

AMENDED IN SENATE AUGUST 17, 2010

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

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**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)**

February 17, 2010

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An act to amend Sections ~~31460, 31461, 31468, and 31522.5~~ *31460 and 31461* 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.

(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.

~~(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)~~

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

8 (3) "Payrate" or "salary" for a member who is not in a group  
9 or class means the rate of pay or base pay, paid in cash and pursuant  
10 to publicly available pay schedules, for services rendered on a  
11 full-time basis during normal working hours, subject to the  
12 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) Service connected disability leave, during which benefits  
28 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 rate of pay or  
25 base pay of the member paid in cash to similarly situated members  
26 of the same group or class of employment for services rendered  
27 on a full-time basis during normal working hours. "Payrate" or  
28 "salary" for a member who is not in a group or class means the  
29 rate of pay or base pay of the member, paid in cash and pursuant  
30 to publicly available pay schedules, for services rendered on a  
31 full-time basis during normal working hours. "Payrate" or "salary"  
32 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) Member contributions that meet the requirements of Section  
6 414(h)(2) of the Internal Revenue Code.
- 7 (C) Any disability or workers' compensation payments to safety  
8 members in accordance with Section 4850 of the Labor Code.
- 9 (2) The computation for any leave without pay of a member  
10 shall be based on the compensation earnable by him or her at the  
11 beginning of the absence.
- 12 (3) The computation for time prior to entering county or district  
13 service shall be based on the compensation earnable by him or her  
14 in the position first held by him or her in that service.
- 15 (c) (1) "Special compensation" of a member includes any  
16 payment received for special skills, knowledge, abilities, work  
17 assignment, workdays or hours, or other work conditions.
- 18 (2) "Special compensation" shall be limited to that cash  
19 remuneration in addition to payrate received by a member pursuant  
20 to a labor policy or agreement or as otherwise required by state or  
21 federal law to similarly situated members of a group or class of  
22 employment. If an individual is not part of a group or class, "special  
23 compensation" shall be limited to that cash remuneration, in  
24 addition to payrate, that the board determines is received by  
25 similarly situated members in the closest related group or class,  
26 subject to the limitations of paragraph (2) of subdivision (e).
- 27 (3) "Special compensation" shall be for services rendered during  
28 normal working hours and, when reported to the board, the county  
29 or district shall identify the pay period in which the special  
30 compensation was earned and shall report special compensation  
31 separately from payrate.
- 32 (4) The monetary value of any service or noncash advantage  
33 furnished by the employer to the member, except as expressly and  
34 specifically provided in this chapter, shall not be "special  
35 compensation."
- 36 (5) (A) The board shall promulgate regulations that delineate  
37 more specifically what shall be excluded from "special  
38 compensation" as used in this section. A uniform allowance, the  
39 monetary value of employer-provided uniforms, holiday pay, and  
40 premium pay for hours worked within the normally scheduled or

1 regular working hours that are in excess of the statutory maximum  
2 workweek or work period applicable to the employee under the  
3 Fair Labor Standards Act (29 U.S.C. Sec. 201 et seq.) and those  
4 items of remuneration identified by the board and consistent with  
5 Ventura County Deputy Sheriffs' Assn. v. Board of Retirement  
6 (1997) 16 Cal.4th 483 and In re Retirement Cases (2003) 110  
7 Cal.App.4th 426 and any settlement agreements thereto, shall be  
8 included as "special compensation."

9 (B) This paragraph shall not be construed to prevent a county  
10 or district and a recognized bargaining unit from agreeing, pursuant  
11 to a memorandum of understanding made under the  
12 Meyers-Milias-Brown Act (Chapter 10 (commencing with Section  
13 3500) of Division 4 of Title 1), to eliminate, as "special  
14 compensation" those items of remuneration as previously identified  
15 by the board, consistent with Ventura County Deputy Sheriffs'  
16 Assn. v. Board of Retirement (1997) 16 Cal.4th 483 and In re  
17 Retirement Cases (2003) 110 Cal.App.4th 426 and any settlement  
18 agreements thereto.

