

AMENDED IN ASSEMBLY AUGUST 16, 2010

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 Ma)
(Coauthor: Senator DeSaulnier)

February 19, 2010

An act to amend Sections 22112.5, 22119.2, 22461, 22905, 24214.5, 25009, 26302, 26505, and 26806 of, *and to add Section 26307 to*, 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

(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 (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.

(2) The Defined Benefit Supplement Program under STRL provides supplemental retirement, disability, final, and termination benefits, payable either in a lump-sum payment or as an annuity, to members receiving benefits under the Defined Benefit Program of the State Teachers' Retirement Plan.

This bill would provide that member and employer contributions credited to the Defined Benefit Supplemental Program would include remuneration earnable within a 5-year period in excess of 125% of that member's compensation earnable in the year prior to that 5-year period. This bill would provide, in the case of a member who retires on or after January 1, 2011, and who elects to receive his or her retirement benefit under the Defined Benefit Supplemental Program as a lump-sum payment, that the lump-sum payment would not be payable until 180 days have elapsed following the effective date of the member's retirement.

This

(3) 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:

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.

25 (4) Retirement systems must employ sound principles that
26 provide consistent treatment of compensation throughout a
27 member’s career and consistent treatment of compensation earnable
28 among all classes of employees.

29 (5) In order to provide consistent treatment across the retirement
30 systems, the reporting procedures used by each retirement system
31 and its participating employers must be sufficiently precise so as
32 to enable the retirement system to distinguish between items of

1 remuneration that are and are not properly included in a member’s
2 final compensation.

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

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

11 SEC. 2. Section 22112.5 of the Education Code is amended to
12 read:

13 22112.5. (a) “Class of employees” means a number of
14 employees considered as a group because they are employed to
15 perform similar duties, are employed in the same type of program,
16 or share other similarities related to the nature of the work being
17 performed.

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

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

22 SEC. 3. Section 22119.2 of the Education Code is amended to
23 read:

24 22119.2. (a) “Creditable compensation” means remuneration
25 that is payable in cash by an employer to all persons in the same
26 class of employees, if applicable, and is paid to an employee for
27 performing creditable service. ~~Contributions paid on creditable
28 compensation shall be credited to either the member’s Defined
29 Benefit Program or the Defined Benefit Supplement Program, as
30 applicable, in accordance with subdivisions (b) and (f) and Section
31 22905.~~

32 (1) Creditable compensation shall be designated as either of the
33 following:

34 (A) Salary or wages paid in accordance with a salary schedule
35 or employment agreement for ~~services performed~~ *the performance*
36 *of creditable service* or the use of an employer-approved leave
37 during a specified period of time, the right of which accrues in
38 proportion to the service performed or the leave used, *except as*
39 *provided in subparagraph (B). Salary or wages shall be credited*
40 *to the Defined Benefit Program or the Defined Benefit Supplement*

1 *Program in accordance with subdivisions (b) and (f) of this section*
2 *and with Section 22905.*

3 (B) Remuneration that is paid in addition to salary *or wages*,
4 providing it is payable to all persons who are in the same class of
5 employees, if applicable, in the same dollar amount, the same
6 percentage of salary *or wages*, or the same percentage of the
7 amount being distributed. For purposes of this subparagraph,
8 “remuneration that is paid in addition to ~~salary~~” *salary or wages*”
9 *shall be credited to the Defined Benefit Supplement Program in*
10 *accordance with Section 22905 and shall include:*

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

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

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

20 ~~(iv) Lump-sum payments or bonus payments that are paid for~~
21 ~~meeting career, educational, age, or performance-related criteria;~~

22 (iv) *Compensation that is payable for meeting specified criteria,*
23 *the right of which does not accrue in proportion to the service*
24 *performed or leave used.*

25 (v) *Compensation that is payable for attaining a specific age*
26 *threshold.*

27 (vi) *Compensation that is payable for meeting*
28 *performance-related criteria, provided that the compensation is*
29 *not used as the basis for subsequent increases in salary or wages.*

30 (vii) *Compensation that is payable in exchange for an agreement*
31 *to terminate employment, except as excluded from “creditable*
32 *compensation” as defined in paragraph (9) of subdivision (c).*

33 ~~(v)~~

34 (viii) Any other payments the board may determine, pursuant
35 to regulations, to be “remuneration that is paid in addition to ~~salary~~.
36 *salary or wages.*”

37 (2) Creditable compensation shall include the following:

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

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

7 (C) Any other amounts the board may determine, pursuant to
8 regulations, to be "creditable compensation."

