

AMENDED IN SENATE MAY 4, 2010
AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1425

Introduced by Senators Simitian and Correa
(Principal coauthor: Assembly Member ~~Hernandez~~ *Ma*)
(Coauthor: Senator DeSaulnier)

February 19, 2010

An act to amend Sections 22112.5, 22119.2, 22461, 22905, 24214.5, 26505, and 26806 of the Education Code, and to amend Sections 20221, 20630, 20636, 20636.1, and 21220 of, and to add Sections 7500.5 and 21220.3 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Simitian. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law (STRL) 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 provide 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 generally 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 revise the definition of "creditable compensation" and 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 these required changes under the laws that govern PERS and STRL.

This bill includes Legislative findings expressing the public purpose that would be served by the enactment of this bill.

This bill would, except as otherwise specified, provide that its provisions would become operative on July 1, 2011. This bill would further provide that it would only become operative if AB 1987 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:

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

4 (2) Neither the Legislature nor the courts ever anticipated a
5 circumstance where the application of the retirement law would
6 result in a method that permits inequitable application of
7 compensation rules in order to enhance an individual’s retirement
8 allowance.

9 (3) It is the responsibility of the Legislature to provide guidance
10 to every retirement system so that each system can determine the
11 proper elements that go into calculating a member’s retirement
12 benefit as recognized by the laws governing each retirement
13 system.

14 (4) Retirement systems must employ sound principles that
15 provide consistent treatment of compensation throughout a
16 member’s career and consistent treatment of compensation earnable
17 among all classes of employees.

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

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

27 (d) The Legislature further finds and declares that the procedures
28 contained in this act provide the appropriate method for resolving
29 the inequitable application of compensation rules; and therefore,
30 provide for the consistent administration of state and local
31 retirement systems that is in the public’s best interest.

32 SEC. 2. Section 22112.5 of the Education Code is amended to
33 read:

34 22112.5. (a) “Class of employees” means a number of
35 employees considered as a group because they are employed to
36 perform similar duties, are employed in the same type of program,
37 or share other similarities related to the nature of the work being
38 performed.

39 (b) One employee shall not be considered a class of employees.

1 (c) The board shall have the right to override the determination
2 by an employer as to whether or not a group constitutes a “class
3 of employees” within the meaning of this section.

4 SEC. 3. Section 22119.2 of the Education Code is amended to
5 read:

6 22119.2. (a) “Creditable compensation” means remuneration
7 that is payable in cash by an employer to all persons in the same
8 class of employees, if applicable, and is paid to an employee for
9 performing creditable service. Contributions paid on creditable
10 compensation shall be credited to either the member’s Defined
11 Benefit Program or the Defined Benefit Supplement Program, as
12 applicable, in accordance with subdivisions (b) and (f) and Section
13 22905.

14 (1) Creditable compensation shall be designated as either of the
15 following:

16 (A) Salary or wages paid in accordance with a salary schedule
17 or employment agreement for services performed or the use of an
18 employer-approved leave during a specified period of time, the
19 right of which accrues in proportion to the service performed or
20 the leave used.

21 (B) Remuneration that is paid in addition to salary, providing
22 it is payable to all persons who are in the same class of employees,
23 if applicable, in the same dollar amount, the same percentage of
24 salary, or the same percentage of the amount being distributed.
25 For purposes of this subparagraph, “remuneration that is paid in
26 addition to salary” shall include:

27 (i) Reimbursements or allowances for expenses, the payment
28 of which is not substantiated pursuant to Section 274(d) of the
29 Internal Revenue Code.

30 (ii) Cash payments made by the employer in exchange for a
31 member’s waiver of a right to receive any payment, amount, or
32 benefit described in paragraphs (5) and (6) of subdivision (c).

33 (iii) Compensation that is payable for a specified number of
34 times as limited by law, a collective bargaining agreement, or an
35 employment agreement.

36 (iv) Lump-sum payments or bonus payments that are paid for
37 meeting career, educational, age, or performance-related criteria,
38 the right of which does not accrue in proportion to the service
39 performed or leave used.

1 (v) Any other payments the board may determine, pursuant to
2 regulations, to be “remuneration that is paid in addition to salary.

3 (2) Creditable compensation shall include the following:

4 (A) Member contributions that are picked up by an employer
5 pursuant to Section 22903 or 22904.

6 (B) Amounts that are deducted from a member’s compensation,
7 including, but not limited to, salary deductions for participation
8 in a deferred compensation plan; deductions to purchase an annuity
9 contract, tax-deferred retirement plan, or insurance program; and
10 contributions to a plan that meets the requirements of Section 125,
11 401(k), 403(b), or 457 of Title 26 of the United States Code.

12 (C) Any other amounts the board may determine, pursuant to
13 regulations, to be “creditable compensation.”