19 (6) "Special compensation" does not include any of the  
20 following:

21 (A) Final settlement pay.

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

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

28 (D) Any other payments the board has affirmatively determined  
29 to be excluded from "special compensation."

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

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

38 (2) Increases in compensation earnable granted to any employee  
39 who is not in a group or class shall be limited during the final  
40 compensation period applicable to the employee, as well as the

1 two years immediately preceding the final compensation period,  
2 to the average increase in compensation earnable during the same  
3 period reported by the employer for all similarly situated members  
4 in the closest related group or class who are in the same  
5 membership classification.

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

16 (2) This subdivision shall not be construed to prevent a county  
17 or district and a recognized bargaining unit from agreeing, pursuant  
18 to a memorandum of understanding made under the  
19 Meyers-Milias-Brown Act (Chapter 10 (commencing with Section  
20 3500) of Division 4 of Title 1), to further eliminate, as “special  
21 compensation” those items of final settlement pay as previously  
22 delineated by the board, consistent with the decisions in *Ventura*  
23 *County Deputy Sheriffs’ Assn. v. Board of Retirement* (1997) 16  
24 Cal.4th 483 and *In re Retirement Cases* (2003) 110 Cal.App.4th  
25 426 and any settlement agreements thereto.

26 (g) Nothing in this section shall be construed to require a county  
27 or district to include as compensation earnable any remuneration,  
28 whether payrate or special compensation, that the county or district  
29 did not include prior to January 1, 2011.

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

32 31461.8. (a) Consistent with Section 31461.6, if the  
33 compensation of a member is a factor in any computation to be  
34 made under this chapter, there shall be excluded from those  
35 computations any compensation based on overtime put in by a  
36 member whose service retirement allowance is a fixed percentage  
37 of final compensation for each year of credited service. For the  
38 purposes of this chapter, overtime is the aggregate service  
39 performed by an employee as a member in all categories of  
40 employment in excess of the hours of work considered normal for

1 employees on a full-time basis, and for which monetary  
2 compensation is paid.

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

9 ~~SEC. 7. Section 31468 of the Government Code is amended~~  
10 ~~to read:~~

11 ~~31468. (a) "District" means a district, formed under the laws~~  
12 ~~of the state, located wholly or partially within the county other~~  
13 ~~than a school district.~~

14 ~~(b) "District" also includes any institution operated by two or~~  
15 ~~more counties, in one of which there has been adopted an ordinance~~  
16 ~~placing this chapter in operation.~~

17 ~~(c) "District" also includes any organization or association~~  
18 ~~authorized by Chapter 26 of the Statutes of 1935, as amended by~~  
19 ~~Chapter 30 of the Statutes of 1941, or by Section 50024, which~~  
20 ~~organization or association is maintained and supported entirely~~  
21 ~~from funds derived from counties, and the board of any retirement~~  
22 ~~system is authorized to receive the officers and employees of that~~  
23 ~~organization or association into the retirement system managed~~  
24 ~~by the board.~~

25 ~~(d) "District" also includes, but is not limited to, any sanitary~~  
26 ~~district formed under Part 1 (commencing with Section 6400) of~~  
27 ~~Division 6 of the Health and Safety Code.~~

28 ~~(e) "District" also includes any city, public authority, public~~  
29 ~~agency, and any other political subdivision or public corporation~~  
30 ~~formed or created under the constitution or laws of this state and~~  
31 ~~located or having jurisdiction wholly or partially within the county.~~

32 ~~(f) "District" also includes any nonprofit corporation or~~  
33 ~~association conducting an agricultural fair for the county pursuant~~  
34 ~~to a contract between the corporation or association and the board~~  
35 ~~of supervisors under the authority of Section 25905.~~

36 ~~(g) "District" also includes the Regents of the University of~~  
37 ~~California, but with respect only to employees who were employees~~  
38 ~~of a county in a county hospital, who became university employees~~  
39 ~~pursuant to an agreement for transfer to the regents of a county~~  
40 ~~hospital or of the obligation to provide professional medical~~

1 services at a county hospital, and who under that agreement had  
2 the right and did elect to continue membership in the county's  
3 retirement system established under this chapter.