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

22 ~~(1) Remuneration increasing a member's compensation earnable~~
23 ~~from one year to the next during the final compensation period or~~
24 ~~in either of the two years prior to the final compensation period in~~
25 ~~excess of the greater of either of the following:~~

26 ~~(A) Ten percent.~~

27 ~~(B) Twice the percentage increase in the average compensation~~
28 ~~earnable by active members of the Defined Benefit Program from~~
29 ~~the prior year, as determined by the system.~~

30 ~~(2) Any other salary or remuneration determined by the board~~
31 ~~to have been paid to enhance a member's benefits.~~

32 (c) "Creditable compensation" does not mean and shall not
33 include:

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

36 (2) Remuneration that is paid for service that is not creditable
37 service pursuant to Section 22119.5.

38 (3) Remuneration that is paid in addition to salary if it is not
39 payable to all persons in the same class of employees in the same
40 dollar amount, the same percentage of salary, or the same

1 percentage of the amount being distributed pursuant to
2 subparagraph (B) of paragraph (1) of subdivision (a).

3 (4) Remuneration that is paid for unused accumulated leave.

4 (5) Annuity contracts, tax-deferred retirement plans, or insurance
5 programs and contributions to plans that meet the requirements of
6 Section 125, 401(k), or 403(b) of Title 26 of the United States
7 Code when the cost is covered by an employer and is not deducted
8 from the member's salary.

9 (6) Fringe benefits provided by an employer.

10 (7) Expenses paid by an employer.

11 (8) Expenses reimbursed by an employer, the payment of which
12 is substantiated pursuant to Section 274(d) of the Internal Revenue
13 Code.

14 (9) Severance pay or compensatory damages or money paid to
15 a member in excess of salary as a compromise settlement.

16 (10) Any other payments the board may determine, pursuant to
17 regulations, not to be "creditable compensation."

18 (d) An employer or individual who knowingly or willfully
19 reports compensation in a manner inconsistent with subdivision
20 (a) or (c) ~~shall reimburse the plan for benefit overpayments that~~
21 ~~occur because of that inconsistent reporting and~~ may be subject to
22 prosecution for fraud, theft, or embezzlement in accordance with
23 the Penal Code. The system may establish procedures to ensure
24 that compensation reported by an employer is in compliance with
25 this section.

26 (e) For purposes of this section, remuneration shall be considered
27 payable if it would be paid to any person who meets the
28 qualifications or requirements specified in a collective bargaining
29 agreement or an employment agreement as a condition of receiving
30 the remuneration.

31 (f) This definition of "creditable compensation" reflects sound
32 principles that support the integrity of the retirement fund. Those
33 principles include, but are not limited to, consistent treatment of
34 compensation throughout a member's career, consistent treatment
35 of compensation among an entire class of employees, *consistent*
36 *levels or ranges of compensation paid by the employer for a*
37 *specified ongoing position*, preventing adverse selection, and
38 excluding from compensation earnable remuneration that is paid
39 ~~for~~ to enhance a member's benefits. The board shall determine the
40 appropriate crediting of contributions between the Defined Benefit

1 Program and the Defined Benefit Supplement Program according
2 to these principles, to the extent not otherwise specified pursuant
3 to this part.

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

6 22461. ~~(a)~~—A school district, community college district, county
7 superintendent of schools, California State University, or other
8 employing agency that retains the services of a retired member
9 under Section 24116, 24214, or 24215; shall do both of the
10 following regardless of whether the retired member performs the
11 services as an employee of the employer, an employee of a third
12 party, or an independent contractor:

13 ~~(1)~~

14 *(a)* Prior to retention, advise the retired member of the earnings
15 limitation set forth in Sections 24116, 24214, 24214.5, and 24215.

16 ~~(2)~~

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

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

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

30 22905. *(a)* Member contributions pursuant to Section 22901,
31 employer contributions pursuant to Section 22903 or 22904, and
32 member contributions made by an employer pursuant to Section
33 22909 shall be credited to the member's individual account under
34 the Defined Benefit Program or the Defined Benefit Supplement
35 Program, whichever is applicable pursuant to the provisions of
36 this part.

37 *(b)* Member and employer contributions on a member's
38 compensation under the following circumstances shall be credited
39 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~~ 22119.2.

