

AMENDED IN SENATE MARCH 3, 2011

**SENATE BILL**

**No. 27**

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**Introduced by ~~Senator~~ *Senators Simitian and Correa***  
**(*Coauthor: Senator Calderon*)**

December 6, 2010

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An act to amend Sections 22112.5, 22119.2, 22461, 22905, 25009, 26302, 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~~ *Section 21220.3* to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Simitian. Public retirement: final compensation: computation: retirees.

*(1) The State Teachers' Retirement Law (STRL) establishes the Defined Benefit Program of the State Teachers' Retirement System, which provides a defined benefit to members of the system based on final compensation, credited service, and age at retirement, subject the certain variations. STRL also establishes the Defined Benefit Supplement Program, which provides supplemental retirement, disability, and other benefits, payable either in a lump-sum payment, an annuity, or both to members of the State Teachers' Retirement Plan. STRL defines creditable compensation for these purposes as remuneration that is payable in cash to all persons in the same class of employees, as specified, for performing creditable service.*

*This bill would revise the definition of creditable compensation for these purposes and would identify certain payments, reimbursements, and compensation that are creditable compensation to be applied to*

*the Defined Benefit Supplement Program. The bill would prohibit one employee from being considered a class. The bill would revise the definition of compensation with respect to the Defined Benefit Supplemental Program to include remuneration earnable within a 5-year period, which includes the last year in which the member's final compensation is determined, when it is in excess of 125% of that member's compensation earnable in the year prior to that 5-year period, as specified. The bill would prohibit a member who retires on or after January 1, 2013, who elects to receive his or her retirement benefit under the Defined Benefit Supplemental Program as a lump-sum payment from receiving that sum until 180 days have elapsed following the effective date of the member's retirement.*

*(2) Existing law permits a retired member of STRS to perform specified activities as an employee of an employer in the system, as an employee of a 3rd party, or as an independent contractor within the California public school system, but prohibits the member from making contributions to the retirement fund or accruing service credit based on compensation earned from that service. Existing law conditions this authorization on a variety of factors including limitations on the rate of pay of the member and the total amount of compensation. Existing law prohibits compensation, in this regard, for a member who is below normal retirement age for the first 6 months after retirement for service.*

*This bill would apply the prohibition described above to employees retiring on or after January 1, 2013, for the first 180 days after retirement for service.*

*(3) Existing law establishes the Cash Balance Benefit Program, administered by the State Teachers' Retirement Board, as a separate benefit program within the State Teachers' Retirement Plan in order to provide a retirement plan for persons employed to perform creditable service for less than 50% of full-time service. Existing law provides that the normal form of benefit under the program is a lump-sum payment, after which further benefits are not payable.*

*This bill would permit the board to assess penalties for late and improper adjustments on contributions in connection with the Cash Balance Benefit Program. The bill would prohibit a member who retires on or after January 1, 2013, from receiving the lump-sum payment under the program until 180 days have elapsed following the effective date of the member's termination of employment.*

*(4) The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System, which is administered by its*

*Board of Administration, and which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines compensation earnable and other related terms for purposes of calculating a member's retirement allowance. PERL requires employers and contracting agencies participating in the system to provide notice to the board of the change of status of a member.*

*This bill would require a participating employer and contracting agencies to immediately notify the board of a change that may affect a member's payrate for purposes of compensation earnable and would authorize the board to assess a reasonable fee upon an employer that fails to do so. The bill would authorize the board to assess a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that an employer knowingly failed to comply with requirements regarding the reporting of compensation. The bill would specify that payrate means, among other things, the members' monthly base pay, would connect payrate to publicly available pay schedules, and would establish requirements for computation of the payrate of a member for a leave without pay. The bill would prescribe a process for determining if specific compensation items are special compensation. The bill would prohibit a person who retires on or after January 1, 2013, from being employed in any capacity by the state, the University of California, a school employer, or a contracting agency until that person has been separated from service for a period of at least 180 days, subject to existing exceptions.*

*The bill would make also additional related changes and would make a statement of legislative findings.*

*This bill would provide that its provisions would become operative on July 1, 2012, except as specified.*

~~(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 provide that a person who retires on or after January 1, 2013, 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, 2013, 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 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, 2012.~~

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

35    (c) The Legislature further finds and declares that consistent  
36 administration of state ~~and local~~ public retirement systems is a  
37 matter of statewide concern.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (v) Compensation that is payable for attaining a specific age  
14 threshold.