4 (h) "~~District~~" also includes the ~~South Coast Air Quality~~  
5 ~~Management District~~, a new public agency created on February  
6 1, 1977, pursuant to Chapter 5.5 (commencing with Section 40400)  
7 of Part 3 of Division 26 of the Health and Safety Code.

8 (1) ~~Employees of the South Coast Air Quality Management~~  
9 ~~District shall be deemed to be employees of a new public agency~~  
10 ~~occupying new positions on February 1, 1977. On that date, those~~  
11 ~~new positions are deemed not to have been covered by any~~  
12 ~~retirement system.~~

13 (2) ~~No retirement system coverage may be effected for an~~  
14 ~~employee of the South Coast Air Quality Management District~~  
15 ~~who commenced employment with the district during the period~~  
16 ~~commencing on February 1, 1977, and ending on December 31,~~  
17 ~~1978, unless and until the employee shall have elected whether to~~  
18 ~~become a member of the retirement association established in~~  
19 ~~accordance with this chapter for employees of Los Angeles County~~  
20 ~~or the retirement association established in accordance with this~~  
21 ~~chapter for employees of San Bernardino County. The election~~  
22 ~~shall occur before January 1, 1980. Any employee who fails to~~  
23 ~~make the election provided for herein shall be deemed to have~~  
24 ~~elected to become a member of the retirement association~~  
25 ~~established in accordance with this chapter for the County of Los~~  
26 ~~Angeles.~~

27 (3) ~~The South Coast Air Quality Management District shall~~  
28 ~~make application to the retirement associations established in~~  
29 ~~accordance with this chapter for employees of Los Angeles County~~  
30 ~~and San Bernardino County for coverage of employees of the South~~  
31 ~~Coast Air Quality Management District.~~

32 (4) ~~An employee of the South Coast Air Quality Management~~  
33 ~~District who commenced employment with the district during the~~  
34 ~~period commencing on February 1, 1977, and ending on December~~  
35 ~~31, 1978, and who has not terminated employment before January~~  
36 ~~1, 1980, shall be covered by the retirement association elected by~~  
37 ~~the employee pursuant to paragraph (2). That coverage shall be~~  
38 ~~effected no later than the first day of the first month following the~~  
39 ~~date of the election provided for in paragraph (2).~~

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

22     ~~(6) An employee of the South Coast Air Quality Management~~  
23 ~~District who commenced employment with the district after~~  
24 ~~December 31, 1978, shall be covered by the retirement association~~  
25 ~~established in accordance with this chapter for employees of San~~  
26 ~~Bernardino County. That coverage shall be effected as of the first~~  
27 ~~day of the first month following the employee's commencement~~  
28 ~~date.~~

29     ~~(7) Notwithstanding paragraphs (2) and (4) above, employees~~  
30 ~~of the South Coast Air Quality Management District who were~~  
31 ~~employed between February 1, 1977, and December 31, 1978, and~~  
32 ~~who terminate their employment between February 1, 1977, and~~  
33 ~~January 1, 1980, shall be deemed to be members of the retirement~~  
34 ~~association established in accordance with this chapter for the~~  
35 ~~employees of Los Angeles County commencing on the date of~~  
36 ~~their employment with the South Coast Air Quality Management~~  
37 ~~District.~~

38     ~~(i) "District" also includes any nonprofit corporation that~~  
39 ~~operates one or more museums within a county of the 15th class,~~  
40 ~~as described by Sections 28020 and 28036 of the Government~~

1 Code, as amended by Chapter 1204 of the Statutes of 1971,  
2 pursuant to a contract between the corporation and the board of  
3 supervisors of the county, and that has entered into an agreement  
4 with the board and the county setting forth the terms and conditions  
5 of the corporation's inclusion in the county's retirement system.

