

Assembly Bill No. 963

CHAPTER 782

An act to amend Sections 22115, 22119.2, 22119.3, 22119.5, 22146, 22164.5, 26113, and 26135.7 of, and to add Sections 22119.6, 22458.5, and 22508.7 to, the Education Code, relating to state teachers' retirement.

[Approved by Governor October 11, 2015. Filed with
Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 963, Bonilla. Teachers' Retirement Law.

Existing law, the Teachers' Retirement Law, establishes the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program. The defined benefit is based on final compensation, credited service, and age at retirement, subject to certain variations. The State Teachers' Retirement System (STRS) is administered by the Teachers' Retirement Board. Existing law establishes the Cash Balance Benefit Program, also administered by the 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.

This bill would revise and recast the definition of creditable service for purposes of the Defined Benefit Program and the Cash Balance Benefit Program, as specified. The bill would, among other things, include as creditable service for the purposes of the Defined Benefit Program any activities that do not meet the definition of creditable service but were performed for an employer, as defined, on or before December 31, 2015, and were reported as creditable service to STRS. The bill would revise the definition of "member" to include any person who has performed those activities. The bill would allow members and specified retired members who have performed those activities to irrevocably elect to have that service subject to coverage under a different public retirement system and excluded from coverage by the Defined Benefit Program, as specified. The bill would also allow a person who had service for those activities removed from STRS and reported to a different public retirement system, as directed by STRS, to make an irrevocable election to have all of that service and subsequent service in the same position be subject to coverage by the Defined Benefit Program and excluded from that other system.

Among other things, the bill would require employers, upon request of the system, to provide the system with information relating to certification qualifications, minimum standards, or provisions of approved school charters to perform creditable service, as specified. The bill would include within

the definition of creditable service specified activities performed by consulting teachers in the California Peer Assistance and Review Program. The bill would make other conforming, nonsubstantive changes.

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

SECTION 1. Section 22115 of the Education Code is amended to read:

22115. (a) "Compensation earnable" means the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program.

(b) The board may determine compensation earnable for persons employed on a part-time basis.

(c) If service credit for a school year is less than 1.000, compensation earnable shall be the quotient obtained when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) If a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least 0.900 of a year, compensation earnable shall be determined as if all service credit for that year had been earned at the highest pay rate. This subdivision shall be applicable only for purposes of determining final compensation. If a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than 0.900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) If creditable service is not performed on a full-time basis because a member is performing those activities pursuant to subdivision (d) of Section 22119.5, compensation earnable for those activities shall be determined as if the creditable compensation had been earned at the lowest pay rate for other creditable service activities performed by the member for the same employer during the same school year.

(f) (1) Except as provided in subdivision (g), for purposes of determining compensation earnable for a member employed by a community college prior to July 1, 1996, full time shall be defined pursuant to Section 22138.5 and pursuant to Section 20521 of Title 5 of the California Code of Regulations, as those provisions read on June 30, 1996, if application of that definition will increase the compensation earnable or otherwise enhance the benefits of the member.

(2) For purposes of administering this subdivision, the board shall have the authority to do both of the following:

(A) Establish and implement factors and assumptions necessary to calculate and compare the benefits payable under the definition of compensation earnable described in this subdivision. Those factors and assumptions may be based on information reported by the employer, including, but not limited to, all of the following:

- (i) Base hours.
- (ii) Actual earnings.
- (iii) Compensation earnable.

(B) Review member benefit calculations that were performed using the factors and assumptions described in subparagraph (A). If the board determines that an employer failed to identify part-time service performed, the board shall consider that part-time service to be performed in a part-time lecture assignment as defined by the employer. If the board determines by the review of the member benefit calculations that the required information reported by the employer is inaccurate, incomplete, or the factors and assumptions were applied incorrectly, the board may recalculate member benefits using additional factors and assumptions that may include, but are not limited to, all of the following:

- (i) Base hours.
- (ii) Actual earnings.
- (iii) Compensation earnable.

(3) This subdivision shall apply to a member employed by a community college prior to July 1, 1996, if the community college subsequently acts to reduce the minimum standard for full time as described in subdivision (c) of Section 22138.5 for the class of employees, and that community college provides written notice to the system of the act of the community college to reduce that minimum standard.