8 (4) (A) Remuneration increasing a member's compensation
9 ~~earnable from one year to the next in excess of the average~~
10 ~~percentage increase in compensation earnable by the members in~~
11 ~~the closest related class of employees during the same period~~
12 ~~reported by each employer, as determined by the system, providing~~
13 ~~that:~~

14 (i) ~~The remuneration is paid to a member who is not in a class~~
15 ~~of employees in accordance with subdivision (b) of Section~~
16 ~~22112.5.~~

17 (ii) ~~The remuneration is either paid during the member's final~~
18 ~~compensation period or either of the two years prior to the~~
19 ~~member's final compensation period.~~

20 (iii) ~~The remuneration is not paid as a result of a legitimate~~
21 ~~change in the member's duties and responsibilities. *during a*~~
22 ~~*five-year period, that includes the last year in which the member's*~~
23 ~~*final compensation is determined and the four years prior to that*~~
24 ~~*year, in which creditable compensation was earned, that exceeds*~~
25 ~~*125 percent of the member's compensation earnable in the year*~~
26 ~~*prior to that five-year period, provided that both of the following*~~
27 ~~*conditions are satisfied:*~~

28 (i) ~~The remuneration is not subject to a written agreement with~~
29 ~~an exclusive representative entered into by an employer pursuant~~
30 ~~to Chapter 10.7 (commencing with Section 3540) of Division 4 of~~
31 ~~Title 1 of the Government Code, or in the case of a member~~
32 ~~employed by a charter school, the remuneration is earned in a~~
33 ~~position that is precluded from being represented by an exclusive~~
34 ~~representative pursuant to Section 3543.4 of the Government Code.~~

35 (ii) ~~The remuneration is not a result of the termination of~~
36 ~~employment with one employer and the beginning of employment~~
37 ~~with another employer.~~

38 (B) ~~The board may, by plan amendment, increase the percentage~~
39 ~~specified in subparagraph (A), if the board determines that the~~
40 ~~average rate of increase in salary and wages paid during the~~

1 *previous five-year period to members employed by the 10*
2 *employers with the largest number of members exceeded 5 percent*
3 *in any of those five years.*

4 (c) A member may not make voluntary pretax or posttax
5 contributions under the Defined Benefit Supplement Program,
6 except as provided in subdivision (d), nor may a member redeposit
7 amounts previously distributed based on the balance in the
8 member's Defined Benefit Supplement account.

9 (d) Member and employer contributions pursuant to paragraph
10 (1) of subdivision (b) under the Defined Benefit Supplement
11 Program shall be credited to the accounts of members as of July
12 1 each year following a determination by the system under the
13 provisions of this part that those contributions should be credited
14 to the Defined Benefit Supplement Program. Any other
15 contributions under the Defined Benefit Supplement Program,
16 pursuant to paragraph (2), (3), or (4) of subdivision (b), shall be
17 credited to the individual account of the member upon receipt by
18 the system. Contributions to a member's Defined Benefit
19 Supplement account shall be identified separately from the
20 member's contributions credited under the Defined Benefit
21 Program.

22 SEC. 6. Section 24214.5 of the Education Code is amended to
23 read:

24 24214.5. (a) Notwithstanding Section 24214, for employees
25 retiring on or after January 1, 2011, the postretirement
26 compensation limitation that shall apply to the compensation for
27 performance of the activities identified in subdivision (a) or (b) of
28 Section 22119.5 either as an employee of an employer, an
29 employee of a third party, or as an independent contractor within
30 the California public school system shall be zero dollars (\$0) during
31 the first 180 days after a member retired for service under this part.

32 (b) If a member retired for service under this part earns
33 compensation for performing activities identified in subdivision
34 (a) or (b) of Section 22119.5 in excess of the limitation specified
35 in subdivision (a), as an employee of an employer, as an employee
36 of a third party, or as an independent contractor, within the
37 California public school system, the member's retirement
38 allowance shall be reduced by the amount of the excess
39 compensation. The amount of the reduction may be equal to the
40 monthly allowance payable but may not exceed the amount of the

1 annual allowance payable under this part for the fiscal year in
2 which the excess compensation was earned.

3 *SEC. 7. Section 25009 of the Education Code is amended to*
4 *read:*

5 25009. (a) A member's retirement benefit under the Defined
6 Benefit Supplement Program shall be an amount equal to the
7 balance of credits in the member's Defined Benefit Supplement
8 account on the date the retirement benefit becomes payable.

