

AMENDED IN ASSEMBLY JANUARY 5, 2012

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 738

Introduced by Assembly Member Hagman

February 17, 2011

An act to add Sections 22119.6 and 22603 to the Education Code, and to amend Sections 9355.4, 9355.41, 20322, 31553, and 31641 of, and to add Sections 7514.51, 9355.42, 20302, 20890.5, 31553.5, 31641.5, 45310.2, and 50805.5 to, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 738, as amended, Hagman. Public employees' retirement: elected officials.

Existing law authorizes the creation of retirement systems for public employees by counties, cities, and districts. Existing law creates the Public Employees' Retirement System and the State Teachers Retirement System, which provide a defined benefit to their members based on age at retirement, service credit, and final compensation. Existing law establishes the criteria for membership in the various public employee retirement systems and may exclude certain employment classifications from membership. Existing law prohibits Members of the Legislature elected on or after November 1, 1990, from accruing any retirement or pension benefit, provided that other elective officers provided for by the California Constitution may elect to become members of Legislators' Retirement System. The California Constitution provides for the division of the state into counties and requires that a

county have an elected sheriff, elected district attorney, elected assessor, and elected governing body. Existing law provides for the incorporation of cities in various forms and requires that certain city offices be filled pursuant to elections, as prescribed. Existing law provides for the creation of districts, the governing bodies of which may be elected.

This bill would prohibit a person who is publicly elected to an office of any kind that is less than full time, as defined, on and after January 1, ~~2012~~ 2013, from becoming a member of a retirement system by virtue of that service or acquiring any retirement right or benefit for serving in that elective office. The bill would also apply these prohibitions to a person who is appointed to fill the term of a person so elected. The bill would except from this prohibition a person who obtained membership by virtue of holding an elective public office prior to January 1, ~~2012~~ 2013, and remains in that office or is reelected to it.

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 22119.6 is added to the Education Code,
2 to read:
3 22119.6. Notwithstanding any other law, “creditable service”
4 does not include service by a person described in Section 22603
5 performed in an elective office.
6 SEC. 2. Section 22603 is added to the Education Code, to read:
7 22603. (a) Notwithstanding any other law, a person who is
8 publicly elected to an office of any kind that is less than full time,
9 on and after January 1, ~~2012~~ 2013, shall not become a member of
10 a retirement system established under this chapter by virtue of that
11 service and shall not acquire any retirement right or benefit for
12 serving in that elective office. This section shall apply equally to
13 a person who is appointed to fill the term of a person so elected.
14 For purposes of this section, “full time” means the elected or
15 appointed official is required to provide service to the state
16 government, local government, or special district for a minimum
17 of five days and 40 hours a week, exclusive of holidays, or
18 otherwise requires the elected or appointed official to devote his
19 or her entire time and attention to the duties of the office and
20 prohibits any outside employment that would interfere with those

1 duties. Designation of an elective or appointive office as full time
2 shall be enacted by law.

3 (b) This section shall not apply to a person who obtained
4 membership by virtue of holding an elective public office prior to
5 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
6 is reelected to that office.

7 SEC. 3. Section 7514.51 is added to the Government Code, to
8 read:

9 7514.51. (a) Notwithstanding any other law and except as
10 required or permitted by the California Constitution, a person who
11 is publicly elected to an office of any kind that is not full time, on
12 and after January 1, ~~2012~~ 2013, shall not become a member of any
13 retirement system by virtue of that service and shall not acquire
14 any retirement right or benefit for serving in that elective office.
15 This section shall apply equally to a person who is appointed to
16 fill the term of a person so elected. For purposes of this section,
17 “full time” means the elected or appointed official is required to
18 provide service to the state government, local government, or
19 special district for a minimum of five days and 40 hours a week,
20 exclusive of holidays, or otherwise requires the elected or appointed
21 official to devote his or her entire time and attention to the duties
22 of the office and prohibits any outside employment that would
23 interfere with those duties. Designation of an elective or appointive
24 office as full time shall be enacted by law.

25 (b) This section shall not apply to a person who obtained
26 membership by virtue of holding an elective public office prior to
27 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
28 is reelected to that office.

29 SEC. 4. Section 9355.4 of the Government Code is amended
30 to read:

31 9355.4. Except as provided in Section 9355.42, every elective
32 officer of the state whose office is provided for by the California
33 Constitution, except judges, may become a member of this system.
34 Except for judges, every elective officer in office at the time this
35 section becomes effective may, within 90 days after the effective
36 date, file with the board a written election to become a member of
37 this system. Except for judges, every elective officer elected after
38 the effective date of this section may file an election within 90
39 days after the commencement of the first term of office for which
40 he or she is elected. Upon the filing of the election he or she

1 becomes a member of this system on the first day of the month
2 following the filing of the election.