(4) This subdivision shall not apply to a member employed by a community college that has not reduced the minimum standard as described in subdivision (c) of Section 22138.5.

(g) Subdivision (f) shall not apply to a member subject to the California Public Employees' Pension Reform Act of 2013.

SEC. 2. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means remuneration that is paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position. Creditable compensation shall include:

(1) Salary or wages paid in accordance with a publicly available written contractual agreement, including, but not limited to, a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary or wages, provided it is paid to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary or wages, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation leave, or an employer-approved compensated leave of absence, except as provided in paragraph (4) of subdivision (c).

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

(5) Amounts that are deducted from a member's remuneration, including, but not limited to, deductions for participation in a deferred compensation plan; deductions to purchase an annuity contract, tax-deferred retirement

plan, or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code.

(6) Any other payments the board determines to be “creditable compensation.”

(b) Any creditable compensation determined by the system to have been paid to enhance a member’s benefits shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the system that creditable compensation was paid to enhance a member’s benefits may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the system that creditable compensation was paid to enhance the member’s benefits may be reversed.

(c) “Creditable compensation” does not mean and shall not include:

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

(2) Remuneration that is paid for service that is not creditable service pursuant to Section 22119.5 or 22119.6.

(3) Remuneration that is paid in addition to salary or wages if it is not paid to all persons in the same class of employees in the same dollar amount, the same percentage of salary or wages, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

(4) Remuneration that is paid in exchange for the relinquishment of unused accumulated leave.

(5) Payments, including, but not limited to, those for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and for contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code when the cost is covered by an employer and is not deducted from the member’s salary.

(6) Fringe benefits provided by an employer.

(7) Expenses paid or reimbursed by an employer.

(8) Severance pay, including lump-sum and installment payments, or money paid in excess of salary or wages to a member as compensatory damages or as a compromise settlement.

(9) Any other payments the board determines not to be “creditable compensation.”

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

(e) For purposes of this section, remuneration shall be considered paid if distributed to any person in the same class of employees who meets the qualifications or requirements specified in a publicly available written contractual agreement, including, but not limited to, a collective bargaining

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

(f) This definition of “creditable compensation” reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member’s career, consistent treatment of compensation among an entire class of employees, consistent treatment of compensation for the position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid to enhance a member’s benefits. The system shall determine the appropriate crediting of contributions between the Defined Benefit Program and the Defined Benefit Supplement Program according to these principles, to the extent not otherwise specified pursuant to this part.

(g) The section shall become operative on July 1, 2002.

(h) This section shall not apply to a member subject to the California Public Employees’ Pension Reform Act of 2013.

SEC. 3. Section 22119.3 of the Education Code is amended to read:

22119.3. (a) “Creditable compensation” for members who are subject to the California Public Employees’ Pension Reform Act of 2013 means remuneration that is paid each pay period in which creditable service is performed for that position. Creditable compensation shall be paid in cash by an employer to all persons in the same class of employees in accordance with a publicly available written contractual agreement, including, but not limited to, a salary schedule or employment agreement. Creditable compensation shall include:

(1) Remuneration that is paid for the use of sick leave, vacation leave, or an employer-approved compensated leave of absence, except as provided in paragraph (4) of subdivision (b).

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

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

(4) Notwithstanding paragraphs (6) and (8) of subdivision (c) of Section 7522.34 of the Government Code, remuneration that is paid for creditable service that exceeds one year in a school year.

(b) “Creditable compensation” does not mean and shall not include:

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

(2) Remuneration that is paid for service that is not creditable service pursuant to Section 22119.5 or 22119.6.

(3) Remuneration that is not paid each pay period in which creditable service is performed for that position.

(4) Remuneration that is paid in exchange for the relinquishment of unused accumulated leave.

(5) Payments, including, but not limited to, those for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and for contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code when the cost is covered by an employer.

(6) Fringe benefits provided by an employer.

(7) Expenses paid or reimbursed by an employer.

(8) Severance pay, including lump sum and installment payments, or money paid in excess of salary or wages to a member as compensatory damages or as a compromise settlement.

(9) Creditable compensation determined by the system to have been paid to enhance a member's benefit.