9 (b) A retirement benefit shall be a lump-sum payment, or an
10 annuity payable in monthly installments, or a combination of both
11 a lump-sum payment and an annuity, as elected by the member on
12 the application for a retirement benefit. Any retirement benefit
13 paid as an annuity under this chapter shall be subject to Section
14 25011 or 25011.1.

15 (c) *If a member who retires on or after January 1, 2011, elects*
16 *to have the retirement benefit paid as a lump-sum payment, that*
17 *payment shall be payable after 180 days have elapsed following*
18 *the effective date of the member's retirement.*

19 ~~(e)~~

20 (d) Upon distribution of the entire retirement benefit in a
21 lump-sum payment, no other benefit shall be payable to the
22 member or the member's beneficiary under the Defined Benefit
23 Supplement Program.

24 ~~(e)~~

25 (e) A member may not apply a lump-sum payment made to the
26 member pursuant to this section for any of the following purposes:

27 (1) Purchasing service credit pursuant to Chapter 14
28 (commencing with Section 22800), Chapter 14.2 (commencing
29 with Section 22820), or Chapter 14.5 (commencing with Section
30 22850).

31 (2) Redepositing previously refunded retirement contributions
32 pursuant to Chapter 19 (commencing with Section 23200).

33 *SEC. 8. Section 26302 of the Education Code is amended to*
34 *read:*

35 26302. (a) If more or less than the contributions required by
36 this part are paid to the plan based on salary paid to a participant,
37 proper adjustment shall be made by the employer within 60 days
38 of discovery or of notification by the system, and any contributions
39 deducted in error from the participant's salary shall be returned to
40 the participant by the employer within the same time period.

1 (b) ~~If a report with respect to the Cash Balance Benefit Program~~
2 ~~contains erroneous information and the system, acting in good~~
3 ~~faith, makes a distribution from the Teachers' Retirement Fund~~
4 ~~with respect to the Cash Balance Benefit Program based on that~~
5 ~~information, the employer who submitted the report shall reimburse~~
6 ~~the Retirement Fund in full for the amount of the erroneous~~
7 ~~disbursement, plus interest on the amount of the erroneous~~
8 ~~disbursement at the minimum interest rate from the date of~~
9 ~~disbursement to the date of reimbursement, immediately upon~~
10 ~~notification by the system.~~

11 *(b) The board, in accordance with regulations, shall assess*
12 *penalties for late or improper adjustments pursuant to Section*
13 *26301. These penalties shall be assessed at a rate equal to the*
14 *penalties imposed under subdivision (b) of Section 23008 and shall*
15 *be deemed to be interest earned in the year in which the penalty*
16 *is received.*

17 *SEC. 9. Section 26307 is added to the Education Code, to read:*
18 *26307. A school district, community college district, county*
19 *superintendent of schools, the California State University, or other*
20 *employing agency that retains the services of a retired participant*
21 *to perform the activities described in subdivision (a) or (b) of*
22 *Section 26113 shall do both of the following, regardless of whether*
23 *the retired participant performs the services as an employee of the*
24 *employer, an employee of a third party, or as an independent*
25 *contractor:*

26 *(a) Prior to retention, advise the retired participant of the*
27 *limitations on employment set forth in Sections 26505, 26806,*
28 *26810, 26911, and 27204.*

29 *(b) Maintain accurate records of the retired participant's*
30 *earnings and report those earnings monthly to the system and the*
31 *retired participant, regardless of the method of payment or the*
32 *fund from which the payments are made.*

33 ~~SEC. 7.~~

34 *SEC. 10. Section 26505 of the Education Code is amended to*
35 *read:*

36 *26505. If a participant who has retired and is receiving an*
37 *annuity under the Cash Balance Benefit Program becomes*
38 *reemployed prior to 60 years of age or becomes reemployed on or*
39 *after 60 years of age but within one year of his or her retirement*
40 *date, to perform creditable service as an employee of an employer,*

1 as an employee of a third party, or as an independent contractor
2 within the California public school system, the annuity shall be
3 terminated, the employee account and the employer account of the
4 participant shall be credited with respective balances that reflect
5 the actuarial equivalent of the participant's retirement benefit as
6 of the date of the reemployment and the Annuitant Reserve shall
7 be reduced by the amount of the credits. If a participant who has
8 retired and is receiving an annuity under the Cash Balance Benefit
9 Program becomes reemployed on or after age 60 and more than
10 one year after retirement to perform creditable service under the
11 plan, the annuity shall continue and employee contributions and
12 employer contributions for the creditable service shall be made to
13 the plan and shall be credited to new employee and employer
14 accounts established on behalf of the participant.

