

Assembly Bill No. 178

CHAPTER 135

An act to amend Sections 24204, 24208, and 24214 of the Education Code, relating to state teachers' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 17, 2012. Filed with
Secretary of State July 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 178, Gorell. State teachers' retirement.

The Teachers' Retirement Law limits the amount of postretirement compensation that may be earned in specified types of employment by a retired member of the Defined Benefit Program without a reduction in the retirement benefits of the member. That law provides exemptions from this limit and until June 30, 2012, specifies that the limitation provisions do not apply to compensation earned by a member retired for service who has returned to work after retirement and, for at least 12 consecutive months, has not performed specified activities.

This bill would extend the operation of that exemption until June 30, 2013. The bill also would exempt from the earnings limitation, until June 30, 2013, compensation paid to a retired member who has returned to work after the date of retirement as a trustee, administrator, or fiscal adviser approved pursuant to specified provisions by the Superintendent of Public Instruction, the Board of Governors of the California Community Colleges, or a county superintendent of schools to address academic or financial weaknesses in a school district. The bill would specify the documentation required for any of those persons exercising that compensation exemption. The bill would additionally exempt from the earnings limitation an employee of a 3rd party which does not participate in a California public pension system if the activities performed by the person are not normally performed by employees of a public employer and it is for a limited-term assignment.

The Teachers' Retirement Law limits the amount of compensation for certain creditable service activities by a retired member in one school year to be \$22,000 adjusted by the percentage change in the average compensation earnable by active members of the Defined Benefit Program, from the 1998-99 fiscal year to the fiscal year ending in the previous calendar year.

The bill would change that limit to be $\frac{1}{2}$ of the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year.

Existing law authorizes a retired member of the State Teachers' Retirement System (STRS) to terminate his or her retirement allowance, reinstate as an active member, and later cancel the termination upon subsequently retiring,

as specified. Existing law prescribes the conditions under which a STRS service retirement allowance becomes effective and requires, in this regard, that the effective date be at least one year following the date on which it is terminated pursuant to the above-described provision.

This bill would eliminate the one-year waiting period after the termination. The bill would also prohibit a member who terminates his or her retirement allowance pursuant to that provision and retires within one year of reinstatement from electing a different option or different set of beneficiaries than were in effect at the time of the termination.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 24204 of the Education Code is amended to read:
24204. (a) A service retirement allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for service retirement allowance is filed on a form provided by the system, which is executed no earlier than six months before the effective date of retirement allowance.

(2) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(3) The effective date is no earlier than the date on which the retirement allowance was terminated under Section 24208.

(4) The effective date is no earlier than one year following the date on which the retirement allowance was terminated under subdivision (a) of Section 24117.

(5) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(6) The effective date is no earlier than the date upon which the member completes payment of a service credit purchase pursuant to Section 22801, 22820, or 22826, or payment of a redeposit of contributions pursuant to Section 23200, except as provided in Section 22801 or 22829.

(7) The effective date is no earlier than the first day of the month in which the application for disability benefits is received at the system's headquarters office, as established pursuant to Section 22375, if the application is made pursuant to Section 24201.5.

(b) A member who files an application for service retirement may change or cancel his or her retirement application, as long as the form provided by the system is received in the system's headquarters office, established pursuant to Section 22375, no later than 30 days from the date the member's initial benefit payment for the member's most recent retirement under the Defined Benefit Program is paid by the system.

(c) The retirement date of a member retiring on and after January 1, 2012, shall be no earlier than January 1, 2012.

SEC. 2. Section 24208 of the Education Code is amended to read:

24208. (a) A member retired for service under this part may terminate the retirement allowance payable under this part and applicable to his or her credited service upon written request to the system effective upon a date designated by the member, subject to the following conditions:

(1) The request for termination of the retirement allowance is filed on a form provided by the system, and the form is executed no earlier than six months before the effective date of the termination.

(2) The effective date of the termination of the retirement allowance is no earlier than the first day of the month in which the request for termination is received in the system's headquarters office, as established pursuant to Section 22375.

(b) A member who files a request for termination of the retirement allowance may cancel the termination upon written request to the system, provided that the cancellation request is received in the system's headquarters office, as established pursuant to Section 22375, no later than the last day of the month in which the termination is effective.

(c) A member whose retirement allowance is terminated pursuant to this section may apply for retirement pursuant to Section 24209, in accordance with Section 24204.

(d) A member whose retirement allowance is terminated pursuant to this section may not file a preretirement election of an option pursuant to Section 24307 within one year of reinstatement that elects either a different option or a different beneficiary or set of beneficiaries, or both, than were in effect at the time the retirement allowance was terminated.

(e) A member whose retirement allowance is terminated pursuant to this section and retires pursuant to Section 24209 within one year of reinstatement shall elect the same option and beneficiary or beneficiaries that were in effect at the time the retirement allowance was terminated.