14 (b) Any salary or other remuneration determined by the board
15 to have been paid to enhance a member’s benefits shall not be
16 credited under the Defined Benefit Program. Contributions on that
17 compensation shall be credited to the Defined Benefit Supplement
18 Program. A presumption by the board that salary or other
19 remuneration was paid to enhance the member’s benefits may be
20 rebutted by the member or by the employer on behalf of the
21 member. Upon receipt of sufficient evidence to the contrary, a
22 presumption by the board that salary or other remuneration was
23 paid to enhance the member’s benefits may be reversed. For the
24 purposes of this subdivision, the following salary or remuneration
25 shall be presumed to have been paid to enhance a member’s
26 benefits:

27 (1) Remuneration increasing a member’s compensation earnable
28 from one year to the next during the final compensation period or
29 in either of the two years prior to the final compensation period in
30 excess of the greater of either of the following:

31 (A) Ten percent.

32 (B) Twice the percentage increase in the average compensation
33 earnable by active members of the Defined Benefit Program from
34 the prior year, as determined by the system.

35 (2) Any other salary or remuneration determined by the board
36 to have been paid to enhance a member’s benefits.

37 (c) “Creditable compensation” does not mean and shall not
38 include:

39 (1) Remuneration that is not payable in cash or is not payable
40 to all persons who are in the same class of employees.

- 1 (2) Remuneration that is paid for service that is not creditable
2 service pursuant to Section 22119.5.
- 3 (3) Remuneration that is paid in addition to salary if it is not
4 payable to all persons in the same class of employees in the same
5 dollar amount, the same percentage of salary, or the same
6 percentage of the amount being distributed pursuant to
7 subparagraph (B) of paragraph (1) of subdivision (a).
- 8 (4) Remuneration that is paid for unused accumulated leave.
- 9 (5) Annuity contracts, tax-deferred retirement plans, or insurance
10 programs and contributions to plans that meet the requirements of
11 Section 125, 401(k), or 403(b) of Title 26 of the United States
12 Code when the cost is covered by an employer and is not deducted
13 from the member's salary.
- 14 (6) Fringe benefits provided by an employer.
- 15 (7) Expenses paid by an employer.
- 16 (8) Expenses reimbursed by an employer, the payment of which
17 is substantiated pursuant to Section 274(d) of the Internal Revenue
18 Code.
- 19 (9) Severance pay or compensatory damages or money paid to
20 a member in excess of salary as a compromise settlement.
- 21 (10) Any other payments the board may determine, pursuant to
22 regulations, not to be "creditable compensation."
- 23 (d) An employer or individual who knowingly or willfully
24 reports compensation in a manner inconsistent with subdivision
25 (a) or (c) shall reimburse the plan for benefit overpayments that
26 occur because of that inconsistent reporting and may be subject to
27 prosecution for fraud, theft, or embezzlement in accordance with
28 the Penal Code. The system may establish procedures to ensure
29 that compensation reported by an employer is in compliance with
30 this section.
- 31 (e) For purposes of this section, remuneration shall be considered
32 payable if it would be paid to any person who meets the
33 qualifications or requirements specified in a collective bargaining
34 agreement or an employment agreement as a condition of receiving
35 the remuneration.
- 36 (f) This definition of "creditable compensation" reflects sound
37 principles that support the integrity of the retirement fund. Those
38 principles include, but are not limited to, consistent treatment of
39 compensation throughout a member's career, consistent treatment
40 of compensation among an entire class of employees, preventing

1 adverse selection, and excluding from compensation earnable
2 remuneration that is paid for to enhance a member's benefits. The
3 board shall determine the appropriate crediting of contributions
4 between the Defined Benefit Program and the Defined Benefit
5 Supplement Program according to these principles, to the extent
6 not otherwise specified pursuant to this part.

7 SEC. 4. Section 22461 of the Education Code is amended to
8 read:

9 22461. (a) A school district, community college district, county
10 superintendent of schools, California State University, or other
11 employing agency that retains the services of a retired member
12 under Section 24116, 24214, or 24215, shall do both of the
13 following regardless of whether the retired member performs the
14 services as an employee of the employer, an employee of a third
15 party, or an independent contractor:

16 (1) Prior to retention, advise the retired member of the earnings
17 limitation set forth in Sections 24116, 24214, 24214.5, and 24215.

18 (2) Maintain accurate records of the retired member's earnings
19 and report those earnings monthly to the system and the retired
20 member regardless of the method of payment or the fund from
21 which the payments were made.

22 (b) This section shall not be construed to make any school
23 district, community college district, county superintendent of
24 schools, the California State University, or other employing agency
25 liable for any amount paid to the retired member in excess of the
26 earnings limitation under any circumstance, including the failure
27 to inform the retired member that continuation of service would
28 exceed the limitations.

29 SEC. 5. Section 22905 of the Education Code is amended to
30 read:

31 22905. (a) Member contributions pursuant to Section 22901,
32 employer contributions pursuant to Section 22903 or 22904, and
33 member contributions made by an employer pursuant to Section
34 22909 shall be credited to the member's individual account under
35 the Defined Benefit Program or the Defined Benefit Supplement
36 Program, whichever is applicable pursuant to the provisions of
37 this part.