15 ~~SEC. 8.~~

16 *SEC. 11.* Section 26806 of the Education Code is amended to
17 read:

18 26806. (a) The normal form of retirement benefit under this
19 part is a lump-sum payment. Upon distribution of the lump-sum
20 payment to the participant, no further benefits shall be payable
21 from the plan with respect to the Cash Balance Benefit Program.
22 *The Effective January 1, 2011, the* lump-sum payment shall not
23 be payable before 180 days have elapsed following the date of
24 termination of employment.

25 (b) The application to receive the normal form of a retirement
26 benefit shall be automatically canceled if the participant performs
27 creditable service as an employee of an employer, as an employee
28 of a third party, or as an independent contractor within the
29 California public school system within 180 days following the
30 date of termination of employment.

31 ~~SEC. 9.~~

32 *SEC. 12.* Section 7500.5 is added to the Government Code, to
33 read:

34 7500.5. (a) In order to safeguard the integrity and soundness
35 of public retirement systems, ensure prompt delivery of benefits
36 and related services to the participants and their beneficiaries, and
37 minimize employer expenses, state and local public retirement
38 systems shall administer retirement benefits in accordance with
39 the principles articulated in this section. Nothing in this section
40 shall be construed to limit the Legislature's authority to adopt more

1 restrictive benefit provisions applicable to a state or local public
2 retirement system.

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

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

24 (d) Cash conversions of accrued employee benefits in amounts
25 that exceed the amount that is both earned and payable to the
26 member during the member's applicable final compensation
27 measurement period shall not be credited to, or included in,
28 compensation earnable by any state or local public retirement
29 system.

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

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

1 (g) Any increase in compensation earnable for an employee
2 who is not in a group or class shall not exceed, during the final
3 compensation period as well as two years immediately preceding
4 the final compensation period, the average increase in
5 compensation earnable during the same period for all similarly
6 situated members in the closest related group or class of that same
7 employer.

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

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

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

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

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

29 (5) “Compensation earnable” includes payrate, salary, special
30 compensation, or other remuneration, or any combination of the
31 ~~forgoing~~ *foregoing*, of the member.

32 ~~SEC. 10.~~

33 *SEC. 13.* Section 20221 of the Government Code is amended
34 to read:

35 20221. Each state employer, school employer, and the chief
36 administrative officer of a contracting agency or any other person
37 who its governing body may designate shall furnish all of the
38 following:

39 (a) Immediate notice to the board, in the manner prescribed by
40 the system, of the change in status of any member resulting from

1 hiring, transfer, promotion, leave of absence, resignation,
2 reinstatement, dismissal, or death.

3 (b) Immediate notice to the board, in the manner prescribed by
4 the system, of any change that may impact a member's payrate or
5 special compensation, as defined in Section 20636 or 20636.1,
6 resulting from the adoption, termination, or amendment of any
7 labor policy or agreement.

8 (c) Any additional information concerning any member or the
9 employer that the board may require in the administration of this
10 system.

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

14 The board may assess a reasonable fee on any employer who
15 fails to provide information as required by this section within *the*
16 applicable ~~the~~ time limits.

17 ~~SEC. 11.~~

18 *SEC. 14.* Section 20630 of the Government Code is amended
19 to read:

20 20630. (a) As used in this part, "compensation" means the
21 remuneration paid out of funds controlled by the employer in
22 payment for the member's services performed during normal
23 working hours or for time during which the member is excused
24 from work because of any of the following:

25 (1) Holidays.

26 (2) Sick leave.

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

31 (4) Vacation.

32 (5) Compensatory time off.

33 (6) Leave of absence.

34 (b) When compensation is reported to the board, the employer
35 shall identify the pay period in which the compensation was earned
36 regardless of when reported or paid. Compensation shall be
37 reported in accordance with Section 20636 or 20636.1 and shall
38 not exceed compensation earnable, as defined in Section 20636
39 or 20636.1.

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

6 (1) Knew or should have known that the compensation reported
7 was not compensation earnable, as defined in Section 20636 or
8 20636.1.