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

18 (vii) Compensation that is payable in exchange for an agreement  
19 to terminate employment, except as excluded from "creditable  
20 compensation" as defined in paragraph (9) of subdivision (c).

21 (viii) Any other payments the board may determine, pursuant  
22 to regulations, to be "remuneration that is paid in addition to salary  
23 or wages."

24 (2) Creditable compensation shall include the following:

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

27 (B) Amounts that are deducted from a member's compensation,  
28 including, but not limited to, salary deductions for participation  
29 in a deferred compensation plan; deductions to purchase an annuity  
30 contract, tax-deferred retirement plan, or insurance program; and  
31 contributions to a plan that meets the requirements of Section 125,  
32 401(k), 403(b), or 457 of Title 26 of the United States Code.

33 (C) Any other amounts the board may determine, pursuant to  
34 regulations, to be "creditable compensation."

35 (b) Any salary or other remuneration determined by the board  
36 to have been paid to enhance a member's benefits shall not be  
37 credited under the Defined Benefit Program. Contributions on that  
38 compensation shall be credited to the Defined Benefit Supplement  
39 Program. A presumption by the board that salary or other  
40 remuneration was paid to enhance the member's benefits may be

1 rebutted by the member or by the employer on behalf of the  
2 member. Upon receipt of sufficient evidence to the contrary, a  
3 presumption by the board that salary or other remuneration was  
4 paid to enhance the member's benefits may be reversed.

5 (c) "Creditable compensation" does not mean and shall not  
6 include:

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

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

11 (3) Remuneration that is paid in addition to salary if it is not  
12 payable to all persons in the same class of employees in the same  
13 dollar amount, the same percentage of salary, or the same  
14 percentage of the amount being distributed pursuant to  
15 subparagraph (B) of paragraph (1) of subdivision (a).

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

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

22 (6) Fringe benefits provided by an employer.

23 (7) Expenses paid by an employer.

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

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

29 (10) Any other payments the board determines not to be  
30 "creditable compensation."

31 (d) An employer or individual who knowingly or willfully  
32 reports compensation in a manner inconsistent with subdivision  
33 (a) or (c) may be subject to prosecution for fraud, theft, or  
34 embezzlement in accordance with the Penal Code. The system  
35 may establish procedures to ensure that compensation reported by  
36 an employer is in compliance with this section.

37 (e) For purposes of this section, remuneration shall be considered  
38 payable if it would be paid to any person who meets the  
39 qualifications or requirements specified in a collective bargaining



1 agreement or an employment agreement as a condition of receiving  
2 the remuneration.

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

16 SEC. 4. Section 22461 of the Education Code is amended to  
17 read:

18 22461. A school district, community college district, county  
19 superintendent of schools, California State University, or other  
20 employing agency that retains the services of a retired member  
21 under Section 24116, 24214, or 24215 shall do both of the  
22 following regardless of whether the retired member performs the  
23 services as an employee of the employer, an employee of a third  
24 party, or an independent contractor:

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

27 (b) Maintain accurate records of the retired member’s earnings  
28 and report those earnings monthly to the system and the retired  
29 member regardless of the method of payment or the fund from  
30 which the payments were made.

31 SEC. 5. Section 22905 of the Education Code is amended to  
32 read:

33 22905. (a) Member contributions pursuant to Section 22901,  
34 employer contributions pursuant to Section 22903 or 22904, and  
35 member contributions made by an employer pursuant to Section  
36 22909 shall be credited to the member’s individual account under  
37 the Defined Benefit Program or the Defined Benefit Supplement  
38 Program, whichever is applicable pursuant to the provisions of  
39 this part.