6 (j) "District" also includes any economic development  
7 association funded in whole or in part by 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, and  
10 that has entered into an agreement with the board of supervisors  
11 and the county setting forth the terms and conditions of the  
12 association's inclusion in the county's retirement system.

13 (k) "District" also includes any special commission established  
14 in the Counties of Tulare and San Joaquin as described by Section  
15 14087.31 of the Welfare and Institutions Code, pursuant to a  
16 contract between the special commission and the county setting  
17 forth the terms and conditions of the special commission's  
18 inclusion in the county's retirement system with the approval of  
19 the board of supervisors and the board of retirement.

20 (l) (1) "District" also includes the retirement system established  
21 under this chapter in Orange County.

22 (2) "District" also includes the retirement system established  
23 under this chapter in San Bernardino County at such time as the  
24 board of retirement, by resolution, makes this section applicable  
25 in that county.

26 (3) "District" also includes any retirement system established  
27 under this chapter at such time as the board of retirement, by  
28 resolution, makes this section applicable in that county. Adoption  
29 of the resolution shall first be approved in a memorandum of  
30 understanding made under the Meyers-Milius-Brown Act and  
31 executed by the board of supervisors and the employee  
32 representatives of the majority of represented general employees  
33 of the retirement system.

34 SEC. 8. Section 31522.5 of the Government Code is amended  
35 to read:

36 31522.5. (a) In a county in which the board of retirement has  
37 appointed personnel pursuant to Section 31522.1, the board of  
38 retirement may appoint an administrator, an assistant administrator,  
39 a chief investment officer, senior management employees next in  
40 line of authority to the chief investment officer, subordinate

1 administrators, senior management employees next in line of  
2 authority to subordinate administrators, and legal counsel.

3 (b) Notwithstanding any other provision of law, the personnel  
4 appointed pursuant to this section may not be county employees  
5 but shall be employees of the retirement system, subject to terms  
6 and conditions of employment established by the board of  
7 retirement. Except as specifically provided in this subdivision, all  
8 other personnel shall be county employees for purposes of the  
9 county's employee relations resolution, or equivalent local rules,  
10 and the terms and conditions of employment established by the  
11 board of supervisors for county employees, including those set  
12 forth in a memorandum of understanding.

13 (c) Except as otherwise provided by Sections 31529.9 and  
14 31596.1, the compensation of personnel appointed pursuant to this  
15 section shall be an expense of administration of the retirement  
16 system, pursuant to Section 31580.2.

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

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

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

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

27 (h) This section shall apply only to a retirement system electing  
28 to become a district pursuant to the authority granted in paragraph  
29 (3) of subdivision (l) of Section 31468 at such time as the board  
30 of retirement, by resolution, makes that section applicable in that  
31 county.

32 SEC. 9. Section 31522.8 is added to the Government Code, to  
33 read:

34 31522.8. (a) The board of retirement may elect to appoint  
35 personnel, or may authorize the retirement administrator to appoint  
36 personnel, to administer the system as provided in this section.

37 (b) (1) Notwithstanding any other law, the personnel appointed  
38 pursuant to this section shall not be county employees but shall be  
39 employees of the retirement system, subject to terms and conditions  
40 of employment established by the board of retirement.