(10) Compensation paid to the member in lieu of benefits provided to the member by the employer or paid directly by the employer to a third party other than the system for the benefit of the member.

(11) Any one-time or ad hoc payments made to a member.

(12) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniform.

(13) Any bonus paid in addition to compensation described in subdivision (a).

(14) Any other payments the board determines not to be "creditable compensation."

(c) (1) Except for purposes of calculating credited service in the Defined Benefit Program and for reporting compensation earnable on or after January 1, 2013, creditable compensation in any fiscal year shall not exceed:

(A) One hundred twenty percent of the "contribution and benefit base," as determined under Section 430(b) of the Social Security Act (42 U.S.C. Sec. 430(b)), on January 1, 2013, for a member whose service is not included in the federal system.

(B) One hundred percent of the "contribution and benefit base," as determined under Section 430(b) of the Social Security Act (42 U.S.C. Sec. 430(b)), on January 1, 2013, for a member whose service is included in the federal system pursuant to any changes in state or federal law enacted on or after January 1, 2013.

(2) The system shall adjust the limit based on the annual changes to the Consumer Price Index for All Urban Consumers: U.S. City Average, calculated by dividing the Consumer Price Index for All Urban Consumers: U.S. City Average for the month of February in the fiscal year preceding the adjustment by the Consumer Price Index for All Urban Consumers: U.S. City Average for the month of February of the previous year rounded to the nearest thousandth. Notwithstanding paragraph (1) of subdivision (d) of Section 7522.10 of the Government Code, the adjustment shall be effective annually on July 1, beginning July 1, 2014.

(3) The Legislature reserves the right to modify the requirements of this subdivision with regard to all members subject to this subdivision, except that the Legislature may not modify these provisions in a manner that would result in a decrease in benefits accrued prior to the effective date of the modification.

(4) This subdivision shall apply to compensation paid during the 2013–14 fiscal year and each fiscal year thereafter.

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

(e) For purposes of this section, remuneration shall be considered paid if distributed to any person in the same class of employees who meets the qualifications or requirements specified in a publicly available written contractual agreement, including, but not limited to, a collective bargaining agreement or an employment agreement, as a condition of receiving the remuneration.

(f) This definition of “creditable compensation” reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member’s career, consistent treatment of compensation among an entire class of employees, consistent treatment of compensation for the position, preventing adverse selection, and excluding from creditable compensation remuneration that is paid to enhance a member’s benefits. The system shall determine the appropriate crediting of contributions according to these principles, to the extent not otherwise specified pursuant to this part. A presumption by the system that creditable compensation was paid to enhance the member’s benefits may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the system that creditable compensation was paid to enhance the member’s benefits may be reversed.

SEC. 4. Section 22119.5 of the Education Code is amended to read:

22119.5. (a) “Creditable service” means any of the activities described in subdivision (b) performed for any of the following employers:

(1) A prekindergarten through grade 12 employer, including the state, in a position requiring certification qualifications as designated in regulations adopted by the Commission on Teacher Credentialing pursuant to Section 44001.

(2) A community college employer by a faculty member, as defined in Section 87003, in an academic position, as defined in subdivision (b) of Section 87001, or by an educational administrator, as defined in subdivision (b) of Section 87002, subject to the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges pursuant to Section 87356, or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training.

(3) A charter school employer under the provisions of an approved charter for the operation of a charter school for which the charter school is eligible to receive state apportionment.

(b) The types of activities are any of the following:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of employees who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to California public school curriculum.

(5) The examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program.

(6) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other California public school health professionals.

(7) Services as a California public school librarian.

(8) Activities connected with the enforcement of the laws relating to compulsory education, coordination of child welfare activities involving the school and the home, and the school adjustment of pupils.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this subdivision.

(c) "Creditable service" also means any of the activities described in subdivision (b) when they are performed for an employer by:

(1) Superintendents of California public schools, and presidents and chancellors of community college employers.

(2) Consulting teachers employed by an employer to participate in the California Peer Assistance and Review Program for Teachers pursuant to Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25 of Division 3 of Title 2.

(d) "Creditable service" also means the performance of California public school activities related to, and an outgrowth of, the instructional and guidance program of the California public school when performed for the same employer for which the member is performing any of the activities described in subdivision (b) or (c).