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

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

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

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

(4) (A) Remuneration increasing a member's compensation earnable during a five-year period, that includes the last year in which the member's final compensation is determined and the four years prior to that year, in which creditable compensation was earned, that exceeds 125 percent of the member's compensation earnable in the year prior to that five-year period, provided that both of the following conditions are satisfied:

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

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

(B) The board may, by plan amendment, increase the percentage specified in subparagraph (A), if the board determines that the average rate of increase in salary and wages paid during the previous five-year period to members employed by the 10 employers with the largest number of members exceeded 5 percent in any of those five years.

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

(d) Member and employer contributions pursuant to paragraph (1) of subdivision (b) under the Defined Benefit Supplement

1 Program shall be credited to the accounts of members as of July  
2 1 each year following a determination by the system under the  
3 provisions of this part that those contributions should be credited  
4 to the Defined Benefit Supplement Program. Any other  
5 contributions under the Defined Benefit Supplement Program,  
6 pursuant to paragraph (2), (3), or (4) of subdivision (b), shall be  
7 credited to the individual account of the member upon receipt by  
8 the system. Contributions to a member's Defined Benefit  
9 Supplement account shall be identified separately from the  
10 member's contributions credited under the Defined Benefit  
11 Program.

12 SEC. 6. Section 24214.5 of the Education Code is amended to  
13 read:

14 24214.5. (a) Notwithstanding Section 24214, as of July 1,  
15 2010, the postretirement compensation limitation that shall apply  
16 to the compensation for performance of the activities identified in  
17 subdivision (a) or (b) of Section 22119.5 either as an employee of  
18 an employer, an employee of a third party, or as an independent  
19 contractor, within the California public school system, shall be  
20 zero dollars (\$0) during the first six calendar months after a  
21 member retired for service under this part, if the member is below  
22 normal retirement age at the time the compensation is earned.

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

34 (c) This section shall remain in effect only until January 1, 2013,  
35 and as of that date is repealed, unless a later enacted statute, that  
36 is enacted before January 1, 2013, deletes or extends that date.

37 SEC. 7. Section 24214.5 is added to the Education Code, to  
38 read:

39 24214.5. (a) Notwithstanding Section 24214, for employees  
40 retiring on or after January 1, 2013, the postretirement

1 compensation limitation that shall apply to the compensation for  
2 performance of the activities identified in subdivision (a) or (b) of  
3 Section 22119.5 either as an employee of an employer, an  
4 employee of a third party, or as an independent contractor within  
5 the California public school system shall be zero dollars (\$0) during  
6 the first 180 days after a member retired for service under this part.

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

18 (c) This section shall become operative on January 1, 2013.

19 SEC. 8. Section 25009 of the Education Code is amended to  
20 read:

21 25009. (a) A member's retirement benefit under the Defined  
22 Benefit Supplement Program shall be an amount equal to the  
23 balance of credits in the member's Defined Benefit Supplement  
24 account on the date the retirement benefit becomes payable.

25 (b) A retirement benefit shall be a lump-sum payment, or an  
26 annuity payable in monthly installments, or a combination of both  
27 a lump-sum payment and an annuity, as elected by the member on  
28 the application for a retirement benefit. Any retirement benefit  
29 paid as an annuity under this chapter shall be subject to Section  
30 25011 or 25011.1.

31 (c) If a member who retires on or after January 1, 2013, elects  
32 to have the retirement benefit paid as a lump-sum payment, that  
33 payment shall be payable after 180 days have elapsed following  
34 the effective date of the member's retirement.

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

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

1 (1) Purchasing service credit pursuant to Chapter 14  
2 (commencing with Section 22800), Chapter 14.2 (commencing  
3 with Section 22820), or Chapter 14.5 (commencing with Section  
4 22850).

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

7 SEC. 9. Section 26302 of the Education Code is amended to  
8 read:

9 26302. (a) If more or less than the contributions required by  
10 this part are paid to the plan based on salary paid to a participant,  
11 proper adjustment shall be made by the employer within 60 days  
12 of discovery or of notification by the system, and any contributions  
13 deducted in error from the participant's salary shall be returned to  
14 the participant by the employer within the same time period.