38 (b) Member and employer contributions on a member's
39 compensation under the following circumstances shall be credited
40 to the member's Defined Benefit Supplement account:

- 1 (1) Compensation for creditable service that exceeds one year
- 2 in a school year.
- 3 (2) Compensation that is consistent with subdivision (b) of
- 4 Section 22119.2.
- 5 (3) Remuneration that is paid in addition to salary, in accordance
- 6 with subparagraph (B) of paragraph (1) of subdivision (a) of
- 7 Section 2119.2.
- 8 (4) Remuneration increasing a member's compensation earnable
- 9 from one year to the next in excess of the average percentage
- 10 increase in compensation earnable by the members in the closest
- 11 related class of employees during the same period reported by each
- 12 employer, as determined by the system, providing that:
- 13 (i) The remuneration is paid to a member who is not in a class
- 14 of employees in accordance with subdivision (b) of Section
- 15 22112.5.
- 16 (ii) The remuneration is either paid during the member's final
- 17 compensation period or either of the two years prior to the
- 18 member's final compensation period.
- 19 (iii) The remuneration is not paid as a result of a legitimate
- 20 change in the member's duties and responsibilities.
- 21 (c) A member may not make voluntary pretax or posttax
- 22 contributions under the Defined Benefit Supplement Program,
- 23 except as provided in subdivision (d), nor may a member redeposit
- 24 amounts previously distributed based on the balance in the
- 25 member's Defined Benefit Supplement account.
- 26 (d) Member and employer contributions pursuant to paragraph
- 27 (1) of subdivision (b) under the Defined Benefit Supplement
- 28 Program shall be credited to the accounts of members as of July
- 29 1 each year following a determination by the system under the
- 30 provisions of this part that those contributions should be credited
- 31 to the Defined Benefit Supplement Program. Any other
- 32 contributions under the Defined Benefit Supplement Program
- 33 pursuant to paragraph (2), (3), or (4) of subdivision (b), shall be
- 34 credited to the individual account of the member upon receipt by
- 35 the system. Contributions to a member's Defined Benefit
- 36 Supplement account shall be identified separately from the
- 37 member's contributions credited under the Defined Benefit
- 38 Program.
- 39 SEC. 6. Section 24214.5 of the Education Code is amended to
- 40 read:

1 24214.5. (a) Notwithstanding Section 24214, for employees
2 retiring on or after January 1, 2011, the postretirement
3 compensation limitation that shall apply to the compensation for
4 performance of the activities identified in subdivision (a) or (b) of
5 Section 22119.5 either as an employee of an employer, an
6 employee of a third party, or as an independent contractor within
7 the California public school system shall be zero dollars (\$0) during
8 the first 180 days after a member retired for service under this part.

9 (b) If a member retired for service under this part earns
10 compensation for performing activities identified in subdivision
11 (a) or (b) of Section 22119.5 in excess of the limitation specified
12 in subdivision (a), as an employee of an employer, as an employee
13 of a third party, or as an independent contractor, within the
14 California public school system, the member's retirement
15 allowance shall be reduced by the amount of the excess
16 compensation. The amount of the reduction may be equal to the
17 monthly allowance payable but may not exceed the amount of the
18 annual allowance payable under this part for the fiscal year in
19 which the excess compensation was earned.

20 SEC. 7. Section 26505 of the Education Code is amended to
21 read:

22 26505. If a participant who has retired and is receiving an
23 annuity under the Cash Balance Benefit Program becomes
24 reemployed prior to 60 years of age or becomes reemployed on or
25 after 60 years of age but within one year of his or her retirement
26 date, to perform creditable service as an employee of an employer,
27 as an employee of a third party, or as an independent contractor
28 within the California public school system, the annuity shall be
29 terminated, the employee account and the employer account of the
30 participant shall be credited with respective balances that reflect
31 the actuarial equivalent of the participant's retirement benefit as
32 of the date of the reemployment and the Annuitant Reserve shall
33 be reduced by the amount of the credits. If a participant who has
34 retired and is receiving an annuity under the Cash Balance Benefit
35 Program becomes reemployed on or after age 60 and more than
36 one year after retirement to perform creditable service under the
37 plan, the annuity shall continue and employee contributions and
38 employer contributions for the creditable service shall be made to
39 the plan and shall be credited to new employee and employer
40 accounts established on behalf of the participant.

1 SEC. 8. Section 26806 of the Education Code is amended to
2 read:

3 26806. (a) The normal form of retirement benefit under this
4 part is a lump-sum payment. Upon distribution of the lump-sum
5 payment to the participant, no further benefits shall be payable
6 from the plan with respect to the Cash Balance Benefit Program.
7 The lump-sum payment shall not be payable before 180 days have
8 elapsed following the date of termination of employment.

9 (b) The application to receive the normal form of a retirement
10 benefit shall be automatically canceled if the participant performs
11 creditable service as an employee of an employer, as an employee
12 of a third party, or as an independent contractor within the
13 California public school system within 180 days following the
14 date of termination of employment.

