

AMENDED IN ASSEMBLY AUGUST 19, 2010

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~~ and 26505 of, to amend, repeal, and add Sections 24214.5 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.

(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~~ *person who retires on or after January 1, 2012*, 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, ~~2014~~ 2012, 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.

(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

1 and its participating employers must be sufficiently precise so as
2 to enable the retirement system to distinguish between items of
3 remuneration that are and are not properly included in a member's
4 final compensation.

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

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

13 SEC. 2. Section 22112.5 of the Education Code is amended to
14 read:

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

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

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

24 SEC. 3. Section 22119.2 of the Education Code is amended to
25 read:

26 22119.2. (a) "Creditable compensation" means remuneration
27 that is payable in cash by an employer to all persons in the same
28 class of employees, if applicable, and is paid to an employee for
29 performing creditable service.

30 (1) Creditable compensation shall be designated as either of the
31 following:

32 (A) Salary or wages paid in accordance with a salary schedule
33 or employment agreement for the performance of creditable service
34 or the use of an employer-approved leave during a specified period
35 of time, the right of which accrues in proportion to the service
36 performed or the leave used, except as provided in subparagraph
37 (B). Salary or wages shall be credited to the Defined Benefit
38 Program or the Defined Benefit Supplement Program in accordance
39 with subdivisions (b) and (f) of this section and with Section 22905.

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

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

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

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

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

21 (v) Compensation that is payable for attaining a specific age
22 threshold.

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

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

29 (viii) Any other payments the board may determine, pursuant
30 to regulations, to be “remuneration that is paid in addition to salary
31 or wages.”

32 (2) Creditable compensation shall include the following:

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

35 (B) Amounts that are deducted from a member’s compensation,
36 including, but not limited to, salary deductions for participation
37 in a deferred compensation plan; deductions to purchase an annuity
38 contract, tax-deferred retirement plan, or insurance program; and
39 contributions to a plan that meets the requirements of Section 125,
40 401(k), 403(b), or 457 of Title 26 of the United States Code.

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

3 (b) Any salary or other remuneration determined by the board
4 to have been paid to enhance a member’s benefits shall not be
5 credited under the Defined Benefit Program. Contributions on that
6 compensation shall be credited to the Defined Benefit Supplement
7 Program. A presumption by the board that salary or other
8 remuneration was paid to enhance the member’s benefits may be
9 rebutted by the member or by the employer on behalf of the
10 member. Upon receipt of sufficient evidence to the contrary, a
11 presumption by the board that salary or other remuneration was
12 paid to enhance the member’s benefits may be reversed.

13 (c) “Creditable compensation” does not mean and shall not
14 include:

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

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

19 (3) Remuneration that is paid in addition to salary if it is not
20 payable to all persons in the same class of employees in the same
21 dollar amount, the same percentage of salary, or the same
22 percentage of the amount being distributed pursuant to
23 subparagraph (B) of paragraph (1) of subdivision (a).

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

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

30 (6) Fringe benefits provided by an employer.

31 (7) Expenses paid by an employer.

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

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

37 (10) Any other payments the board may determine, pursuant to
38 regulations, not to be “creditable compensation.”

39 (d) An employer or individual who knowingly or willfully
40 reports compensation in a manner inconsistent with subdivision

1 (a) or (c) may be subject to prosecution for fraud, theft, or
2 embezzlement in accordance with the Penal Code. The system
3 may establish procedures to ensure that compensation reported by
4 an employer is in compliance with this section.

5 (e) For purposes of this section, remuneration shall be considered
6 payable if it would be paid to any person who meets the
7 qualifications or requirements specified in a collective bargaining
8 agreement or an employment agreement as a condition of receiving
9 the remuneration.

10 (f) This definition of “creditable compensation” reflects sound
11 principles that support the integrity of the retirement fund. Those
12 principles include, but are not limited to, consistent treatment of
13 compensation throughout a member’s career, consistent treatment
14 of compensation among an entire class of employees, consistent
15 levels or ranges of compensation paid by the employer for a
16 specified ongoing position, preventing adverse selection, and
17 excluding from compensation earnable remuneration that is paid
18 to enhance a member’s benefits. The board shall determine the
19 appropriate crediting of contributions between the Defined Benefit
20 Program and the Defined Benefit Supplement Program according
21 to these principles, to the extent not otherwise specified pursuant
22 to this part.