15 (b) The board, in accordance with regulations, shall assess  
16 penalties for late or improper adjustments pursuant to Section  
17 26301. These penalties shall be assessed at a rate equal to the  
18 penalties imposed under subdivision (b) of Section 23008 and shall  
19 be deemed to be interest earned in the year in which the penalty  
20 is received.

21 SEC. 10. Section 26307 is added to the Education Code, to  
22 read:

23 26307. A school district, community college district, county  
24 superintendent of schools, the California State University, or other  
25 employing agency that retains the services of a retired participant  
26 to perform the activities described in subdivision (a) or (b) of  
27 Section 26113 shall do both of the following, regardless of whether  
28 the retired participant performs the services as an employee of the  
29 employer, an employee of a third party, or as an independent  
30 contractor:

31 (a) Prior to retention, advise the retired participant of the  
32 limitations on employment set forth in Sections 26505, 26806,  
33 26810, 26911, and 27204.

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

38 SEC. 11. Section 26505 of the Education Code is amended to  
39 read:

1 26505. If a participant who has retired and is receiving an  
2 annuity under the Cash Balance Benefit Program becomes  
3 reemployed prior to 60 years of age or becomes reemployed on or  
4 after 60 years of age but within one year of his or her retirement  
5 date, to perform creditable service as an employee of an employer,  
6 as an employee of a third party, or as an independent contractor  
7 within the California public school system, the annuity shall be  
8 terminated, the employee account and the employer account of the  
9 participant shall be credited with respective balances that reflect  
10 the actuarial equivalent of the participant's retirement benefit as  
11 of the date of the reemployment and the Annuitant Reserve shall  
12 be reduced by the amount of the credits. If a participant who has  
13 retired and is receiving an annuity under the Cash Balance Benefit  
14 Program becomes reemployed on or after age 60 and more than  
15 one year after retirement to perform creditable service under the  
16 plan, the annuity shall continue and employee contributions and  
17 employer contributions for the creditable service shall be made to  
18 the plan and shall be credited to new employee and employer  
19 accounts established on behalf of the participant.

20 SEC. 12. Section 26806 of the Education Code is amended to  
21 read:

22 26806. (a) The normal form of retirement benefit under this  
23 part is a lump-sum payment. Upon distribution of the lump-sum  
24 payment to the participant, no further benefits shall be payable  
25 from the plan with respect to the Cash Balance Benefit Program.

26 (b) This section shall remain in effect only until January 1, 2013,  
27 and as of that date is repealed, unless a later enacted statute, that  
28 is enacted before January 1, 2013, deletes or extends that date.

29 SEC. 13. Section 26806 is added to the Education Code, to  
30 read:

31 26806. (a) The normal form of retirement benefit under this  
32 part is a lump-sum payment. Upon distribution of the lump-sum  
33 payment to the participant, no further benefits shall be payable  
34 from the plan with respect to the Cash Balance Benefit Program.  
35 Effective January 1, 2013, the lump-sum payment shall not be  
36 payable before 180 days have elapsed following the date of  
37 termination of employment.

38 (b) The application to receive the normal form of a retirement  
39 benefit shall be automatically canceled if the participant performs  
40 creditable service as an employee of an employer, as an employee

1 of a third party, or as an independent contractor within the  
2 California public school system within 180 days following the  
3 date of termination of employment.

4 (c) This section shall become operative on January 1, 2013.

5 SEC. 14. Section 7500.5 is added to the Government Code, to  
6 read:

7 7500.5. (a) In order to safeguard the integrity and soundness  
8 of public retirement systems, ensure prompt delivery of benefits  
9 and related services to the participants and their beneficiaries, and  
10 minimize employer expenses, state and local public retirement  
11 systems shall administer retirement benefits in accordance with  
12 the principles articulated in this section. Nothing in this section  
13 shall be construed to limit the Legislature's authority to adopt more  
14 restrictive benefit provisions applicable to a state or local public  
15 retirement system.

16 (b) The board of each state and local public retirement system  
17 shall establish, by statute or regulation, accountability provisions  
18 that shall include an audit process to ensure compliance with the  
19 principles articulated in the provisions of this section. The  
20 accountability provisions shall be enforceable by the imposition  
21 of monetary penalties or fees, including, but not limited to,  
22 untimely or inaccurate submissions of any information that the  
23 board may require in the administration of the system.