3 SEC. 5. Section 9355.41 of the Government Code is amended
4 to read:

5 9355.41. Except as provided in Section 9355.42, the Insurance
6 Commissioner may become a member of this system as provided
7 in this section. An Insurance Commissioner who is elected after
8 January 1, 1994, may file an election within 90 days after the
9 commencement of the term of office for which he or she is elected.
10 Upon the filing of the election he or she becomes a member of this
11 system on the first day of the month following the filing of the
12 election.

13 SEC. 6. Section 9355.42 is added to the Government Code, to
14 read:

15 9355.42. (a) Notwithstanding any other law, a person who is
16 publicly elected to an office of any kind that is less than full time,
17 on and after January 1, ~~2012~~ 2013, shall not become a member of
18 the system by virtue of that service and shall not acquire any
19 retirement right or benefit for serving in that elective office. This
20 section shall apply equally to a person who is appointed to fill the
21 term of a person so elected. For purposes of this section, "full time"
22 means the elected or appointed official is required to provide
23 service to the state government, local government, or special
24 district for a minimum of five days and 40 hours a week, exclusive
25 of holidays, or otherwise requires the elected or appointed official
26 to devote his or her entire time and attention to the duties of the
27 office and prohibits any outside employment that would interfere
28 with those duties. Designation of an elective or appointive office
29 as full time shall be enacted by law.

30 (b) This section shall not apply to a person who obtained
31 membership by virtue of holding an elective public office prior to
32 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
33 is reelected to that office.

34 SEC. 7. Section 20302 is added to the Government Code, to
35 read:

36 20302. (a) Notwithstanding any other law, a person who is
37 publicly elected to an office of any kind that is not full time, on
38 and after January 1, ~~2012~~ 2013, shall not become a member of the
39 system by virtue of that service and shall not acquire any retirement
40 right or benefit for serving in that elective office. This section shall

1 apply equally to a person who is appointed to fill the term of a
2 person so elected. For purposes of this section, “full time” means
3 the elected or appointed official is required to provide service to
4 the state government, local government, or special district for a
5 minimum of five days and 40 hours a week, exclusive of holidays,
6 or otherwise requires the elected or appointed official to devote
7 his or her entire time and attention to the duties of the office and
8 prohibits any outside employment that would interfere with those
9 duties. Designation of an elective or appointive office as full time
10 shall be enacted by law.

11 (b) This section shall not apply to a person who obtained
12 membership by virtue of holding an elective public office prior to
13 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
14 is reelected to that office.

15 SEC. 8. Section 20322 of the Government Code is amended
16 to read:

17 20322. Except as otherwise provided in Section 20302:

18 (a) An elective officer is excluded from membership in this
19 system unless the officer files with the board an election in writing
20 to become a member. Upon electing to become a member, the
21 officer may further elect at any time prior to retirement to receive
22 service credit for his or her prior, excluded service by making the
23 contributions as specified in Sections 21050 and 21051.

24 (b) As used in this part, “elective officer” includes any officer
25 of the Senate or Assembly who is elected by vote of the members
26 of either or both of the houses of the Legislature, and any
27 appointive officer of a city or county occupying a fixed term of
28 office, as well as officers of the state or contracting agencies elected
29 by the people, and persons elected to a city council or a county
30 board of supervisors.

31 (c) Notwithstanding any other provision of subdivision (a) or
32 (b), elected or appointed officers of a county superintendent of
33 schools, school district, or community college district, or of a
34 contracting agency, who serve on public commissions, boards,
35 councils, or similar legislative or administrative bodies are
36 excluded from membership in this system. This exclusion shall
37 only apply to those elected or appointed officers, other than city
38 or county officers, who are first elected or appointed to an office
39 on or after July 1, 1994, or who are elected or appointed to a term
40 of office not consecutive with the term of office held on June 30,

1 1994. For city or county elected or appointed officers, this
2 exclusion shall only apply to those officers who are first elected
3 or appointed to an office on or after January 1, 1997, or who are
4 elected or appointed to a term of office not consecutive with the
5 term of office held on December 31, 1996. This exclusion shall
6 not apply to persons elected to a city council or county board of
7 supervisors.

8 (d) Any person holding the office of city attorney or the office
9 of assistant city attorney, whether employed, appointed, or elected,
10 is excluded from the definition of “elective officer” as defined in
11 subdivision (b). This subdivision shall apply only to persons first
12 employed, elected, or appointed on or after July 1, 1994, or
13 following any break in state service while serving in the office if
14 the office was held on June 30, 1994.

15 (e) In accordance with Section 20125, the board shall be the
16 sole judge of which elected or appointed positions qualify the
17 incumbent as an “elective officer” in this system under this section.

18 (f) Notwithstanding any other provision of law, with respect to
19 elective officers of contracting agencies, payment by a contracting
20 agency of employer contributions and any other amounts for
21 employer paid benefits under this system shall not be construed
22 as receipt of salary or compensation by the elective officer for
23 purposes of any statutory salary or compensation limitation.