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

25 22461. A school district, community college district, county
26 superintendent of schools, California State University, or other
27 employing agency that retains the services of a retired member
28 under Section 24116, 24214, or 24215 shall do both of the
29 following regardless of whether the retired member performs the
30 services as an employee of the employer, an employee of a third
31 party, or an independent contractor:

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

34 (b) Maintain accurate records of the retired member’s earnings
35 and report those earnings monthly to the system and the retired
36 member regardless of the method of payment or the fund from
37 which the payments were made.

38 SEC. 5. Section 22905 of the Education Code is amended to
39 read:

1 22905. (a) Member contributions pursuant to Section 22901,
2 employer contributions pursuant to Section 22903 or 22904, and
3 member contributions made by an employer pursuant to Section
4 22909 shall be credited to the member's individual account under
5 the Defined Benefit Program or the Defined Benefit Supplement
6 Program, whichever is applicable pursuant to the provisions of
7 this part.

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

11 (1) Compensation for creditable service that exceeds one year
12 in a school year.

13 (2) Compensation that is consistent with subdivision (b) of
14 Section 22119.2.

15 (3) Remuneration that is paid in addition to salary, in accordance
16 with subparagraph (B) of paragraph (1) of subdivision (a) of
17 Section 22119.2.

18 (4) (A) Remuneration increasing a member's compensation
19 earnable

20 during a five-year period, that includes the last year in which
21 the member's final compensation is determined and the four years
22 prior to that year, in which creditable compensation was earned,
23 that exceeds 125 percent of the member's compensation earnable
24 in the year prior to that five-year period, provided that both of the
25 following conditions are satisfied:

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

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

36 (B) The board may, by plan amendment, increase the percentage
37 specified in subparagraph (A), if the board determines that the
38 average rate of increase in salary and wages paid during the
39 previous five-year period to members employed by the 10

1 employers with the largest number of members exceeded 5 percent
2 in any of those five years.

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

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

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

23 24214.5. (a) Notwithstanding Section 24214, as of July 1,
24 2010, the postretirement compensation limitation that shall apply
25 to the compensation for performance of the activities identified in
26 subdivision (a) or (b) of Section 22119.5 either as an employee of
27 an employer, an employee of a third party, or as an independent
28 contractor shall be zero dollars (\$0) during the first six calendar
29 months after a member retired for service under this part, if the
30 member is below normal retirement age at the time the
31 compensation is earned.

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 *(c) This section shall remain in effect only until January 1, 2012,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2012, deletes or extends that date.*

6 ~~SEC. 6. Section 24214.5 of the Education Code is amended to~~
7 ~~read:~~

8 *SEC. 7. Section 24214.5 is added to the Education Code, to*
9 *read:*

10 24214.5. (a) Notwithstanding Section 24214, for employees
11 retiring on or after January 1, ~~2011~~ 2012, the postretirement
12 compensation limitation that shall apply to the compensation for
13 performance of the activities identified in subdivision (a) or (b) of
14 Section 22119.5 either as an employee of an employer, an
15 employee of a third party, or as an independent contractor within
16 the California public school system shall be zero dollars (\$0) during
17 the first 180 days after a member retired for service under this part.

18 (b) If a member retired for service under this part earns
19 compensation for performing activities identified in subdivision
20 (a) or (b) of Section 22119.5 in excess of the limitation specified
21 in subdivision (a), as an employee of an employer, as an employee
22 of a third party, or as an independent contractor, within the
23 California public school system, the member's retirement
24 allowance shall be reduced by the amount of the excess
25 compensation. The amount of the reduction may be equal to the
26 monthly allowance payable but may not exceed the amount of the
27 annual allowance payable under this part for the fiscal year in
28 which the excess compensation was earned.

29 *(c) This section shall become operative on January 1, 2012.*

30 ~~SEC. 7.~~

31 *SEC. 8. Section 25009 of the Education Code is amended to*
32 *read:*

33 25009. (a) A member's retirement benefit under the Defined
34 Benefit Supplement Program shall be an amount equal to the
35 balance of credits in the member's Defined Benefit Supplement
36 account on the date the retirement benefit becomes payable.