24 (c) Any payrate, salary, special compensation, or other  
25 remuneration determined by the board of a state or local public  
26 retirement system to have been paid for the principal purpose of  
27 enhancing a member's retirement benefits under that system shall  
28 not be included in compensation earnable. If the board of a state  
29 or local public retirement system determines that payrate, salary,  
30 special compensation, or other remuneration was paid for the  
31 principal purpose of enhancing a member's benefit, the member  
32 or the employer may present evidence to the contrary. Upon receipt  
33 of sufficient evidence to the contrary, a board may reverse its  
34 determination that payrate, salary, special compensation, or other  
35 remuneration was paid for the principal purpose of enhancing a  
36 member's retirement benefits.

37 (d) Cash conversions of accrued employee benefits in amounts  
38 that exceed the amount that is both earned and payable to the  
39 member during the member's applicable final compensation  
40 measurement period shall not be credited to, or included in,

1 compensation earnable by any state or local public retirement  
2 system.

3 (e) ~~Final settlement pay or any similar payment that is received~~  
4 ~~by a member upon retirement or separation from employment shall~~  
5 ~~not be included in compensation earnable by any state or local~~  
6 ~~public retirement system.~~

7 (f) ~~A retired person, who has not reinstated following retirement,~~  
8 ~~shall have a separation in service for a period of at least 180 days~~  
9 ~~before performing service for any employer covered by the state~~  
10 ~~or local retirement system from which he or she retired, whether~~  
11 ~~as an employee, through a third party, or as an independent~~  
12 ~~contractor. This requirement shall apply to all persons who retire~~  
13 ~~on and after January 1, 2013.~~

14 (g) ~~Any increase in compensation earnable for an employee~~  
15 ~~who is not in a group or class shall not exceed, during the final~~  
16 ~~compensation period as well as two years immediately preceding~~  
17 ~~the final compensation period, the average increase in~~  
18 ~~compensation earnable during the same period for all similarly~~  
19 ~~situated members in the closest related group or class of that same~~  
20 ~~employer.~~

21 (h) ~~For the purposes of implementing this section, all state or~~  
22 ~~local public retirement systems shall have terms or definitions~~  
23 ~~consistent with the following:~~

24 (1) ~~“A group or class” means a number of employees of the~~  
25 ~~same employer considered together because they share job~~  
26 ~~similarities, work location, collective bargaining unit, or other~~  
27 ~~logical work grouping. Under no circumstance shall one employee~~  
28 ~~be considered a group or class.~~

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

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



1     ~~(4) “Special compensation” includes a payment received for~~  
2 ~~special skills, knowledge, abilities, work assignment, workdays~~  
3 ~~or hours, or other work conditions.~~

4     ~~(5) “Compensation earnable” includes payrate, salary, special~~  
5 ~~compensation, or other remuneration, or any combination of the~~  
6 ~~foregoing, of the member.~~

7     ~~SEC. 15.~~

8     *SEC. 14.* Section 20221 of the Government Code is amended  
9 to read:

10     20221. Each state employer, school employer, and the chief  
11 administrative officer of a contracting agency or any other person  
12 who its governing body may designate shall furnish all of the  
13 following:

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

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

23     (c) Any additional information concerning any member that the  
24 board may require in the administration of this system.

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

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

31     ~~SEC. 16.~~

32     *SEC. 15.* Section 20630 of the Government Code is amended  
33 to read:

34     20630. (a) As used in this part, “compensation” means the  
35 remuneration paid out of funds controlled by the employer in  
36 payment for the member’s services performed during normal  
37 working hours or for time during which the member is excused  
38 from work because of any of the following:

39         (1) Holidays.

40         (2) Sick leave.

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

(4) Vacation.

(5) Compensatory time off.

(6) Leave of absence.

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

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

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

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

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

~~SEC. 17.~~

*SEC. 16.* Section 20636 of the Government Code is amended to read:

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

(b) (1) “Payrate” means the normal monthly rate of pay or monthly base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or monthly base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a

1 full-time basis during normal working hours, subject to the  
2 limitations of paragraph (2) of subdivision (e).

