this section becomes*
30 *applicable.*

31 *(C) Retirement system employees shall receive their same salary*
32 *rates, leaves of absences, leave accrual rates, including all related*
33 *compensation rules and provisions applicable to those salary rates,*
34 *leaves, and accrual rates, under the county system that existed on*
35 *the date this section becomes applicable, subject to any subsequent*
36 *revisions the retirement board may make pursuant to regulations*
37 *governing terms and conditions of employment. The retirement*
38 *board may contract with the county to administer its payroll system*
39 *for the retirement system employees.*

1 (D) Retirement system employees shall be afforded the
2 opportunity to continue to participate in county benefit plans and
3 programs, including, but not limited to, group health, dental, and
4 life insurance, workers' compensation, and deferred compensation,
5 that existed on the date this section becomes applicable, subject
6 to any subsequent revisions the retirement board may make
7 pursuant to regulations governing terms and conditions of
8 employment. The retirement board shall contract with the county
9 to administer the county benefit plans and programs for retirement
10 system employees, and pursuant to that contract shall pay the
11 county for the employer cost of those benefits. This contract shall
12 remain in place until the retirement board makes changes to the
13 benefit plans resulting in retirement system employees no longer
14 receiving the county benefit plans and programs.

15 (3) Retirement system employees appointed to positions pursuant
16 to paragraph (1), on or after the date the board of retirement makes
17 this section applicable in the county, shall be subject to the same
18 terms and conditions of employment, and provided the same
19 opportunities to participate in the benefit plans and programs, as
20 the retirement system employees described under paragraph (2).

21 (4) The participation of retirement system employees in county
22 benefit plans or programs, and the county's administration of
23 certain compensation or benefits for retirement system employees,
24 pursuant to this subdivision, shall not create, and shall not be
25 construed to create, a meet and confer obligation between the
26 county and any employee organization recognized to represent
27 retirement system employees.

28 (c) The compensation of personnel appointed pursuant to this
29 section shall be an expense of administration of the retirement
30 system, pursuant to Section 31580.2, except as otherwise provided
31 in Section 31529.9 or 31596.1.

32 (d) The board of retirement and the county may enter into any
33 agreements as may be necessary and appropriate to carry out the
34 provisions of this section.

35 (e) Sections 31522.1, 31522.2, and 31522.3 shall no longer
36 apply to a county electing to be covered by this section. The board
37 of retirement may make regulations not inconsistent with this
38 chapter, and the provisions of Section 31525 that require approval
39 by the board of supervisors for retirement board regulations to be

1 *effective shall not apply to a county electing to be covered by this*
2 *section.*

3 *(f) This section shall apply only to a retirement system electing*
4 *to become a district for the first time pursuant to the authority*
5 *granted in paragraph (3) of subdivision (l) of Section 31468 at*
6 *such time as the board of retirement, by resolution, makes that*
7 *section applicable in that county.*

8 ~~SEC. 7.~~

9 *SEC. 10.* Section 31539 of the Government Code is repealed.

10 ~~SEC. 8.~~

11 *SEC. 11.* Section 31539 is added to the Government Code, to
12 read:

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

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

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

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

38 (c) Notwithstanding subdivision (b), in cases in which payment
39 is erroneous because of the death of the retired member or
40 beneficiary or because of the remarriage of the beneficiary, the

1 period of limitation shall be 10 years and that period shall
2 commence with the discovery of the erroneous payment.

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

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

15 ~~SEC. 9.~~

16 *SEC. 12.* Section 31539.5 is added to the Government Code,
17 to read:

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

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

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

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

34 Failure by a member or beneficiary to make the inquiry that
35 would be made by a reasonable person in like or similar
36 circumstances does not constitute an “error or omission”
37 correctable under this section.

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

1 (c) The duty and power of the board to correct mistakes, as
2 provided in this section, shall terminate upon the expiration of
3 obligations of this system to the party seeking correction of the
4 error or omission, as those obligations are defined by Section
5 31539.

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

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

20 (1) That the correction cannot be performed in a retroactive
21 manner.

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

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

29 ~~SEC. 10.~~

30 *SEC. 13.* Section 31540 is added to the Government Code, to
31 read:

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

37 (1) A new pay item is created.

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

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

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

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

14 (b) Upon notification pursuant to subdivision (a), the board shall
15 determine, within 90 days, whether the pay item is included in
16 compensation as defined in Section 31460 and compensation
17 earnable as defined in Section 31461. Any determination by the
18 board regarding an item of compensation may be appealed *within*
19 *30 days* by the county, district, or member.