37 (b) A retirement benefit shall be a lump-sum payment, or an
38 annuity payable in monthly installments, or a combination of both
39 a lump-sum payment and an annuity, as elected by the member on
40 the application for a retirement benefit. Any retirement benefit

1 paid as an annuity under this chapter shall be subject to Section
2 25011 or 25011.1.

3 (c) If a member who retires on or after January 1, ~~2011~~ 2012,
4 elects to have the retirement benefit paid as a lump-sum payment,
5 that payment shall be payable after 180 days have elapsed
6 following the effective date of the member's retirement.

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

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

13 (1) Purchasing service credit pursuant to Chapter 14
14 (commencing with Section 22800), Chapter 14.2 (commencing
15 with Section 22820), or Chapter 14.5 (commencing with Section
16 22850).

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

19 ~~SEC. 8.~~

20 *SEC. 9.* Section 26302 of the Education Code is amended to
21 read:

22 26302. (a) If more or less than the contributions required by
23 this part are paid to the plan based on salary paid to a participant,
24 proper adjustment shall be made by the employer within 60 days
25 of discovery or of notification by the system, and any contributions
26 deducted in error from the participant's salary shall be returned to
27 the participant by the employer within the same time period.

28 (b) The board, in accordance with regulations, shall assess
29 penalties for late or improper adjustments pursuant to Section
30 26301. These penalties shall be assessed at a rate equal to the
31 penalties imposed under subdivision (b) of Section 23008 and shall
32 be deemed to be interest earned in the year in which the penalty
33 is received.

34 ~~SEC. 9.~~

35 *SEC. 10.* Section 26307 is added to the Education Code, to
36 read:

37 26307. A school district, community college district, county
38 superintendent of schools, the California State University, or other
39 employing agency that retains the services of a retired participant
40 to perform the activities described in subdivision (a) or (b) of

1 Section 26113 shall do both of the following, regardless of whether
2 the retired participant performs the services as an employee of the
3 employer, an employee of a third party, or as an independent
4 contractor:

5 (a) Prior to retention, advise the retired participant of the
6 limitations on employment set forth in Sections 26505, 26806,
7 26810, 26911, and 27204.

8 (b) Maintain accurate records of the retired participant's earnings
9 and report those earnings monthly to the system and the retired
10 participant, regardless of the method of payment or the fund from
11 which the payments are made.

12 ~~SEC. 10.~~

13 *SEC. 11.* Section 26505 of the Education Code is amended to
14 read:

15 26505. If a participant who has retired and is receiving an
16 annuity under the Cash Balance Benefit Program becomes
17 reemployed prior to 60 years of age or becomes reemployed on or
18 after 60 years of age but within one year of his or her retirement
19 date, to perform creditable service as an employee of an employer,
20 as an employee of a third party, or as an independent contractor
21 within the California public school system, the annuity shall be
22 terminated, the employee account and the employer account of the
23 participant shall be credited with respective balances that reflect
24 the actuarial equivalent of the participant's retirement benefit as
25 of the date of the reemployment and the Annuitant Reserve shall
26 be reduced by the amount of the credits. If a participant who has
27 retired and is receiving an annuity under the Cash Balance Benefit
28 Program becomes reemployed on or after age 60 and more than
29 one year after retirement to perform creditable service under the
30 plan, the annuity shall continue and employee contributions and
31 employer contributions for the creditable service shall be made to
32 the plan and shall be credited to new employee and employer
33 accounts established on behalf of the participant.

34 *SEC. 12.* Section 26806 of the Education Code is amended to
35 read:

36 26806. (a) The normal form of retirement benefit under this
37 part is a lump-sum payment. Upon distribution of the lump-sum
38 payment to the participant, no further benefits shall be payable
39 from the plan with respect to the Cash Balance Benefit Program.

1 **(b)** *This section shall remain in effect only until January 1, 2012,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2012, deletes or extends that date.*

4 ~~SEC. 11.~~ Section 26806 of the Education Code is amended to
5 read:

6 **SEC. 13.** *Section 26806 is added to the Education Code, to*
7 *read:*

8 26806. (a) The normal form of retirement benefit under this
9 part is a lump-sum payment. Upon distribution of the lump-sum
10 payment to the participant, no further benefits shall be payable
11 from the plan with respect to the Cash Balance Benefit Program.
12 Effective January 1, ~~2011~~ 2012, the lump-sum payment shall not
13 be payable before 180 days have elapsed following the date of
14 termination of employment.