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

5 (A) Participation in a deferred compensation plan.

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

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

12 (D) Participation in a flexible benefits program.

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

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

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

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

32 (3) Special compensation shall be for services rendered during  
33 normal working hours and, when reported to the board, the  
34 employer shall identify the pay period in which the special  
35 compensation was earned.

36 (4) Special compensation may include the full monetary value  
37 of normal contributions paid to the board by the employer, on  
38 behalf of the member and pursuant to Section 20691, if the  
39 employer’s labor policy or agreement specifically provides for the

1 inclusion of the normal contribution payment in compensation  
2 earnable.

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

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

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

22 (A) Final settlement pay.

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

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

27 (8) A written request may be submitted for the board’s  
28 determination as to whether specific compensation items meet the  
29 definition of special compensation. Determinations shall be made  
30 on these requests within 90 calendar days of receipt of all  
31 information required to be submitted by the board.

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

35 (e) (1) As used in this part, “group or class of employment”  
36 means a number of employees considered together because they  
37 share similarities in job duties, work location, collective bargaining  
38 unit, or other logical work-related grouping. One employee may  
39 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 similarly situated members in the closest related group or class, or 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, pursuant to publicly available pay schedules, 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.

1 (ii) 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 (iii) 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 (iv) Participation in a flexible benefits program.

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

12 (C) Employer "pick up" of member contributions that meets  
13 the requirements of Section 414(h)(2) of Title 26 of the United  
14 States Code.

15 (D) Disability or workers' compensation payments to safety  
16 members in accordance with Section 4800 of the Labor Code.

17 (E) Temporary industrial disability payments pursuant to Article  
18 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

19 (F) Other payments the board may determine to be within  
20 "payrate."

21 (3) Notwithstanding subdivision (c), "special compensation"  
22 for state members shall mean all of the following:

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

27 (B) Compensation for performing normally required duties,  
28 such as holiday pay, bonuses (for duties performed on regular work  
29 shift), educational incentive pay, maintenance and noncash  
30 payments, out-of-class pay, marksmanship pay, hazard pay,  
31 motorcycle pay, paramedic pay, emergency medical technician  
32 pay, Peace Officer Standards and Training (POST) certificate pay,  
33 and split shift differential.

34 (C) Compensation for uniforms, except as provided in Section  
35 20632.

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

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

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

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

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

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

15 (E) Employer payments that are to be credited as employee  
16 contributions for benefits provided by this system, or employer  
17 payments that are to be credited to employee accounts in deferred  
18 compensation plans. The amounts deducted from a member's  
19 wages for participation in a deferred compensation plan may not  
20 be considered to be "employer payments."

21 (F) Payments for unused vacation, annual leave, personal leave,  
22 sick leave, or compensating time off, whether paid in lump sum  
23 or otherwise.

24 (G) Final settlement pay.

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

27 (I) Compensation for additional services outside regular duties,  
28 such as standby pay, callback pay, court duty, allowance for  
29 automobiles, and bonuses for duties performed after the member's  
30 regular work shift.

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

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

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

38 (K) Payments made by the employer to or on behalf of its  
39 employees who have elected to be covered by a flexible benefits

1 program, where those payments reflect amounts that exceed the  
2 employee's salary.

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

5 (5) If the provisions of this subdivision, including the board's  
6 determinations pursuant to subparagraph (F) of paragraph (2) and  
7 subparagraph (D) of paragraph (3), are in conflict with the  
8 provisions of a memorandum of understanding reached pursuant  
9 to Section 3517.5 or 3560, the memorandum of understanding  
10 shall be controlling without further legislative action, except that  
11 if the provisions of a memorandum of understanding require the  
12 expenditure of funds, those provisions may not become effective  
13 unless approved by the Legislature in the annual Budget Act. No  
14 memorandum of understanding reached pursuant to Section 3517.5  
15 or 3560 may exclude from the definition of either "payrate" or  
16 "special compensation" a member's base salary payments or  
17 payments for time during which the member is excused from work  
18 because of holidays, sick leave, vacation, compensating time off,  
19 or leave of absence. If items of compensation earnable are included  
20 by memorandum of understanding as "payrate" or "special  
21 compensation" for retirement purposes for represented and higher  
22 education employees pursuant to this paragraph, the Department  
23 of Personnel Administration or the Trustees of the California State  
24 University shall obtain approval from the board for that inclusion.