1     ~~(2) All persons who were appointed as county employees to~~  
2 ~~retirement system personnel positions pursuant to Sections 31522.1,~~  
3 ~~31522.2, or 31522.3 shall cease to be county employees and shall~~  
4 ~~become retirement system employees at their existing or equivalent~~  
5 ~~classifications as of the date the board of retirement makes this~~  
6 ~~section applicable in the county pursuant to subdivision (f). All of~~  
7 ~~the following shall apply to those persons who become retirement~~  
8 ~~system employees pursuant to this paragraph:~~

9     ~~(A) Employment seniority of a retirement system employee,~~  
10 ~~including an employee's continuous service date used for purposes~~  
11 ~~of retirement or other benefits, as calculated and used under the~~  
12 ~~county system in effect prior to the date this section becomes~~  
13 ~~applicable, shall be calculated and used in the same manner by the~~  
14 ~~retirement system at the time the county employees become~~  
15 ~~retirement system employees, subject to any subsequent revisions~~  
16 ~~the retirement board may make pursuant to regulations governing~~  
17 ~~terms and conditions of employment.~~

18     ~~(B) Retirement system employees shall have the same status~~  
19 ~~they had as probationary, permanent, or regular employees under~~  
20 ~~the county system in effect on the date this section becomes~~  
21 ~~applicable.~~

22     ~~(C) Retirement system employees shall receive their same salary~~  
23 ~~rates, leaves of absences, leave accrual rates, including all related~~  
24 ~~compensation rules and provisions applicable to those salary rates,~~  
25 ~~leaves, and accrual rates, under the county system that existed on~~  
26 ~~the date this section becomes applicable, subject to any subsequent~~  
27 ~~revisions the retirement board may make pursuant to regulations~~  
28 ~~governing terms and conditions of employment. The retirement~~  
29 ~~board may contract with the county to administer its payroll system~~  
30 ~~for the retirement system employees.~~

31     ~~(D) Retirement system employees shall be afforded the~~  
32 ~~opportunity to continue to participate in county benefit plans and~~  
33 ~~programs, including, but not limited to, group health, dental, and~~  
34 ~~life insurance, workers' compensation, and deferred compensation,~~  
35 ~~that existed on the date this section becomes applicable, subject~~  
36 ~~to any subsequent revisions the retirement board may make~~  
37 ~~pursuant to regulations governing terms and conditions of~~  
38 ~~employment. The retirement board shall contract with the county~~  
39 ~~to administer the county benefit plans and programs for retirement~~  
40 ~~system employees, and pursuant to that contract shall pay the~~

1 county for the employer cost of those benefits. This contract shall  
2 remain in place until the retirement board makes changes to the  
3 benefit plans resulting in retirement system employees no longer  
4 receiving the county benefit plans and programs.

5 ~~(3) Retirement system employees appointed to positions~~  
6 ~~pursuant to paragraph (1), on or after the date the board of~~  
7 ~~retirement makes this section applicable in the county, shall be~~  
8 ~~subject to the same terms and conditions of employment, and~~  
9 ~~provided the same opportunities to participate in the benefit plans~~  
10 ~~and programs, as the retirement system employees described under~~  
11 ~~paragraph (2).~~

12 ~~(4) The participation of retirement system employees in county~~  
13 ~~benefit plans or programs, and the county's administration of~~  
14 ~~certain compensation or benefits for retirement system employees,~~  
15 ~~pursuant to this subdivision, shall not create, and shall not be~~  
16 ~~construed to create, a meet and confer obligation between the~~  
17 ~~county and any employee organization recognized to represent~~  
18 ~~retirement system employees.~~

19 ~~(e) The compensation of personnel appointed pursuant to this~~  
20 ~~section shall be an expense of administration of the retirement~~  
21 ~~system, pursuant to Section 31580.2, except as otherwise provided~~  
22 ~~in Section 31529.9 or 31596.1.~~

23 ~~(d) The board of retirement and the county may enter into any~~  
24 ~~agreements as may be necessary and appropriate to carry out the~~  
25 ~~provisions of this section.~~

26 ~~(e) Sections 31522.1, 31522.2, and 31522.3 shall no longer~~  
27 ~~apply to a county electing to be covered by this section. The board~~  
28 ~~of retirement may make regulations not inconsistent with this~~  
29 ~~chapter, and the provisions of Section 31525 that require approval~~  
30 ~~by the board of supervisors for retirement board regulations to be~~  
31 ~~effective shall not apply to a county electing to be covered by this~~  
32 ~~section.~~

