

AMENDED IN ASSEMBLY FEBRUARY 28, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 344

Introduced by Assembly Member Furutani

February 10, 2011

An act to amend ~~Section~~ Sections 20636 and 21221 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 344, as amended, Furutani. Public employees' ~~retirement; retiree appointments; retirement.~~

(1) *The Public Employees' Retirement Law (PERL) requires contributions to the retirement fund based on compensation earnable by a member, which includes the member's payrate and special compensation, as specified. "Payrate" is defined as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment, as specified. For a member who is not in a group or class, "payrate" means the monthly rate of pay or base pay of the member, as specified. PERL provides that increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the 2 years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the Board of Administration of the Public Employees' Retirement System that establish reasonable standards for granting exceptions.*

This bill would delete the authorization for the board to adopt regulations to permit those exceptions to the average increase limitation for increases in compensation earnable granted to an employee who is not in a group or class.

The Public Employees' Retirement Law

(2) PERL establishes the circumstances in which a retired person may serve without reinstatement from retirement or loss or interruption of benefits, including, among others, an appointment of limited duration that does not exceed 960 hours in any fiscal year. Existing law further provides that a person may serve without reinstatement under an appointment that exceeds 960 hours in any fiscal year, if the governing body of the contracting agency requests approval from the ~~Public Employees' Retirement Board~~ *board*, as specified.

This bill would delete ~~that~~ the option for a person to serve without reinstatement under an appointment that exceeds 960 hours in any fiscal year.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 20636 of the Government Code is
- 2 amended to read:
- 3 20636. (a) "Compensation earnable" by a member means the
- 4 payrate and special compensation of the member, as defined by
- 5 subdivisions (b), (c), and (g), and as limited by Section 21752.5.
- 6 (b) (1) "Payrate" means the normal monthly rate of pay or base
- 7 pay of the member paid in cash to similarly situated members of
- 8 the same group or class of employment for services rendered on
- 9 a full-time basis during normal working hours, pursuant to publicly
- 10 available pay schedules. "Payrate," for a member who is not in a
- 11 group or class, means the monthly rate of pay or base pay of the
- 12 member, paid in cash and pursuant to publicly available pay
- 13 schedules, for services rendered on a full-time basis during normal
- 14 working hours, subject to the limitations of paragraph (2) of
- 15 subdivision (e).
- 16 (2) "Payrate" shall include an amount deducted from a member's
- 17 salary for any of the following:
- 18 (A) Participation in a deferred compensation plan.

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

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

7 (D) Participation in a flexible benefits program.

8 (3) The computation for a leave without pay of a member shall
9 be based on the compensation earnable by him or her at the
10 beginning of the absence.

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

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

17 (2) Special compensation shall be limited to that which is
18 received by a member pursuant to a labor policy or agreement or
19 as otherwise required by state or federal law, to similarly situated
20 members of a group or class of employment that is in addition to
21 payrate. If an individual is not part of a group or class, special
22 compensation shall be limited to that which the board determines
23 is received by similarly situated members in the closest related
24 group or class that is in addition to payrate, subject to the
25 limitations of paragraph (2) of subdivision (e).

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

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

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

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes “special compensation” as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

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

(A) Final settlement pay.

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

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

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

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

(2) Increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, ~~except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.~~

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

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

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

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

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

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

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

(iv) Participation in a flexible benefits program.

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

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

(D) Disability or workers’ compensation payments to safety 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 **SECTION 1.**

34 *SEC. 2.* Section 21221 of the Government Code is amended
35 to read:

36 21221. A retired person may serve without reinstatement from
37 retirement or loss or interruption of benefits provided by this
38 system, as follows:

39 (a) As a member of any board, commission, or advisory
40 committee, upon appointment by the Governor, the Speaker of the

1 Assembly, the President pro Tempore of the Senate, director of a
2 state department, or the governing board of the contracting agency.
3 However, the appointment shall not be deemed employment within
4 the meaning of Division 4 (commencing with Section 3200) and
5 Division 4.5 (commencing with Section 6100) of the Labor Code,
6 and shall not provide a basis for the payment of workers'
7 compensation to a retired state employee or to his or her
8 dependents.

9 (b) As a school crossing guard.

10 (c) As a juror or election officer.

11 (d) As an elective officer on and after September 15, 1961.
12 However, all rights and immunities which may have accrued under
13 Section 21229 as it read prior to that section's repeal during the
14 1969 Regular Session of the Legislature are hereby preserved.

15 (e) As an appointive member of the governing body of a
16 contracting agency. However, the compensation for that office
17 shall not exceed one hundred dollars (\$100) per month.

18 (f) Upon appointment by the Legislature, or either house, or a
19 legislative committee to a position deemed by the appointing power
20 to be temporary in nature.

21 (g) Upon employment by a contracting agency to a position
22 found by the governing body, by resolution, to be available because
23 of a leave of absence granted to a person on payroll status for a
24 period not to exceed one year and found by the governing body to
25 require specialized skills. The temporary employment shall be
26 terminated at the end of the leave of absence. Appointments under
27 this section shall be reported to the board and shall be accompanied
28 by the resolution adopted by the governing body.

29 (h) Upon appointment by the governing body of a contracting
30 agency to a position deemed by the governing body to be of a
31 limited duration and requiring specialized skills or during an
32 emergency to prevent stoppage of public business. These
33 appointments, in addition to any made pursuant to Section 21224,
34 shall not exceed a total for all employers of 960 hours in any fiscal
35 year.

36 (i) Upon appointment by the Administrative Director of the
37 Courts to the position of Court Security Coordinator, a position

- 1 deemed temporary in nature and requiring the specialized skills
- 2 and experience of a retired professional peace officer.

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