25 (6) (A) Subparagraph (B) of paragraph (3) prescribes that  
26 compensation earnable includes compensation for performing  
27 normally required duties, such as holiday pay, bonuses (for duties  
28 performed on regular work shift), educational incentive pay,  
29 maintenance and noncash payments, out-of-class pay,  
30 marksmanship pay, hazard pay, motorcycle pay, paramedic pay,  
31 emergency medical technician pay, POST certificate pay, and split  
32 shift differential; and includes compensation for uniforms, except  
33 as provided in Section 20632; and subparagraph (I) of paragraph  
34 (4) excludes from compensation earnable compensation for  
35 additional services outside regular duties, such as standby pay,  
36 callback pay, court duty, allowance for automobile, and bonuses  
37 for duties performed after regular work shift.

38 (B) Notwithstanding subparagraph (A), the Department of  
39 Personnel Administration shall determine which payments and  
40 allowances that are paid by the state employer shall be considered



1 compensation for retirement purposes for an employee who either  
2 is excluded from the definition of state employee in Section 3513,  
3 or is a nonelected officer or employee of the executive branch of  
4 government who is not a member of the civil service.

5 (C) Notwithstanding subparagraph (A), the Trustees of the  
6 California State University shall determine which payments and  
7 allowances that are paid by the trustees shall be considered  
8 compensation for retirement purposes for a managerial employee,  
9 as defined in Section 3562, or supervisory employee as defined in  
10 Section 3580.3.

11 ~~SEC. 18.~~

12 *SEC. 17.* Section 20636.1 of the Government Code is amended  
13 to read:

14 20636.1. (a) Notwithstanding Section 20636, and Section  
15 45102 of the Education Code, “compensation earnable” by a school  
16 member means the payrate and special compensation of the  
17 member, as defined by subdivisions (b) and (c), and as limited by  
18 Section 21752.5.

19 (b) (1) “Payrate” means the normal monthly rate of pay or  
20 monthly base pay of the member paid in cash to similarly situated  
21 members of the same group or class of employment for services  
22 rendered on a full-time basis during normal working hours,  
23 pursuant to publicly available pay schedules. For purposes of this  
24 part, for classified members, full-time employment is 40 hours per  
25 week, and payments for services rendered, not to exceed 40 hours  
26 per week, shall be reported as compensation earnable for all months  
27 of the year in which work is performed. “Payrate,” for a member  
28 who is not in a group or class, means the monthly rate of pay or  
29 monthly base pay of the member, paid in cash and pursuant to  
30 publicly available pay schedules, for services rendered on a  
31 full-time basis during normal working hours, subject to the  
32 limitations of paragraph (2) of subdivision (e).

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

38 (B) For the purposes of this section, and Sections 20962 and  
39 20966, “certificated members” shall mean members who retain  
40 membership under this system while employed in positions subject

1 to coverage under the Defined Benefit Program under the State  
2 Teacher's Retirement System.

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

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

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

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

21 (3) Special compensation shall be for services rendered during  
22 normal working hours and, when reported to the board, the  
23 employer shall identify the pay period in which the special  
24 compensation was earned, and shall report special compensation  
25 separately from payrate.

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

32 (5) The monetary value of any service or noncash advantage  
33 furnished by the employer to the member, except as expressly and  
34 specifically provided in this part, shall not be special compensation  
35 unless regulations promulgated by the board specifically determine  
36 that value to be "special compensation."