24 SEC. 9. Section 20890.5 is added to the Government Code, to
25 read:

26 20890.5. Notwithstanding any other law, a person described
27 in Section 20302 shall not be credited with service by virtue of
28 serving in an elective office.

29 SEC. 10. Section 31553 of the Government Code is amended
30 to read:

31 31553. Except as provided in Section 31553.5, elective officers
32 become members of the retirement association on the first day of
33 the calendar month following the filing of a declaration with the
34 board to become a member, provided, however, that any such
35 elective officer may, within 60 days after the expiration of the
36 officer’s term of office or within 60 days after the officer ceases
37 to hold the office, rescind the declaration and withdraw from the
38 retirement association. In such cases, all contributions paid by the
39 member shall be refunded in the same manner as applicable to
40 members terminating service.

1 SEC. 11. Section 31553.5 is added to the Government Code,
2 to read:

3 31553.5. (a) Notwithstanding any other law, a person who is
4 publicly elected to an office of any kind that is not full time, on
5 and after January 1, ~~2012~~ 2013, shall not become a member of a
6 retirement system established under this chapter by virtue of that
7 service and shall not acquire any retirement right or benefit for
8 serving in that elective office. This section shall apply equally to
9 a person who is appointed to fill the term of a person so elected.
10 For purposes of this section, “full time” means the elected or
11 appointed official is required to provide service to the state
12 government, local government, or special district for a minimum
13 of five days and 40 hours a week, exclusive of holidays, or
14 otherwise requires the elected or appointed official to devote his
15 or her entire time and attention to the duties of the office and
16 prohibits any outside employment that would interfere with those
17 duties. Designation of an elective or appointive office as full time
18 shall be enacted by law.

19 (b) This section shall not apply to a person who obtained
20 membership by virtue of holding an elective public office prior to
21 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
22 is reelected to that office.

23 SEC. 12. Section 31641 of the Government Code is amended
24 to read:

25 31641. Except as provided in Section 31641.5, “service” means
26 uninterrupted employment of any person appointed or elected for
27 that period of time:

28 (a) For which deductions are made from his earnable
29 compensation from the county or district for such service while
30 he is a member of the retirement association.

31 (b) In military service for which the county or district or member
32 is authorized by other provisions of this chapter to make, and does
33 make, contributions.

34 (c) For which he receives credit for county service or for public
35 service or for both pursuant to the provisions of this article.

36 (d) Allowed for prior service.

37 SEC. 13. Section 31641.5 is added to the Government Code,
38 to read:

1 31641.5. Notwithstanding any other law, a person described
2 in Section 31553.5 shall not be credited with service by virtue of
3 serving in an elective office.

4 SEC. 14. Section 45310.2 is added to the Government Code,
5 to read:

6 45310.2. (a) Notwithstanding any other law, a person who is
7 publicly elected to an office of any kind that is not full time, on
8 and after January 1, ~~2012~~ 2013, shall not become a member of a
9 retirement system established under this chapter by virtue of that
10 service and shall not acquire any retirement right or benefit for
11 serving in that elective office. This section shall apply equally to
12 a person who is appointed to fill the term of a person so elected.
13 For purposes of this section, “full time” means the elected or
14 appointed official is required to provide service to the state
15 government, local government, or special district for a minimum
16 of five days and 40 hours a week, exclusive of holidays, or
17 otherwise requires the elected or appointed official to devote his
18 or her entire time and attention to the duties of the office and
19 prohibits any outside employment that would interfere with those
20 duties. Designation of an elective or appointive office as full time
21 shall be enacted by law.

22 (b) This section shall not apply to a person who obtained
23 membership by virtue of holding an elective public office prior to
24 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
25 is reelected to that office.

26 SEC. 15. Section 50805.5 is added to the Government Code,
27 to read:

28 50805.5. (a) Notwithstanding any other law, a person who is
29 publicly elected to an office of any kind that is not full time, on
30 and after January 1, ~~2012~~ 2013, shall not become a member of a
31 retirement system established under this chapter by virtue of that
32 service and shall not acquire any retirement right or benefit for
33 serving in that elective office. This section shall apply equally to
34 a person who is appointed to fill the term of a person so elected.
35 For purposes of this section, “full time” means the elected or
36 appointed official is required to provide service to the state
37 government, local government, or special district for a minimum
38 of five days and 40 hours a week, exclusive of holidays, or
39 otherwise requires the elected or appointed official to devote his
40 or her entire time and attention to the duties of the office and

1 prohibits any outside employment that would interfere with those
2 duties. Designation of an elective or appointive office as full time
3 shall be enacted by law.

4 (b) This section shall not apply to a person who obtained
5 membership by virtue of holding an elective public office prior to
6 January 1, ~~2012~~ 2013, for so long as he or she holds that office or
7 is reelected to that office.

8 SEC. 16. The provisions of this act are severable. If any
9 provision of this act or its application is held invalid, that invalidity
10 shall not affect other provisions or applications that can be given
11 effect without the invalid provision or application.

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