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

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

13 ~~SEC. 12.~~

14 *SEC. 15.* Section 20636 of the Government Code is amended
15 to read:

16 20636. (a) “Compensation earnable” by a member means the
17 payrate and special compensation of the member, as defined by
18 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

19 (b) (1) “Payrate” means the normal monthly rate of pay or
20 monthly base pay of the member paid in cash to similarly situated
21 members of the same group or class of employment for services
22 rendered on a full-time basis during normal working hours,
23 pursuant to publicly available pay schedules. “Payrate,” for a
24 member who is not in a group or class, means the monthly rate of
25 pay or monthly base pay of the member, paid in cash and pursuant
26 to publicly available pay schedules, for services rendered on a
27 full-time basis during normal working hours, subject to the
28 limitations of paragraph (2) of subdivision (e).

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

31 (A) Participation in a deferred compensation plan.

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

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

38 (D) Participation in a flexible benefits program.

39 (3) The computation for a leave without pay of a member shall
40 be based on the compensation earnable by him or her at the

1 beginning of the absence and shall report special compensation
2 separately from payrate.

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

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

9 (2) Special compensation shall be limited to that which is
10 received by a member pursuant to a labor policy or agreement or
11 as otherwise required by state or federal law, to similarly situated
12 members of a group or class of employment that is in addition to
13 payrate. If an individual is not part of a group or class, special
14 compensation shall be limited to that which the board determines
15 is received by similarly situated members in the closest related
16 group or class that is in addition to payrate, subject to the
17 limitations of paragraph (2) of subdivision (e).

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

22 (4) Special compensation may include the full monetary value
23 of normal contributions paid to the board by the employer, on
24 behalf of the member and pursuant to Section 20691, if the
25 employer's labor policy or agreement specifically provides for the
26 inclusion of the normal contribution payment in compensation
27 earnable.

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

33 (6) The board shall promulgate regulations that delineate more
34 specifically and exclusively what constitutes "special
35 compensation" as used in this section. A written petition to request
36 an addition to the exclusive list that identifies and defines "special
37 compensation" items contained in board regulations may be made
38 pursuant to Section 11340.7. A uniform allowance, the monetary
39 value of employer-provided uniforms, holiday pay, and premium
40 pay for hours worked within the normally scheduled or regular

1 working hours that are in excess of the statutory maximum
2 workweek or work period applicable to the employee under Section
3 201 et seq. of Title 29 of the United States Code shall be included
4 as special compensation and appropriately defined in those
5 regulations.

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

7 (A) Final settlement pay.

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

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

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

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

20 (e) (1) As used in this part, "group or class of employment"
21 means a number of employees considered together because they
22 share similarities in job duties, work location, collective bargaining
23 unit, or other logical work-related grouping. One employee may
24 not be considered a group or class.

25 (2) Increases in compensation earnable granted to an employee
26 who is not in a group or class shall be limited during the final
27 compensation period applicable to the employees, as well as the
28 two years immediately preceding the final compensation period,
29 to the average increase in compensation earnable during the same
30 period reported by the employer for all similarly situated members
31 in the closest related group or class, or who are in the same
32 membership classification, except as may otherwise be determined
33 pursuant to regulations adopted by the board that establish
34 reasonable standards for granting exceptions.

35 (f) As used in this part, "final settlement pay" means pay or
36 cash conversions of employee benefits that are in excess of
37 compensation earnable, that are granted or awarded to a member
38 in connection with, or in anticipation of, a separation from
39 employment. The board shall promulgate regulations that delineate
40 more specifically what constitutes final settlement pay.

1 (g) (1) Notwithstanding subdivision (a), “compensation
2 earnable” for state members means the average monthly
3 compensation, as determined by the board, upon the basis of the
4 average time put in by members in the same group or class of
5 employment and at the same rate of pay, and is composed of the
6 payrate and special compensation of the member. The computation
7 for an absence of a member shall be based on the compensation
8 earnable by him or her at the beginning of the absence and for time
9 prior to entering state service shall be based on the compensation
10 earnable by him or her in the position first held by him or her in
11 that state service.

12 (2) Notwithstanding subdivision (b), “payrate” for state members
13 means the average monthly remuneration paid in cash out of funds
14 paid by the employer to similarly situated members of the same
15 group or class of employment, pursuant to publicly available pay
16 schedules, in payment for the member’s services or for time during
17 which the member is excused from work because of holidays, sick
18 leave, vacation, compensating time off, or leave of absence.
19 “Payrate” for state members shall include:

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

22 (i) Participation in a deferred compensation plan established
23 pursuant to Chapter 4 (commencing with Section 19993) of Part
24 2.6.