37 (6) The board shall promulgate regulations that delineate more  
38 specifically and exclusively what constitutes "special  
39 compensation" as used in this section. A written petition to request  
40 an addition to the exclusive list that identifies and defines "special

1 compensation” items contained in board regulations may be made  
2 pursuant to Section 11340.7. A uniform allowance, the monetary  
3 value of employer-provided uniforms, holiday pay, and premium  
4 pay for hours worked within the normally scheduled or regular  
5 working hours that are in excess of the statutory maximum  
6 workweek or work period applicable to the employee under Section  
7 201 et seq. of Title 29 of the United States Code shall be included  
8 as special compensation and appropriately defined in those  
9 regulations.

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

11 (A) Final settlement pay.

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

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

16 (8) A written request may be submitted for the board’s  
17 determination as to whether specific compensation items meet the  
18 definition of special compensation. Determinations shall be made  
19 on these requests within 90 calendar days of receipt of all  
20 information required to be submitted by the board.

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

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

29 (2) Increases in compensation earnable granted to any employee  
30 who is not in a group or class shall be limited during the final  
31 compensation period applicable to the employees, as well as the  
32 two years immediately preceding the final compensation period,  
33 to the average increase in compensation earnable during the same  
34 period reported by the employer for all similarly situated members  
35 in the closest related group or class or who are in the same  
36 membership classification, except as may otherwise be determined  
37 pursuant to regulations adopted by the board that establish  
38 reasonable standards for granting exceptions.

39 (f) As used in this part, “final settlement pay” means any pay  
40 or cash conversions of employee benefits that are in excess of

1 compensation earnable, that are granted or awarded to a member  
2 in connection with or in anticipation of a separation from  
3 employment. The board shall promulgate regulations that delineate  
4 more specifically what constitutes final settlement pay.

5 ~~SEC. 19.~~

6 *SEC. 18.* Section 21220 of the Government Code is amended  
7 to read:

8 21220. (a) A person who has been retired under this system,  
9 for service or for disability, may not be employed in any capacity  
10 thereafter by the state, the university, a school employer, or a  
11 contracting agency, unless any of the following conditions are  
12 satisfied:

13 (1) The employment qualifies for service credit in the University  
14 of California Retirement Plan or the State Teachers' Retirement  
15 Plan.

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

18 (3) For a person retiring on or after January 1, 2013, the  
19 employment, without reinstatement, is authorized by this article  
20 and at least 180 days have elapsed since that person's retirement  
21 date.

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

25 (c) Any retired member employed in violation of this article  
26 shall:

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

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

34 (3) Contribute toward reimbursement of this system for  
35 administrative expenses incurred in responding to this situation,  
36 to the extent the member is determined by the executive officer to  
37 be at fault.

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

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

5 (2) Contribute toward reimbursement of this system for  
6 administrative expenses incurred in responding to this situation,  
7 to the extent the employer is determined by the executive officer  
8 of this system to be at fault.

9 ~~SEC. 20.~~

10 *SEC. 19.* Section 21220.3 is added to the Government Code,  
11 to read:

12 21220.3. (a) A person who has retired under this system, for  
13 service or for disability, may not render services for compensation  
14 in any capacity for the state, the university, a school employer, or  
15 a contracting agency, through a third party or as an independent  
16 contractor, for a period of 180 days following the date of his or  
17 her retirement.

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

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

23 (2) Contribute toward reimbursement for administrative  
24 expenses incurred by the system because of the violation, to the  
25 extent that the retired member is determined by the executive  
26 officer of this system to be at fault. For purposes of this  
27 subdivision, a retired member shall be determined to be at fault if  
28 the retired member knew or should have known that he or she was  
29 performing services in violation of this section.

30 (c) Any public employer that utilizes the services of a retired  
31 member in violation of this section shall contribute toward  
32 reimbursement of this system for administrative expenses incurred  
33 by this system because of the violation, to the extent that the  
34 employer is determined, by the executive officer of this system,  
35 to be at fault. For purposes of this subdivision, a public employer  
36 shall be determined to be at fault if the public employer knew or  
37 should have known that the retired member was performing  
38 services in violation of this section.

39 (d) This section shall apply to all persons who retire on and after  
40 January 1, 2013.

1     ~~SEC. 21.~~

2     *SEC. 20.* Except as otherwise specifically provided, the  
3     provisions of this act shall become operative on July 1, 2012.

O