15 SEC. 9. Section 7500.5 is added to the Government Code, to
16 read:

17 7500.5. (a) In order to safeguard the integrity and soundness
18 of public retirement systems, ~~assure~~ *ensure* prompt delivery of
19 benefits and related services to the participants and their
20 beneficiaries, and minimize employer expenses, state and local
21 public retirement systems shall administer retirement benefits in
22 accordance with the principles articulated in this section. Nothing
23 in this section shall be construed to limit the Legislature's authority
24 to adopt more restrictive benefit provisions applicable to a state
25 or local public retirement system.

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

34 (c) Any payrate, salary, special compensation, or other
35 remuneration determined by the board of a state or local public
36 retirement system to have been paid for the principal purpose of
37 enhancing a member's retirement benefits under that system shall
38 not be included in compensation earnable. Where the board of a
39 state or local public retirement system determines that payrate,
40 salary, special compensation, or other remuneration was paid for

1 the principal purpose of enhancing a member’s benefit, the member
2 or the employer may present evidence to the contrary. Upon receipt
3 of sufficient evidence to the contrary, a board may reverse its
4 determination that payrate, salary, special compensation, or other
5 remuneration was paid for the principal purpose of enhancing a
6 member’s retirement benefits.

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

13 (e) Final settlement ~~or termination~~ pay or any similar payment
14 that is received by a member ~~in anticipation of retirement, or~~
15 ~~separation from employment, or~~ upon retirement *or separation*
16 *from employment*, shall not be included in compensation earnable
17 by any state or local public retirement system.

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

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

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

35 (1) “A group or class” means a number of employees of the
36 same employer considered together because they share job
37 similarities, work location, collective bargaining unit, or other
38 logical work grouping. Under no circumstance shall one employee
39 be considered a group or class.

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

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

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

14 (5) “Compensation earnable” includes payrate, salary, special
15 compensation, or other remuneration, or any combination of the
16 forgoing, of the member.

17 SEC. 10. Section 20221 of the Government Code is amended
18 to read:

19 20221. Each state employer, school employer, and the chief
20 administrative officer of a contracting agency or any other person
21 who its governing body may designate shall furnish all of the
22 following:

23 (a) Immediate notice to the board, in the manner prescribed by
24 the system, of the change in status of any member resulting from
25 hiring, transfer, promotion, leave of absence, resignation,
26 reinstatement, dismissal, or death.

27 (b) Immediate notice to the board, in the manner prescribed by
28 the system, of any change that may impact a member’s payrate or
29 special compensation, as defined in Section 20636 or 20636.1,
30 resulting from the adoption, termination or amendment of any
31 labor policy or agreement.

32 (c) Any additional information concerning any member or the
33 employer that the board may require in the administration of this
34 system.

35 (d) The services of its officer and departments that the board
36 may request in connection with claims by members against this
37 system.

38 The board may assess a reasonable fee on any employer who
39 fails to provide information as required by this section within
40 applicable the time limits.

1 SEC. 11. Section 20630 of the Government Code is amended
2 to read:

3 20630. (a) As used in this part, “compensation” means the
4 remuneration paid out of funds controlled by the employer in
5 payment for the member’s services performed during normal
6 working hours or for time during which the member is excused
7 from work because of any of the following:

8 (1) Holidays.

9 (2) Sick leave.

10 (3) Industrial disability leave, during which, benefits are payable
11 pursuant to Sections 4800 and 4850 of the Labor Code, Article 4
12 (commencing with Section 19869) of Chapter 2.5 of Part 2.6, or
13 Section 44043 or 87042 of the Education Code.

14 (4) Vacation.

15 (5) Compensatory time off.

16 (6) Leave of absence.

17 (b) When compensation is reported to the board, the employer
18 shall identify the pay period in which the compensation was earned
19 regardless of when reported or paid. Compensation shall be
20 reported in accordance with Section 20636 or 20636.1 and shall
21 not exceed compensation earnable, as defined in Section 20636
22 or 20636.1.

23 (c) The board may assess a reasonable amount to cover the cost
24 of audit, adjustment, or correction, where it determines that an
25 employer knowingly failed to comply with subdivision (b). An
26 employer will be found to have knowingly failed to comply with
27 subdivision (b) if the board determines that the employer either:

28 (1) Knew or should have known that the compensation reported
29 was not compensation earnable, as defined in Section 20636 or
30 20636.1.

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

33 (d) An employer shall not pass on to an employee any costs
34 assessed pursuant to subdivision (c).

35 SEC. 12. Section 20636 of the Government Code is amended
36 to read:

37 20636. (a) “Compensation earnable” by a member means the
38 payrate and special compensation of the member, as defined by
39 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

1 (b) (1) “Payrate” means the normal monthly rate of pay or
2 monthly base pay of the member paid in cash to similarly situated
3 members of the same group or class of employment for services
4 rendered on a full-time basis during normal working hours,
5 pursuant to publicly available pay schedules. “Payrate,” for a
6 member who is not in a group or class, means the monthly rate of
7 pay or monthly base pay of the member, paid in cash and pursuant
8 to publicly available pay schedules, for services rendered on a
9 full-time basis during normal working hours, subject to the
10 limitations of paragraph (2) of subdivision (e).

