

AMENDED IN ASSEMBLY APRIL 25, 2011
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 Sections 20636, 20636.1, and 21221 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 344, as amended, Furutani. Public employees' retirement.

(1) The Public Employees' Retirement Law (PERL) requires contributions to the retirement fund based on compensation earnable by a member, *including a school 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.

(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 board, as specified.

This bill would delete 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: 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."

1 (6) The board shall promulgate regulations that delineate more
2 specifically and exclusively what constitutes “special
3 compensation” as used in this section. A uniform allowance, the
4 monetary value of employer-provided uniforms, holiday pay, and
5 premium pay for hours worked within the normally scheduled or
6 regular working hours that are in excess of the statutory maximum
7 workweek or work period applicable to the employee under Section
8 201 et seq. of Title 29 of the United States Code shall be included
9 as special compensation and appropriately defined in those
10 regulations.

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

12 (A) Final settlement pay.

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

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

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

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

25 (2) Increases in compensation earnable granted to an employee
26 who is not in a group or class shall be limited during the final
27 compensation period applicable to the employees, as well as the
28 two years immediately preceding the final compensation period,
29 to the average increase in compensation earnable during the same
30 period reported by the employer for all employees who are in the
31 same membership classification.

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

38 (g) (1) Notwithstanding subdivision (a), “compensation
39 earnable” for state members means the average monthly
40 compensation, as determined by the board, upon the basis of the

1 average time put in by members in the same group or class of
2 employment and at the same rate of pay, and is composed of the
3 payrate and special compensation of the member. The computation
4 for an absence of a member shall be based on the compensation
5 earnable by him or her at the beginning of the absence and for time
6 prior to entering state service shall be based on the compensation
7 earnable by him or her in the position first held by him or her in
8 that state service.

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

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

18 (i) Participation in a deferred compensation plan established
19 pursuant to Chapter 4 (commencing with Section 19993) of Part
20 2.6.

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

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

27 (iv) Participation in a flexible benefits program.

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

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

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

37 (E) Temporary industrial disability payments pursuant to Article
38 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

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

1 (3) Notwithstanding subdivision (c), “special compensation”
2 for state members shall mean all of the following:
3 (A) The monetary value, as determined by the board, of living
4 quarters, board, lodging, fuel, laundry, and other advantages of
5 any nature furnished to a member by his or her employer in
6 payment for the member’s services.
7 (B) Compensation for performing normally required duties,
8 such as holiday pay, bonuses (for duties performed on regular work
9 shift), educational incentive pay, maintenance and noncash
10 payments, out-of-class pay, marksmanship pay, hazard pay,
11 motorcycle pay, paramedic pay, emergency medical technician
12 pay, Peace Officer Standards and Training (POST) certificate pay,
13 and split shift differential.
14 (C) Compensation for uniforms, except as provided in Section
15 20632.
16 (D) Other payments the board may determine to be within
17 “special compensation.”
18 (4) “Payrate” and “special compensation” for state members do
19 not include any of the following:
20 (A) The provision by the state employer of a medical or hospital
21 service or care plan or insurance plan for its employees (other than
22 the purchase of annuity contracts as described below in this
23 subdivision), a contribution by the employer to meet the premium
24 or charge for that plan, or a payment into a private fund to provide
25 health and welfare benefits for employees.
26 (B) A payment by the state employer of the employee portion
27 of taxes imposed by the Federal Insurance Contribution Act.
28 (C) Amounts not available for payment of salaries and that are
29 applied by the employer for the purchase of annuity contracts
30 including those that meet the requirements of Section 403(b) of
31 Title 26 of the United States Code.
32 (D) Benefits paid pursuant to Article 5 (commencing with
33 Section 19878) of Chapter 2.5 of Part 2.6.
34 (E) Employer payments that are to be credited as employee
35 contributions for benefits provided by this system, or employer
36 payments that are to be credited to employee accounts in deferred
37 compensation plans. The amounts deducted from a member’s
38 wages for participation in a deferred compensation plan may not
39 be considered to be “employer payments.”