33 ~~(f) This section shall apply only to a retirement system electing~~  
34 ~~to become a district for the first time pursuant to the authority~~  
35 ~~granted in paragraph (3) of subdivision (l) of Section 31468 at~~  
36 ~~such time as the board of retirement, by resolution, makes that~~  
37 ~~section applicable in that county.~~

38 ~~SEC. 10.~~

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

1     ~~SEC. 11.~~

2     *SEC. 8.* Section 31539 is added to the Government Code, to  
3 read:

4     31539. (a) The obligations of the retirement system to its  
5 members continue throughout their respective memberships, and  
6 the obligations of the retirement system to and in respect to retired  
7 members continue throughout the lives of the respective retired  
8 members, and thereafter until all obligations to their respective  
9 beneficiaries under optional settlements have been discharged.  
10 The obligations of the county or district to the retirement system  
11 in respect to members employed by them, respectively, continue  
12 throughout the memberships of the respective members, and the  
13 obligations of the county or district to the retirement system in  
14 respect to retired members formerly employed by them,  
15 respectively, continue until all of the obligations of the retirement  
16 system in respect to those retired members, respectively, have been  
17 discharged. The obligations of any member to the retirement system  
18 continue throughout his or her membership, and thereafter until  
19 all of the obligations of the retirement system to or in respect to  
20 him or her have been discharged.

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

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

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

29     (c) Notwithstanding subdivision (b), in cases in which payment  
30 is erroneous because of the death of the retired member or  
31 beneficiary or because of the remarriage of the beneficiary, the  
32 period of limitation shall be 10 years and that period shall  
33 commence with the discovery of the erroneous payment.

34     (d) Notwithstanding subdivision (b), where any payment has  
35 been made as a result of fraudulent reports for compensation made,  
36 or caused to be made, by a member for his or her own benefit or  
37 the member causing his or her final compensation to be improperly  
38 increased or otherwise overstated at the time of retirement, the  
39 period of limitation shall be 10 years and that period shall

1 commence either from the date of payment or upon discovery of  
2 the fraudulent reporting, whichever date is later.

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

7 ~~SEC. 12.~~

8 *SEC. 9.* Section 31539.5 is added to the Government Code, to  
9 read:

10 31539.5. (a) Subject to subdivisions (c) and (d), the board  
11 may, in its discretion and upon any terms it deems just, correct the  
12 errors or omissions of any active or retired member, or any  
13 beneficiary of an active or retired member, if all of the following  
14 facts exist:

15 (1) The request, claim, or demand to correct the error or  
16 omission is made by the party seeking correction within a  
17 reasonable time after discovery of the right to make the correction,  
18 which in no case shall exceed six months after discovery of this  
19 right.

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

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

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

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

33 (c) The duty and power of the board to correct mistakes, as  
34 provided in this section, shall terminate upon the expiration of  
35 obligations of this system to the party seeking correction of the  
36 error or omission, as those obligations are defined by Section  
37 31539.

38 (d) The party seeking correction of an error or omission pursuant  
39 to this section has the burden of presenting documentation or other

1 evidence to the board establishing the right to correction pursuant  
2 to subdivisions (a) and (b).

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

13 (1) That the correction cannot be performed in a retroactive  
14 manner.

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

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

22 ~~SEC. 13.~~

23 *SEC. 10.* Section 31540 is added to the Government Code, to  
24 read:

25 31540. (a) Each county or district, and the chief administrative  
26 officer of the county or district, or any other person who its  
27 governing body may designate shall report to the Retirement Board  
28 in writing, in a manner prescribed by the board, within 30 days of  
29 any of the following events:

30 (1) A new pay item is created.