15 (b) The application to receive the normal form of a retirement
16 benefit shall be automatically canceled if the participant performs
17 creditable service as an employee of an employer, as an employee
18 of a third party, or as an independent contractor within the
19 California public school system within 180 days following the
20 date of termination of employment.

21 **(c)** *This section shall become operative on January 1, 2012.*

22 ~~SEC. 12.~~

23 **SEC. 14.** Section 7500.5 is added to the Government Code, to
24 read:

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

34 (b) The board of each state and local public retirement system
35 shall establish, by statute or regulation, accountability provisions
36 that shall include an audit process to ensure compliance with the
37 principles articulated in the provisions of this section. The
38 accountability provisions shall be enforceable by the imposition
39 of monetary penalties or fees, including, but not limited to,

1 untimely or inaccurate submissions of any information that the
2 board may require in the administration of the system.

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

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

22 (e) Final settlement pay or any similar payment that is received
23 by a member upon retirement or separation from employment;
24 shall not be included in compensation earnable by any state or
25 local public retirement system.

26 (f) A retired person, who has not reinstated following retirement,
27 shall have a separation in service for a period of at least 180 days
28 before performing service for any employer covered by the state
29 or local retirement system from which he or she retired, whether
30 as an employee, through a third party, or as an independent
31 contractor. This requirement shall apply to all persons who retire
32 on and after January 1, ~~2011~~ 2012.

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

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

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

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

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

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

22 (5) “Compensation earnable” includes payrate, salary, special
23 compensation, or other remuneration, or any combination of the
24 foregoing, of the member.

25 ~~SEC. 13.~~

26 *SEC. 15.* Section 20221 of the Government Code is amended
27 to read:

28 20221. Each state employer, school employer, and the chief
29 administrative officer of a contracting agency or any other person
30 who its governing body may designate shall furnish all of the
31 following:

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

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

1 (c) Any additional information concerning any member or the
2 employer that the board may require in the administration of this
3 system.

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

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

10 ~~SEC. 14.~~

11 *SEC. 16.* Section 20630 of the Government Code is amended
12 to read:

13 20630. (a) As used in this part, “compensation” means the
14 remuneration paid out of funds controlled by the employer in
15 payment for the member’s services performed during normal
16 working hours or for time during which the member is excused
17 from work because of any of the following:

18 (1) Holidays.

19 (2) Sick leave.

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

24 (4) Vacation.

25 (5) Compensatory time off.

26 (6) Leave of absence.

27 (b) When compensation is reported to the board, the employer
28 shall identify the pay period in which the compensation was earned
29 regardless of when reported or paid. Compensation shall be
30 reported in accordance with Section 20636 or 20636.1 and shall
31 not exceed compensation earnable, as defined in Section 20636
32 or 20636.1.

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

38 (1) Knew or should have known that the compensation reported
39 was not compensation earnable, as defined in Section 20636 or
40 20636.1.

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

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

5 ~~SEC. 15.~~

6 *SEC. 17.* Section 20636 of the Government Code is amended
7 to read:

8 20636. (a) “Compensation earnable” by a member means the
9 payrate and special compensation of the member, as defined by
10 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

11 (b) (1) “Payrate” means the normal monthly rate of pay or
12 monthly base pay of the member paid in cash to similarly situated
13 members of the same group or class of employment for services
14 rendered on a full-time basis during normal working hours,
15 pursuant to publicly available pay schedules. “Payrate,” for a
16 member who is not in a group or class, means the monthly rate of
17 pay or monthly base pay of the member, paid in cash and pursuant
18 to publicly available pay schedules, for services rendered on a
19 full-time basis during normal working hours, subject to the
20 limitations of paragraph (2) of subdivision (e).

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

23 (A) Participation in a deferred compensation plan.

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

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

30 (D) Participation in a flexible benefits program.