11 (2) “Payrate” shall include an amount deducted from a member’s
12 salary for any of the following:

13 (A) Participation in a deferred compensation plan.

14 (B) Payment for participation in a retirement plan that meets
15 the requirements of Section 401(k) of Title 26 of the United States
16 Code.

17 (C) Payment into a money purchase pension plan and trust that
18 meets the requirements of Section 401(a) of Title 26 of the United
19 States Code.

20 (D) Participation in a flexible benefits program.

21 (3) The computation for a leave without pay of a member shall
22 be based on the compensation earnable by him or her at the
23 beginning of the absence and shall report special compensation
24 separately from payrate.

25 (4) The computation for time prior to entering state service shall
26 be based on the compensation earnable by him or her in the position
27 first held by him or her in state service.

28 (c) (1) Special compensation of a member includes a payment
29 received for special skills, knowledge, abilities, work assignment,
30 workdays or hours, or other work conditions.

31 (2) Special compensation shall be limited to that which is
32 received by a member pursuant to a labor policy or agreement or
33 as otherwise required by state or federal law, to similarly situated
34 members of a group or class of employment that is in addition to
35 payrate. If an individual is not part of a group or class, special
36 compensation shall be limited to that which the board determines
37 is received by similarly situated members in the closest related
38 group or class that is in addition to payrate, subject to the
39 limitations of paragraph (2) of subdivision (e).

1 (3) Special compensation shall be for services rendered during
2 normal working hours and, when reported to the board, the
3 employer shall identify the pay period in which the special
4 compensation was earned.

5 (4) Special compensation may include the full monetary value
6 of normal contributions paid to the board by the employer, on
7 behalf of the member and pursuant to Section 20691, if the
8 employer's labor policy or agreement specifically provides for the
9 inclusion of the normal contribution payment in compensation
10 earnable.

11 (5) The monetary value of a service or noncash advantage
12 furnished by the employer to the member, except as expressly and
13 specifically provided in this part, is not special compensation unless
14 regulations promulgated by the board specifically determine that
15 value to be "special compensation."

16 (6) The board shall promulgate regulations that delineate more
17 specifically and exclusively what constitutes "special
18 compensation" as used in this section. A written petition to request
19 an addition to the exclusive list that identifies and defines "special
20 compensation" items contained in board regulations may be made
21 pursuant to Section 11340.7. A uniform allowance, the monetary
22 value of employer-provided uniforms, holiday pay, and premium
23 pay for hours worked within the normally scheduled or regular
24 working hours that are in excess of the statutory maximum
25 workweek or work period applicable to the employee under Section
26 201 et seq. of Title 29 of the United States Code shall be included
27 as special compensation and appropriately defined in those
28 regulations.

29 (7) Special compensation does not include any of the following:

30 (A) Final settlement pay.

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

33 (8) A written request may be submitted for the board's
34 determination as to whether specific compensation items meet the
35 definition of special compensation. Determinations shall be made
36 on these requests within 90 calendar days of receipt of all
37 information required to be submitted by the board.

38 (C) Other payments the board has not affirmatively determined
39 to be special compensation.

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

4 (e) (1) As used in this part, “group or class of employment”
5 means a number of employees considered together because they
6 share similarities in job duties, work location, collective bargaining
7 unit, or other logical work-related grouping. One employee may
8 not be considered a group or class.

9 (2) Increases in compensation earnable granted to an employee
10 who is not in a group or class shall be limited during the final
11 compensation period applicable to the employees, as well as the
12 two years immediately preceding the final compensation period,
13 to the average increase in compensation earnable during the same
14 period reported by the employer for all similarly situated members
15 in the closest related group or class, or who are in the same
16 membership classification, except as may otherwise be determined
17 pursuant to regulations adopted by the board that establish
18 reasonable standards for granting exceptions.

19 (f) As used in this part, “final settlement pay” means pay or
20 cash conversions of employee benefits that are in excess of
21 compensation earnable, that are granted or awarded to a member
22 in connection with, or in anticipation of, a separation from
23 employment. The board shall promulgate regulations that delineate
24 more specifically what constitutes final settlement pay.

25 (g) (1) Notwithstanding subdivision (a), “compensation
26 earnable” for state members means the average monthly
27 compensation, as determined by the board, upon the basis of the
28 average time put in by members in the same group or class of
29 employment and at the same rate of pay, and is composed of the
30 payrate and special compensation of the member. The computation
31 for an absence of a member shall be based on the compensation
32 earnable by him or her at the beginning of the absence and for time
33 prior to entering state service shall be based on the compensation
34 earnable by him or her in the position first held by him or her in
35 that state service.