SEC. 3. Section 24214 of the Education Code, as amended by Section 25 of Chapter 703 of the Statutes of 2011, is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in subdivision (a) or (b) of Section 22119.5, or subdivision (a) or (b) of Section 26113, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service. The employer shall maintain accurate records of the earnings of the retired member and report those earnings monthly to the system and retired member as described in Section 22461.

(b) If a member is retired for service under this part, the rate of pay for service performed by that member as an employee of the employer, as an employee of a third party, or as an independent contractor shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part shall not be required to reinstate for performing the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor shall, in any one school year, be an amount calculated by the board each July 1 equal to one-half of the median final compensation of all members who retired for service during the fiscal year to the fiscal year ending in the previous calendar year.

(g) If a member retired for service under this part earns compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, and if that compensation is not exempt from that limitation under subdivision (e) or any other provisions of law, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned after any reduction made in accordance with subdivision (b) of Section 24214.5.

(h) The limitation specified in this section is not applicable to compensation paid to a member retired for service under this part who has returned to work after the date of retirement as a trustee, administrator, or fiscal adviser approved by the Superintendent of Public Instruction, the Board of Governors of the California Community Colleges, or a county superintendent of schools to address academic or financial weaknesses in a school district pursuant to any of the following provisions:

- (1) Section 41320.1.
- (2) Article 2 (commencing with Section 42122) of Chapter 6 of Part 24 of Division 3 of Title 2.

(3) Article 3.1 (commencing with Section 52055.57) of Chapter 6.1 of Part 28 of Division 4 of Title 2.

(4) Section 84040.

(i) The Superintendent of Public Instruction, the Chancellor of the California Community Colleges, or the county superintendent of schools exercising the exemption pursuant to subdivision (h) shall submit all documentation required by the system to substantiate the eligibility of the retired member for the exemption, including compliance with subdivision (h). The documentation shall be received by the system prior to the retired member's performance of any activity specified in subdivision (a) or (b) of Section 22119.5 or subdivision (a) or (b) of Section 26113.

(j) The documentation required for subdivision (i) shall include certification of the following:

(1) The position was first advertised for appointment to current active or inactive members of the program with the necessary qualifications to perform the requirements of the position and no qualified current active or inactive member was available to be appointed.

(2) The appointing authority made a good faith effort to hire a retired member who reinstated to active membership for the position at the same salary that was offered as first advertised pursuant to paragraph (1).

(3) The appointing authority, having tried and failed to hire a current active or inactive member or a reinstated retired member, hired a retired member and the salary offered to the retired member subject to this paragraph does not exceed the salary that was offered as first advertised pursuant to paragraph (1).

(4) The appointment shall be terminated no later than June 30, 2013.

(5) The salary paid shall be no greater than the salary offered to current active members for the appointed position.

(k) An employee of a third party shall not be subject to this section if he or she meets all of the following conditions:

(1) He or she performs a limited-term assignment.

(2) The third-party employer does not participate in a California public pension system.

(3) The activities performed by the individual are not normally performed by employees of the employer, as defined in Section 22131.

(l) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

(m) This section shall apply to compensation paid during the 2012–13 fiscal year.

(n) This section shall become inoperative on June 30, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 24214 of the Education Code, as amended by Section 26 of Chapter 703 of the Statutes of 2011, is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in subdivision (a) or (b) of Section 22119.5, or

subdivision (a) or (b) of Section 26113, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service. The employer shall maintain accurate records of the earnings of the retired member and report those earnings monthly to the system and retired member as described in Section 22461.

(b) If a member is retired for service under this part, the rate of pay for service performed by that member as an employee of the employer, as an employee of a third party, or as an independent contractor within the California public school system shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part shall not be required to reinstate for performing the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor shall, in any one school year, be an amount calculated by the board each July 1 equal to one-half of the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year.

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

was earned after any reduction made in accordance with subdivision (b) of Section 24214.5.

(h) An employee of a third party shall not be subject to this section if he or she meets all of the following conditions:

(1) He or she performs a limited-term assignment.

(2) The third-party employer does not participate in a California public pension system.

(3) The activities performed by the individual are not normally performed by employees of the employer, as defined in Section 22131.

(i) The language of this section derived from the amendments to the section of this number added by Chapter 394 of the Statutes of 1995, enacted during the 1995–96 Regular Session, is deemed to have become operative on July 1, 1996.

(j) This section shall become operative on July 1, 2013.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that school districts and community colleges across the state are not left unable to retain their interim educators, who are often in important educational and administrative roles, due to the June 30, 2012, expiration of certain exemptions from the limitations on postretirement employment by members of the Defined Benefit Program, it is necessary that this act take effect immediately.