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

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

37 (4) Any other change that may impact the payrate or special  
38 compensation of any member resulting from an agreement pursuant  
39 to a memorandum of understanding between a county or district  
40 and any of its recognized employee organizations, or a resolution

1 adopted by its board of supervisors with respect to nonrepresented  
2 employees.

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

7 (b) Upon notification pursuant to subdivision (a), the board shall  
8 determine, within 90 days, whether the pay item is included in  
9 compensation as defined in Section 31460 and compensation  
10 earnable as defined in Section 31461. Any determination by the  
11 board regarding an item of compensation may be appealed within  
12 30 days by the county, district, or member.

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

16 ~~SEC. 14.~~

17 *SEC. 11.* Section 31541 is added to the Government Code, to  
18 read:

19 31541. The board, during the course of an audit, may require  
20 a county or district to provide information or make available for  
21 examination or copying at a specified time and place, or both,  
22 books, papers, any data, or records, including, but not limited to,  
23 personnel and payroll records, as deemed necessary by the board  
24 to determine the correctness of retirement benefits, reportable  
25 compensation, and enrollment in and reinstatement to this system.

26 ~~SEC. 15.~~

27 *SEC. 12.* Section 31569 is added to the Government Code, to  
28 read:

29 31569. Any county or district that fails to enroll an employee  
30 into membership when he or she becomes eligible, or within 90  
31 days thereof, when the employer knows or can reasonably be  
32 expected to have known of that eligibility shall be required to pay  
33 all arrears costs for member contributions and administrative costs  
34 of five hundred dollars (\$500) per member as a reimbursement to  
35 the system's current year budget.

36 ~~SEC. 16.~~

37 *SEC. 13.* Section 31680.10 is added to the Government Code,  
38 to read:

39 31680.10. (a) Except as provided in Section 31680.1, any  
40 person, who has been retired for service on or after January 1,

1 2011, as a member of a county retirement system established under  
2 this chapter, may not be reemployed in any capacity either as an  
3 employee, an independent contractor, or an employee of a third  
4 party without reinstatement by a district or county operating a  
5 county retirement system established under this chapter unless at  
6 least 180 days have elapsed since the person’s date of retirement.

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

10 (c) Any retired member employed in violation of this article  
11 shall:

12 (1) Reimburse the retirement system for any retirement  
13 allowance received during the period or periods of employment  
14 that are in violation of law.

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

19 (d) Any county or district that employs a retired member in  
20 violation of this article shall contribute toward the reimbursement  
21 of the retirement system for administrative expenses incurred in  
22 responding to a violation of this article, to the extent the county  
23 or district is determined by the executive officer of this system to  
24 be at fault.

25 ~~SEC. 17.~~

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

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

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

34 ~~SEC. 18.~~

35 *SEC. 15.* Section 45309.7 is added to the Government Code,  
36 to read:

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

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

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

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

9 ~~SEC. 19.~~

10 *SEC. 16.* Section 50871.6 is added to the Government Code,  
11 to read:

12 50871.6. (a) A retirement board established pursuant to this  
13 chapter shall be in full compliance with the provisions of Section  
14 7500.5 by July 1, 2011.

15 (b) A retirement system established pursuant to this chapter  
16 shall adopt any regulations necessary to implement the  
17 requirements of Section 7500.5.

18 ~~SEC. 20.~~

19 *SEC. 17.* Section 50871.7 is added to the Government Code,  
20 to read:

21 50871.7. (a) A retirement board established pursuant to this  
22 chapter may adopt regulations regarding the employment of retirees  
23 who were members of a retirement system established pursuant  
24 to this chapter.

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

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

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

33 ~~SEC. 21.~~

34 *SEC. 18.* (a) Except as otherwise specifically provided, the  
35 provisions of this act regarding the determination of a person's  
36 final compensation shall become operative on July 1, 2011.

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

1     ~~SEC. 22.~~

2     *SEC. 19.* This bill shall become operative only if Senate Bill  
3     1425 of the 2009–10 Regular Session is enacted and takes effect  
4     on or before January 1, 2011.

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