1 (F) Payments for unused vacation, annual leave, personal leave,
2 sick leave, or compensating time off, whether paid in lump sum
3 or otherwise.

4 (G) Final settlement pay.

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

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

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

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

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

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

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

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

1 education employees pursuant to this paragraph, the Department
2 of Personnel Administration or the Trustees of the California State
3 University shall obtain approval from the board for that inclusion.

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

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

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

30 *SEC. 2. Section 20636.1 of the Government Code is amended*
31 *to read:*

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

37 (b) (1) “Payrate” means the normal monthly rate of pay or base
38 pay of the member paid in cash to similarly situated members of
39 the same group or class of employment for services rendered on
40 a full-time basis during normal working hours. For purposes of

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

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

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

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

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

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

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

38 (3) Special compensation shall be for services rendered during
39 normal working hours and, when reported to the board, the

1 employer shall identify the pay period in which the special
2 compensation was earned.

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 uniform allowance, the
17 monetary value of employer-provided uniforms, holiday pay, and
18 premium pay for hours worked within the normally scheduled or
19 regular working hours that are in excess of the statutory maximum
20 workweek or work period applicable to the employee under Section
21 201 et seq. of Title 29 of the United States Code shall be included
22 as special compensation and appropriately defined in those
23 regulations.

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

- 25 (A) Final settlement pay.
- 26 (B) Payments made for additional services rendered outside of
27 normal working hours, whether paid in lump sum or otherwise.
- 28 (C) Any other payments the board has not affirmatively
29 determined to be special compensation.

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

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

38 (2) Increases in compensation earnable granted to any employee
39 who is not in a group or class shall be limited during the final
40 compensation period applicable to the employees, as well as the

1 two years immediately preceding the final compensation period,
2 to the average increase in compensation earnable during the same
3 period reported by the employer for all employees who are in the
4 same membership classification, ~~except as may otherwise be~~
5 ~~determined pursuant to regulations adopted by the board that~~
6 ~~establish reasonable standards for granting exceptions.~~

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

13 ~~SEC. 2.~~

14 *SEC. 3.* Section 21221 of the Government Code is amended
15 to read:

16 21221. A retired person may serve without reinstatement from
17 retirement or loss or interruption of benefits provided by this
18 system, as follows:

19 (a) As a member of any board, commission, or advisory
20 committee, upon appointment by the Governor, the Speaker of the
21 Assembly, the President pro Tempore of the Senate, director of a
22 state department, or the governing board of the contracting agency.
23 However, the appointment shall not be deemed employment within
24 the meaning of Division 4 (commencing with Section 3200) and
25 Division 4.5 (commencing with Section 6100) of the Labor Code,
26 and shall not provide a basis for the payment of workers’
27 compensation to a retired state employee or to his or her
28 dependents.

29 (b) As a school crossing guard.

30 (c) As a juror or election officer.

31 (d) As an elective officer on and after September 15, 1961.
32 However, all rights and immunities which may have accrued under
33 Section 21229 as it read prior to that section’s repeal during the
34 1969 Regular Session of the Legislature are hereby preserved.

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

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

1 (g) Upon employment by a contracting agency to a position
2 found by the governing body, by resolution, to be available because
3 of a leave of absence granted to a person on payroll status for a
4 period not to exceed one year and found by the governing body to
5 require specialized skills. The temporary employment shall be
6 terminated at the end of the leave of absence. Appointments under
7 this section shall be reported to the board and shall be accompanied
8 by the resolution adopted by the governing body.

9 (h) Upon appointment by the governing body of a contracting
10 agency to a position deemed by the governing body to be of a
11 limited duration and requiring specialized skills or during an
12 emergency to prevent stoppage of public business. These
13 appointments, in addition to any made pursuant to Section 21224,
14 shall not exceed a total for all employers of 960 hours in any fiscal
15 year.

16 (i) Upon appointment by the Administrative Director of the
17 Courts to the position of Court Security Coordinator, a position
18 deemed temporary in nature and requiring the specialized skills
19 and experience of a retired professional peace officer.