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

23 ~~SEC. 11.~~

24 *SEC. 14.* Section 31541 is added to the Government Code, to
25 read:

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

33 ~~SEC. 12.~~

34 *SEC. 15.* Section 31569 is added to the Government Code, to
35 read:

36 31569. Any county or district that fails to enroll an employee
37 into membership when he or she becomes eligible, or within 90
38 days thereof, when the employer knows or can reasonably be
39 expected to have known of that eligibility shall be required to pay
40 all arrears costs for member contributions and administrative costs

1 of five hundred dollars (\$500) per member as a reimbursement to
2 the system’s current year budget.

3 ~~SEC. 13.~~

4 *SEC. 16.* Section 31680.10 is added to the Government Code,
5 to read:

6 31680.10. (a) Except as provided in Section 31680.1, any
7 person, who has been retired for service on or after January 1,
8 2011, as a member of a county retirement system established under
9 this chapter, may not be reemployed in any capacity either as an
10 employee, an independent contractor, or an employee of a third
11 party without reinstatement by a district or county operating a
12 county retirement system established under this chapter unless at
13 least 180 days have elapsed since the person’s date of retirement.

14 (b) A retired person whose employment, without reinstatement,
15 is authorized by this article shall not acquire service credit or
16 retirement rights under this part with respect to that employment.

17 (c) Any retired member employed in violation of this article
18 shall:

19 (1) Reimburse the retirement system for any retirement
20 allowance received during the period or periods of employment
21 that are in violation of law.

22 ~~(2) Pay to the retirement system an amount of money equal to~~
23 ~~the employee contributions that would otherwise have been paid~~
24 ~~during the period or periods of unlawful employment, plus interest~~
25 ~~thereon.~~

26 ~~(3)~~

27 (2) Contribute toward the reimbursement of the retirement
28 system for administrative expenses incurred in responding to a
29 violation of this article, to the extent the member is determined by
30 the executive officer to be at fault.

31 (d) Any county or district that employs a retired member in
32 violation of this article shall:

33 ~~(1) Pay to the retirement system an amount of money equal to~~
34 ~~employer contributions that would otherwise have been paid for~~
35 ~~the period or periods of time that the member is employed in~~
36 ~~violation of this article, plus interest thereon.~~

37 ~~(2) Contribute~~ *violation of this article shall contribute* toward
38 the reimbursement of the retirement system for administrative
39 expenses incurred in responding to a violation of this article, to

1 the extent the county or district is determined by the executive
2 officer of this system to be at fault.

3 ~~SEC. 14.~~

4 *SEC. 17.* Section 45309.6 is added to the Government Code,
5 to read:

6 45309.6. (a) A city retirement board established pursuant to
7 this chapter shall be in full compliance with the provisions of
8 Section 7500.5 by July 1, 2011.

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

12 ~~SEC. 15.~~

13 *SEC. 18.* Section 45309.7 is added to the Government Code,
14 to read:

15 45309.7. (a) A city retirement board established pursuant to
16 this chapter may adopt regulations regarding the employment of
17 retirees who were members of a retirement system established
18 pursuant to this chapter.

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

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

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

27 ~~SEC. 16.~~

28 *SEC. 19.* Section 50871.6 is added to the Government Code,
29 to read:

30 50871.6. (a) A retirement board established pursuant to this
31 chapter shall be in full compliance with the provisions of Section
32 7500.5 by July 1, 2011.

33 (b) A retirement system established pursuant to this chapter
34 shall adopt any regulations necessary to implement the
35 requirements of Section 7500.5.

36 ~~SEC. 17.~~

37 *SEC. 20.* Section 50871.7 is added to the Government Code,
38 to read:

39 50871.7. (a) A retirement board established pursuant to this
40 chapter may adopt regulations regarding the employment of retirees

1 who were members of a retirement system established pursuant
2 to this chapter.

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

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

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

11 ~~SEC. 18.~~

12 *SEC. 21. (a) Except as otherwise specifically provided, the*
13 *provisions of this act regarding the determination of a person's*
14 *final compensation shall become operative on July 1, 2011.*

15 *(b) It is the intent of the Legislature that the provisions of this*
16 *act shall not be interpreted or applied to reduce the pension of*
17 *any person who has retired prior to July 1, 2011.*

18 ~~SEC. 19.~~

19 *SEC. 22. This bill shall become operative only if Senate Bill*
20 *1425 of the 2009–10 Regular Session is enacted and takes effect*
21 *on or before January 1, 2011.*