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

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

31 (iv) Participation in a flexible benefits program.

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

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

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

1 (E) Temporary industrial disability payments pursuant to Article
2 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

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

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

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

11 (B) Compensation for performing normally required duties,
12 such as holiday pay, bonuses (for duties performed on regular work
13 shift), educational incentive pay, maintenance and noncash
14 payments, out-of-class pay, marksmanship pay, hazard pay,
15 motorcycle pay, paramedic pay, emergency medical technician
16 pay, Peace Officer Standards and Training (POST) certificate pay,
17 and split shift differential.

18 (C) Compensation for uniforms, except as provided in Section
19 20632.

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

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

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

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

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

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

38 (E) Employer payments that are to be credited as employee
39 contributions for benefits provided by this system, or employer
40 payments that are to be credited to employee accounts in deferred

1 compensation plans. The amounts deducted from a member's
2 wages for participation in a deferred compensation plan may not
3 be considered to be "employer payments."

4 (F) Payments for unused vacation, annual leave, personal leave,
5 sick leave, or compensating time off, whether paid in lump sum
6 or otherwise.

7 (G) Final settlement pay.

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

10 (I) Compensation for additional services outside regular duties,
11 such as standby pay, callback pay, court duty, allowance for
12 automobiles, and bonuses for duties performed after the member's
13 regular work shift.

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

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

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

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

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

27 (5) If the provisions of this subdivision, including the board's
28 determinations pursuant to subparagraph (F) of paragraph (2) and
29 subparagraph (D) of paragraph (3), are in conflict with the
30 provisions of a memorandum of understanding reached pursuant
31 to Section 3517.5 or 3560, the memorandum of understanding
32 shall be controlling without further legislative action, except that
33 if the provisions of a memorandum of understanding require the
34 expenditure of funds, those provisions may not become effective
35 unless approved by the Legislature in the annual Budget Act. No
36 memorandum of understanding reached pursuant to Section 3517.5
37 or 3560 may exclude from the definition of either "payrate" or
38 "special compensation" a member's base salary payments or
39 payments for time during which the member is excused from work
40 because of holidays, sick leave, vacation, compensating time off,

1 or leave of absence. If items of compensation earnable are included
2 by memorandum of understanding as “payrate” or “special
3 compensation” for retirement purposes for represented and higher
4 education employees pursuant to this paragraph, the Department
5 of Personnel Administration or the Trustees of the California State
6 University shall obtain approval from the board for that inclusion.

7 (6) (A) Subparagraph (B) of paragraph (3) prescribes that
8 compensation earnable includes compensation for performing
9 normally required duties, such as holiday pay, bonuses (for duties
10 performed on regular work shift), educational incentive pay,
11 maintenance and noncash payments, out-of-class pay,
12 marksmanship pay, hazard pay, motorcycle pay, paramedic pay,
13 emergency medical technician pay, POST certificate pay, and split
14 shift differential; and includes compensation for uniforms, except
15 as provided in Section 20632; and subparagraph (I) of paragraph
16 (4) excludes from compensation earnable compensation for
17 additional services outside regular duties, such as standby pay,
18 callback pay, court duty, allowance for automobile, and bonuses
19 for duties performed after regular work shift.

20 (B) Notwithstanding subparagraph (A), the Department of
21 Personnel Administration shall determine which payments and
22 allowances that are paid by the state employer shall be considered
23 compensation for retirement purposes for an employee who either
24 is excluded from the definition of state employee in Section 3513,
25 or is a nonelected officer or employee of the executive branch of
26 government who is not a member of the civil service.

27 (C) Notwithstanding subparagraph (A), the Trustees of the
28 California State University shall determine which payments and
29 allowances that are paid by the trustees shall be considered
30 compensation for retirement purposes for a managerial employee,
31 as defined in Section 3562, or supervisory employee as defined in
32 Section 3580.3.