36 (2) Notwithstanding subdivision (b), “payrate” for state members
37 means the average monthly remuneration paid in cash out of funds
38 paid by the employer to similarly situated members of the same
39 group or class of employment, pursuant to publicly available pay
40 schedules, in payment for the member’s services or for time during

1 which the member is excused from work because of holidays, sick
2 leave, vacation, compensating time off, or leave of absence.
3 “Payrate” for state members shall include:

4 (A) An amount deducted from a member’s salary for any of the
5 following:

6 (i) Participation in a deferred compensation plan established
7 pursuant to Chapter 4 (commencing with Section 19993) of Part
8 2.6.

9 (ii) Payment for participation in a retirement plan that meets
10 the requirements of Section 401(k) of Title 26 of the United States
11 Code.

12 (iii) Payment into a money purchase pension plan and trust that
13 meets the requirements of Section 401(a) of Title 26 of the United
14 States Code.

15 (iv) Participation in a flexible benefits program.

16 (B) A payment in cash by the member’s employer to one other
17 than an employee for the purpose of purchasing an annuity contract
18 for a member under an annuity plan that meets the requirements
19 of Section 403(b) of Title 26 of the United States Code.

20 (C) Employer “pick up” of member contributions that meets
21 the requirements of Section 414(h)(2) of Title 26 of the United
22 States Code.

23 (D) Disability or workers’ compensation payments to safety
24 members in accordance with Section 4800 of the Labor Code.

25 (E) Temporary industrial disability payments pursuant to Article
26 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

27 (F) Other payments the board may determine to be within
28 “payrate.”

29 (3) Notwithstanding subdivision (c), “special compensation”
30 for state members shall mean all of the following:

31 (A) The monetary value, as determined by the board, of living
32 quarters, board, lodging, fuel, laundry, and other advantages of
33 any nature furnished to a member by his or her employer in
34 payment for the member’s services.

35 (B) Compensation for performing normally required duties,
36 such as holiday pay, bonuses (for duties performed on regular work
37 shift), educational incentive pay, maintenance and noncash
38 payments, out-of-class pay, marksmanship pay, hazard pay,
39 motorcycle pay, paramedic pay, emergency medical technician

1 pay, Peace Officer Standards and Training (POST) certificate pay,
2 and split shift differential.

3 (C) Compensation for uniforms, except as provided in Section
4 20632.

5 (D) Other payments the board may determine to be within
6 “special compensation.”

7 (4) “Payrate” and “special compensation” for state members do
8 not include any of the following:

9 (A) The provision by the state employer of a medical or hospital
10 service or care plan or insurance plan for its employees (other than
11 the purchase of annuity contracts as described below in this
12 subdivision), a contribution by the employer to meet the premium
13 or charge for that plan, or a payment into a private fund to provide
14 health and welfare benefits for employees.

15 (B) A payment by the state employer of the employee portion
16 of taxes imposed by the Federal Insurance Contribution Act.

17 (C) Amounts not available for payment of salaries and that are
18 applied by the employer for the purchase of annuity contracts
19 including those that meet the requirements of Section 403(b) of
20 Title 26 of the United States Code.

21 (D) Benefits paid pursuant to Article 5 (commencing with
22 Section 19878) of Chapter 2.5 of Part 2.6.

23 (E) Employer payments that are to be credited as employee
24 contributions for benefits provided by this system, or employer
25 payments that are to be credited to employee accounts in deferred
26 compensation plans. The amounts deducted from a member’s
27 wages for participation in a deferred compensation plan may not
28 be considered to be “employer payments.”

29 (F) Payments for unused vacation, annual leave, personal leave,
30 sick leave, or compensating time off, whether paid in lump sum
31 or otherwise.

32 (G) Final settlement pay.

33 (H) Payments for overtime, including pay in lieu of vacation or
34 holiday.

35 (I) Compensation for additional services outside regular duties,
36 such as standby pay, callback pay, court duty, allowance for
37 automobiles, and bonuses for duties performed after the member’s
38 regular work shift.

39 (J) Amounts not available for payment of salaries and that are
40 applied by the employer for any of the following:

1 (i) The purchase of a retirement plan that meets the requirements
2 of Section 401(k) of Title 26 of the United States Code.

3 (ii) Payment into a money purchase pension plan and trust that
4 meets the requirements of Section 401(a) of Title 26 of the United
5 States Code.

6 (K) Payments made by the employer to or on behalf of its
7 employees who have elected to be covered by a flexible benefits
8 program, where those payments reflect amounts that exceed the
9 employee's salary.

10 (L) Other payments the board may determine are not "payrate"
11 or "special compensation."