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

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

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

1 (2) Special compensation shall be limited to that which is
2 received by a member pursuant to a labor policy or agreement or
3 as otherwise required by state or federal law, to similarly situated
4 members of a group or class of employment that is in addition to
5 payrate. If an individual is not part of a group or class, special
6 compensation shall be limited to that which the board determines
7 is received by similarly situated members in the closest related
8 group or class that is in addition to payrate, subject to the
9 limitations of paragraph (2) of subdivision (e).

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

14 (4) Special compensation may include the full monetary value
15 of normal contributions paid to the board by the employer, on
16 behalf of the member and pursuant to Section 20691, if the
17 employer’s labor policy or agreement specifically provides for the
18 inclusion of the normal contribution payment in compensation
19 earnable.

20 (5) The monetary value of a service or noncash advantage
21 furnished by the employer to the member, except as expressly and
22 specifically provided in this part, is not special compensation unless
23 regulations promulgated by the board specifically determine that
24 value to be “special compensation.”

25 (6) The board shall promulgate regulations that delineate more
26 specifically and exclusively what constitutes “special
27 compensation” as used in this section. A written petition to request
28 an addition to the exclusive list that identifies and defines “special
29 compensation” items contained in board regulations may be made
30 pursuant to Section 11340.7. A uniform allowance, the monetary
31 value of employer-provided uniforms, holiday pay, and premium
32 pay for hours worked within the normally scheduled or regular
33 working hours that are in excess of the statutory maximum
34 workweek or work period applicable to the employee under Section
35 201 et seq. of Title 29 of the United States Code shall be included
36 as special compensation and appropriately defined in those
37 regulations.

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

39 (A) Final settlement pay.

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

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

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

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

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

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

28 (f) As used in this part, "final settlement pay" means pay or
29 cash conversions of employee benefits that are in excess of
30 compensation earnable, that are granted or awarded to a member
31 in connection with, or in anticipation of, a separation from
32 employment. The board shall promulgate regulations that delineate
33 more specifically what constitutes final settlement pay.

34 (g) (1) Notwithstanding subdivision (a), "compensation
35 earnable" for state members means the average monthly
36 compensation, as determined by the board, upon the basis of the
37 average time put in by members in the same group or class of
38 employment and at the same rate of pay, and is composed of the
39 payrate and special compensation of the member. The computation
40 for an absence of a member shall be based on the compensation

1 earnable by him or her at the beginning of the absence and for time
2 prior to entering state service shall be based on the compensation
3 earnable by him or her in the position first held by him or her in
4 that state service.

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

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

15 (i) Participation in a deferred compensation plan established
16 pursuant to Chapter 4 (commencing with Section 19993) of Part
17 2.6.

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

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

24 (iv) Participation in a flexible benefits program.

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

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

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

34 (E) Temporary industrial disability payments pursuant to Article
35 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

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

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

1 (A) The monetary value, as determined by the board, of living
2 quarters, board, lodging, fuel, laundry, and other advantages of
3 any nature furnished to a member by his or her employer in
4 payment for the member's services.

5 (B) Compensation for performing normally required duties,
6 such as holiday pay, bonuses (for duties performed on regular work
7 shift), educational incentive pay, maintenance and noncash
8 payments, out-of-class pay, marksmanship pay, hazard pay,
9 motorcycle pay, paramedic pay, emergency medical technician
10 pay, Peace Officer Standards and Training (POST) certificate pay,
11 and split shift differential.

12 (C) Compensation for uniforms, except as provided in Section
13 20632.

14 (D) Other payments the board may determine to be within
15 "special compensation."

16 (4) "Payrate" and "special compensation" for state members do
17 not include any of the following:

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

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

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

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

32 (E) Employer payments that are to be credited as employee
33 contributions for benefits provided by this system, or employer
34 payments that are to be credited to employee accounts in deferred
35 compensation plans. The amounts deducted from a member's
36 wages for participation in a deferred compensation plan may not
37 be considered to be "employer payments."

38 (F) Payments for unused vacation, annual leave, personal leave,
39 sick leave, or compensating time off, whether paid in lump sum
40 or otherwise.

1 (G) Final settlement pay.

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

4 (I) Compensation for additional services outside regular duties,
5 such as standby pay, callback pay, court duty, allowance for
6 automobiles, and bonuses for duties performed after the member's
7 regular work shift.