33 ~~SEC. 13.~~

34 *SEC. 16.* Section 20636.1 of the Government Code is amended
35 to read:

36 20636.1. (a) Notwithstanding Section 20636, and Section
37 45102 of the Education Code, “compensation earnable” by a school
38 member means the payrate and special compensation of the
39 member, as defined by subdivisions (b) and (c), and as limited by
40 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. For purposes of this
6 part, for classified members, full-time employment is 40 hours per
7 week, and payments for services rendered, not to exceed 40 hours
8 per week, shall be reported as compensation earnable for all months
9 of the year in which work is performed. “Payrate,” for a member
10 who is not in a group or class, means the monthly rate of pay or
11 monthly base pay of the member, paid in cash and pursuant to
12 publicly available pay schedules, for services rendered on a
13 full-time basis during normal working hours, subject to the
14 limitations of paragraph (2) of subdivision (e).

15 (A) For the purposes of this section, “classified members” shall
16 mean members who retain membership under this system while
17 employed with a school employer in positions not subject to
18 coverage under the Defined Benefit Program under the State
19 Teacher’s Retirement System.

20 (B) For the purposes of this section, and Sections 20962 and
21 20966, “certificated members” shall mean members who retain
22 membership under this system while employed in positions subject
23 to coverage under the Defined Benefit Program under the State
24 Teacher’s Retirement System.

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

28 (3) The computation for time prior to entering state service shall
29 be based on the compensation earnable by him or her in the position
30 first held by him or her in state service.

31 (c) (1) Special compensation of a school member includes any
32 payment received for special skills, knowledge, abilities, work
33 assignment, workdays or hours, or other work conditions.

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

1 group or class that is in addition to payrate, subject to the
2 limitations of paragraph (2) of subdivision (e).

3 (3) Special compensation shall be for services rendered during
4 normal working hours and, when reported to the board, the
5 employer shall identify the pay period in which the special
6 compensation was earned, and shall report special compensation
7 separately from payrate.

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

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

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

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

33 (A) Final settlement pay.

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

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

38 (8) A written request may be submitted for the board's
39 determination as to whether specific compensation items meet the
40 definition of special compensation. Determinations shall be made

1 on these requests within 90 calendar days of receipt of all
2 information required to be submitted by the board.

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

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

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

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

27 ~~SEC. 14.~~

28 *SEC. 17.* Section 21220 of the Government Code is amended
29 to read:

30 21220. (a) A person who has been retired under this system,
31 for service or for disability, may not be employed in any capacity
32 thereafter by the state, the university, a school employer, or a
33 contracting agency, unless any of the following conditions are
34 satisfied:

35 (1) The employment qualifies for service credit in the University
36 of California Retirement Plan or the State Teachers’ Retirement
37 Plan.

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

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

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

8 (c) Any retired member employed in violation of this article
9 shall:

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

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

17 (3) Contribute toward reimbursement of this system for
18 administrative expenses incurred in responding to this situation,
19 to the extent the member is determined by the executive officer to
20 be at fault.

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

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

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

31 ~~SEC. 15.~~

32 *SEC. 18.* Section 21220.3 is added to the Government Code,
33 to read:

34 21220.3. (a) A person who has retired under this system, for
35 service or for disability, may not render services for compensation
36 in any capacity for the state, the university, a school employer, or
37 a contracting agency, through a third party or as an independent
38 contractor, for a period of 180 days following the date of his or
39 her retirement.

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

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

6 (2) Contribute toward reimbursement for administrative
7 expenses incurred by the system because of the violation, to the
8 extent that the retired member is determined by the executive
9 officer of this system to be at fault. For purposes of this
10 subdivision, a retired member shall be determined to be at fault if
11 the retired member knew or should have known that he or she was
12 performing services in violation of this section.

13 (c) Any public employer that utilizes the services of a retired
14 member in violation of this section shall contribute toward
15 reimbursement of this system for administrative expenses incurred
16 by this system because of the violation, to the extent that the
17 employer is determined, by the executive officer of this system,
18 to be at fault. For purposes of this subdivision, a public employer
19 shall be determined to be at fault if the public employer knew or
20 should have known that the retired member was performing
21 services in violation of this section.

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

24 ~~SEC. 16.~~

25 *SEC. 19.* Except as otherwise specifically provided, the
26 provisions of this act shall become operative on July 1, 2011.

27 ~~SEC. 17.~~

28 *SEC. 20.* This bill shall become operative only if Assembly
29 Bill 1987 of the 2009–10 Regular Session is enacted and takes
30 effect on or before January 1, 2011.

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33 **CORRECTIONS:**

34 **Text—Pages 4, 5, and 9.**

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