12 (5) If the provisions of this subdivision, including the board's
13 determinations pursuant to subparagraph (F) of paragraph (2) and
14 subparagraph (D) of paragraph (3), are in conflict with the
15 provisions of a memorandum of understanding reached pursuant
16 to Section 3517.5 or 3560, the memorandum of understanding
17 shall be controlling without further legislative action, except that
18 if the provisions of a memorandum of understanding require the
19 expenditure of funds, those provisions may not become effective
20 unless approved by the Legislature in the annual Budget Act. No
21 memorandum of understanding reached pursuant to Section 3517.5
22 or 3560 may exclude from the definition of either "payrate" or
23 "special compensation" a member's base salary payments or
24 payments for time during which the member is excused from work
25 because of holidays, sick leave, vacation, compensating time off,
26 or leave of absence. If items of compensation earnable are included
27 by memorandum of understanding as "payrate" or "special
28 compensation" for retirement purposes for represented and higher
29 education employees pursuant to this paragraph, the Department
30 of Personnel Administration or the Trustees of the California State
31 University shall obtain approval from the board for that inclusion.

32 (6) (A) Subparagraph (B) of paragraph (3) prescribes that
33 compensation earnable includes compensation for performing
34 normally required duties, such as holiday pay, bonuses (for duties
35 performed on regular work shift), educational incentive pay,
36 maintenance and noncash payments, out-of-class pay,
37 marksmanship pay, hazard pay, motorcycle pay, paramedic pay,
38 emergency medical technician pay, POST certificate pay, and split
39 shift differential; and includes compensation for uniforms, except
40 as provided in Section 20632; and subparagraph (I) of paragraph

1 (4) excludes from compensation earnable compensation for
2 additional services outside regular duties, such as standby pay,
3 callback pay, court duty, allowance for automobile, and bonuses
4 for duties performed after regular work shift.

5 (B) Notwithstanding subparagraph (A), the Department of
6 Personnel Administration shall determine which payments and
7 allowances that are paid by the state employer shall be considered
8 compensation for retirement purposes for an employee who either
9 is excluded from the definition of state employee in Section 3513,
10 or is a nonelected officer or employee of the executive branch of
11 government who is not a member of the civil service.

12 (C) Notwithstanding subparagraph (A), the Trustees of the
13 California State University shall determine which payments and
14 allowances that are paid by the trustees shall be considered
15 compensation for retirement purposes for a managerial employee,
16 as defined in Section 3562, or supervisory employee as defined in
17 Section 3580.3.

18 SEC. 13. Section 20636.1 of the Government Code is amended
19 to read:

20 20636.1. (a) Notwithstanding Section 20636, and Section
21 45102 of the Education Code, “compensation earnable” by a school
22 member means the payrate and special compensation of the
23 member, as defined by subdivisions (b) and (c), and as limited by
24 Section 21752.5.

25 (b) (1) “Payrate” means the normal monthly rate of pay or
26 monthly base pay of the member paid in cash to similarly situated
27 members of the same group or class of employment for services
28 rendered on a full-time basis during normal working hours,
29 pursuant to publicly available pay schedules. For purposes of this
30 part, for classified members, full-time employment is 40 hours per
31 week, and payments for services rendered, not to exceed 40 hours
32 per week, shall be reported as compensation earnable for all months
33 of the year in which work is performed. “Payrate,” for a member
34 who is not in a group or class, means the monthly rate of pay or
35 monthly base pay of the member, paid in cash and pursuant to
36 publicly available pay schedules, for services rendered on a
37 full-time basis during normal working hours, subject to the
38 limitations of paragraph (2) of subdivision (e).

39 (A) For the purposes of this section, “classified members” shall
40 mean members who retain membership under this system while

1 employed with a school employer in positions not subject to
2 coverage under the Defined Benefit Program under the State
3 Teacher’s Retirement System.

4 (B) For the purposes of this section, and Sections 20962 and
5 20966, “certificated members” shall mean members who retain
6 membership under this system while employed in positions subject
7 to coverage under the Defined Benefit Program under the State
8 Teacher’s Retirement System.

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 state service shall
13 be based on the compensation earnable by him or her in the position
14 first held by him or her in state service.

15 (c) (1) Special compensation of a school 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 which is
19 received by a member pursuant to a labor policy or agreement or
20 as otherwise required by state or federal law, to similarly situated
21 members of a group or class of employment that is in addition to
22 payrate. If an individual is not part of a group or class, special
23 compensation shall be limited to that which the board determines
24 is received by similarly situated members in the closest related
25 group or class that is in addition to payrate, subject to the
26 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
29 employer shall identify the pay period in which the special
30 compensation was earned, and shall report special compensation
31 separately from payrate.

32 (4) Special compensation may include the full monetary value
33 of normal contributions paid to the board by the employer, on
34 behalf of the member and pursuant to Section 20691, provided
35 that the employer’s labor policy or agreement specifically provides
36 for the inclusion of the normal contribution payment in
37 compensation earnable.

38 (5) 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 part, shall not be special compensation

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

3 (6) The board shall promulgate regulations that delineate more
4 specifically and exclusively what constitutes “special
5 compensation” as used in this section. A written petition to request
6 an addition to the exclusive list that identifies and defines “special
7 compensation” items contained in board regulations may be made
8 pursuant to Section 11340.7. A uniform allowance, the monetary
9 value of employer-provided uniforms, holiday pay, and premium
10 pay for hours worked within the normally scheduled or regular
11 working hours that are in excess of the statutory maximum
12 workweek or work period applicable to the employee under Section
13 201 et seq. of Title 29 of the United States Code shall be included
14 as special compensation and appropriately defined in those
15 regulations.