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

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

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

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

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

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

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

21 (C) Notwithstanding subparagraph (A), the Trustees of the
22 California State University shall determine which payments and
23 allowances that are paid by the trustees shall be considered
24 compensation for retirement purposes for a managerial employee,
25 as defined in Section 3562, or supervisory employee as defined in
26 Section 3580.3.

27 ~~SEC. 16.~~

28 *SEC. 18.* Section 20636.1 of the Government Code is amended
29 to read:

30 20636.1. (a) Notwithstanding Section 20636, and Section
31 45102 of the Education Code, “compensation earnable” by a school
32 member means the payrate and special compensation of the
33 member, as defined by subdivisions (b) and (c), and as limited by
34 Section 21752.5.

35 (b) (1) “Payrate” means the normal monthly rate of pay or
36 monthly base pay of the member paid in cash to similarly situated
37 members of the same group or class of employment for services
38 rendered on a full-time basis during normal working hours,
39 pursuant to publicly available pay schedules. For purposes of this
40 part, for classified members, full-time employment is 40 hours per

1 week, and payments for services rendered, not to exceed 40 hours
2 per week, shall be reported as compensation earnable for all months
3 of the year in which work is performed. “Payrate,” for a member
4 who is not in a group or class, means the monthly rate of pay or
5 monthly base pay of the member, paid in cash and pursuant to
6 publicly available pay schedules, for services rendered on a
7 full-time basis during normal working hours, subject to the
8 limitations of paragraph (2) of subdivision (e).

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

14 (B) For the purposes of this section, and Sections 20962 and
15 20966, “certificated members” shall mean members who retain
16 membership under this system while employed in positions subject
17 to coverage under the Defined Benefit Program under the State
18 Teacher’s Retirement System.

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

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

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

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

37 (3) Special compensation shall be for services rendered during
38 normal working hours and, when reported to the board, the
39 employer shall identify the pay period in which the special

1 compensation was earned, and shall report special compensation
2 separately from payrate.

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

9 (5) The monetary value of any service or noncash advantage
10 furnished by the employer to the member, except as expressly and
11 specifically provided in this part, shall not be special compensation
12 unless regulations promulgated by the board specifically determine
13 that value to be “special compensation.”

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

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

28 (A) Final settlement pay.

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

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

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

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

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

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

22 ~~SEC. 17.~~

23 *SEC. 19.* Section 21220 of the Government Code is amended
24 to read:

25 21220. (a) A person who has been retired under this system,
26 for service or for disability, may not be employed in any capacity
27 thereafter by the state, the university, a school employer, or a
28 contracting agency, unless any of the following conditions are
29 satisfied:

30 (1) The employment qualifies for service credit in the University
31 of California Retirement Plan or the State Teachers’ Retirement
32 Plan.

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

35 (3) For a person retiring on or after January 1, ~~2011~~ 2012, the
36 employment, without reinstatement, is authorized by this article
37 and at least 180 days have elapsed since that person’s retirement
38 date.

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

4 (c) Any retired member employed in violation of this article
5 shall:

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

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

13 (3) Contribute toward reimbursement of this system for
14 administrative expenses incurred in responding to this situation,
15 to the extent the member is determined by the executive officer to
16 be at fault.

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

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

23 (2) Contribute toward reimbursement of this system for
24 administrative expenses incurred in responding to this situation,
25 to the extent the employer is determined by the executive officer
26 of this system to be at fault.

27 ~~SEC. 18.~~

28 *SEC. 20.* Section 21220.3 is added to the Government Code,
29 to read:

30 21220.3. (a) A person who has retired under this system, for
31 service or for disability, may not render services for compensation
32 in any capacity for the state, the university, a school employer, or
33 a contracting agency, through a third party or as an independent
34 contractor, for a period of 180 days following the date of his or
35 her retirement.

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

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

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

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

17 (d) This section shall apply to all persons who retire on and after
18 January 1, ~~2011~~ 2012.

19 ~~SEC. 19.~~

20 *SEC. 21.* Except as otherwise specifically provided, the
21 provisions of this act shall become operative on July 1, 2011.

22 ~~SEC. 20.~~

23 *SEC. 22.* This bill shall become operative only if Assembly
24 Bill 1987 of the 2009–10 Regular Session is enacted and takes
25 effect on or before January 1, 2011.