16 (7) Special compensation does not include any of the following:

17 (A) Final settlement pay.

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

20 (C) Any other payments the board has not affirmatively
21 determined to be special compensation.

22 (8) A written request may be submitted for the board’s
23 determination as to whether specific compensation items meet the
24 definition of special compensation. Determinations shall be made
25 on these requests within 90 calendar days of receipt of all
26 information required to be submitted by the board.

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

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

35 (2) Increases in compensation earnable granted to any employee
36 who is not in a group or class shall be limited during the final
37 compensation period applicable to the employees, as well as the
38 two years immediately preceding the final compensation period,
39 to the average increase in compensation earnable during the same
40 period reported by the employer for all similarly situated members

1 in the closest related group or class or who are in the same
2 membership classification, except as may otherwise be determined
3 pursuant to regulations adopted by the board that establish
4 reasonable standards for granting exceptions.

5 (f) As used in this part, “final settlement pay” means any pay
6 or cash conversions of employee benefits that are in excess of
7 compensation earnable, that are granted or awarded to a member
8 in connection with or in anticipation of a separation from
9 employment. The board shall promulgate regulations that delineate
10 more specifically what constitutes final settlement pay.

11 SEC. 14. Section 21220 of the Government Code is amended
12 to read:

13 21220. (a) A person who has been retired under this system,
14 for service or for disability, may not be employed in any capacity
15 thereafter by the state, the university, a school employer, or a
16 contracting agency, unless any of the following conditions are
17 satisfied:

18 (1) The employment qualifies for service credit in the University
19 of California Retirement Plan or the State Teachers’ Retirement
20 Plan.

21 (2) He or she has first been reinstated from retirement pursuant
22 to this chapter.

23 (3) For a person retiring on or after January 1, 2011, the
24 employment, without reinstatement, is authorized by this article
25 and at least 180 days have elapsed since that person’s retirement
26 date.

27 (b) A retired person whose employment without reinstatement
28 is authorized by this article shall acquire no service credit or
29 retirement rights under this part with respect to the employment.

30 (c) Any retired member employed in violation of this article
31 shall:

32 (1) Reimburse this system for any retirement allowance received
33 during the period or periods of employment that are in violation
34 of law.

35 (2) Pay to this system an amount of money equal to the
36 employee contributions that would otherwise have been paid during
37 the period or periods of unlawful employment, plus interest
38 thereon.

39 (3) Contribute toward reimbursement of this system for
40 administrative expenses incurred in responding to this situation,

1 to the extent the member is determined by the executive officer to
2 be at fault.

3 (d) Any public employer that employs a retired member in
4 violation of this article shall:

5 (1) Pay to this system an amount of money equal to employer
6 contributions that would otherwise have been paid for the period
7 or periods of time that the member is employed in violation of this
8 article, plus interest thereon.

9 (2) Contribute toward reimbursement of this system for
10 administrative expenses incurred in responding to this situation,
11 to the extent the employer is determined by the executive officer
12 of this system to be at fault.

13 SEC. 15. Section 21220.3 is added to the Government Code,
14 to read:

15 21220.3. (a) A person who has retired under this system, for
16 service or for disability, may not render services for compensation
17 in any capacity for the state, the university, a school employer, or
18 a contracting agency, through a third party or as an independent
19 contractor, for a period of 180 days following the date of his or
20 her retirement.

21 (b) Any retired member who provides services in violation of
22 this section shall:

23 (1) Cease performing services for compensation and shall not
24 be eligible to again perform services for a period of 180 days
25 following the last date he or she performed services.

26 (2) Contribute toward reimbursement for administrative
27 expenses incurred by the system because of the violation, to the
28 extent that the retired member is determined by the executive
29 officer of this system to be at fault. For purposes of this
30 subdivision, a retired member shall be determined to be at fault if
31 the retired member knew or should have known that he or she was
32 performing services in violation of this section.

33 (c) Any public employer that utilizes the services of a retired
34 member in violation of this section shall contribute toward
35 reimbursement of this system for administrative expenses incurred
36 by this system because of the violation, to the extent that the
37 employer is determined, by the executive officer of this system,
38 to be at fault. For purposes of this subdivision, a public employer
39 shall be determined to be at fault if the public employer knew or

1 should have known that the retired member was performing
2 services in violation of this section.

3 (d) This section shall apply to all persons who retire on and after
4 January 1, 2011.

5 SEC. 16. Except as otherwise specifically provided, the
6 provisions of this act shall become operative on July 1, 2011.

7 SEC. 17. This bill shall become operative only if Assembly
8 Bill 1987 of the 2009–10 Regular Session is enacted and takes
9 effect on or before January 1, 2011.

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