(e) The board shall have final authority for determining creditable service to cover any activities not already specified.

SEC. 5. Section 22119.6 is added to the Education Code, to read:

22119.6. (a) Creditable service shall also include any activities that do not meet the definition of creditable service under Section 22119.5, but

were performed for any employer, as defined in Section 22131, on or before December 31, 2015, and were reported as creditable service to the system.

(b) The type of activities described in subdivision (a) performed by a member who becomes employed by the same or a different employer in a new position on or after January 1, 2016, shall be subject to Section 22119.5.

SEC. 6. Section 22146 of the Education Code is amended to read:

22146. “Member” means any person, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 or 22119.6 and has earned creditable compensation for that service and has not received a refund for that service and, as a result, is subject to the Defined Benefit Program. A member’s rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any applicable exceptions under other provisions of this part.

(a) An active member is a member who is not retired or disabled and who earns creditable compensation during the school year.

(b) An inactive member is a member who is not retired or disabled and who has not earned creditable compensation during the current or preceding school year.

(c) A disabled member is a member to whom a disability allowance is payable under Chapter 25 (commencing with Section 24001).

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable.

SEC. 7. Section 22164.5 of the Education Code is amended to read:

22164.5. (a) “Retired member activities” means one or more activities identified in subdivision (b), (c), or (d) of Section 22119.5 or subdivision (b), (c), or (d) of Section 26113 within the California public school system and performed by a member retired for service under this part as one of the following:

(1) An employee of an employer.

(2) An employee of a third party, except as specified in subdivision (b).

(3) An independent contractor.

(b) The activities of an employee of a third party shall not be included in the definition of “retired member activities” if all of the following conditions apply:

(1) The employee performs an assignment of 24 months or less.

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

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

SEC. 8. Section 22458.5 is added to the Education Code, to read:

22458.5. Upon request from the system, each employer shall provide the system with information regarding the certification qualifications,

minimum standards, or provisions of an approved charter for the operation of a charter school required to perform creditable service pursuant to subdivision (a) of Section 22119.5, in a position.

SEC. 9. Section 22508.7 is added to the Education Code, to read:

22508.7. (a) This section shall apply to service deemed creditable service pursuant to subdivision (a) of Section 22119.6 and a person who performs that service.

(b) (1) A member, including a member who retires on or before December 31, 2015, may elect to have all of that service subject to coverage by a different public retirement system and excluded from coverage by the Defined Benefit Program, if the member is not excluded from coverage by that public retirement system.

(2) If an election is made pursuant to this subdivision, all of the following shall apply:

(A) All service that was subject to coverage by the Defined Benefit Program shall be subject to coverage by the other public retirement system, if the member is not excluded from coverage by that public retirement system.

(B) Any member contributions and credited interest, as determined by the system, and employer contributions, less any amounts previously paid to the person, shall be returned to the employer for that service, with the system recovering from the person any amounts that were paid to the person and not recovered from withheld member contributions, credited interest, or employer contributions.

(C) Any amounts not recovered pursuant to subparagraph (B) shall be paid in full by the member before his or her service can be subject to coverage by the other public retirement system.

(3) If an election is made pursuant to this subdivision, the following shall apply:

(A) A member not subject to the California Public Employees' Pension Reform Act of 2013 in the Defined Benefit Program shall not be subject to that act in the other public retirement system.

(B) A member subject to the California Public Employees' Pension Reform Act of 2013 in the Defined Benefit Program shall be subject to that act in the other public retirement system.

(4) If an election is not made pursuant to this subdivision, all service performed shall continue to be subject to coverage by the Defined Benefit Program until the member becomes employed pursuant to subdivision (b) of Section 22119.6.

(c) (1) A person who had service removed from the system and reported to a different public retirement system, as directed by the system, including a person who is receiving a benefit on or before December 31, 2015, may elect to have all of that service and subsequent service in the same position subject to coverage by the Defined Benefit Program and excluded from coverage by the other public retirement system.

(2) If an election is made pursuant to this subdivision, all of the following shall apply:

(A) All of that service and subsequent service in the same position that was subject to coverage by the other public retirement system shall be subject to coverage by the Defined Benefit Program and reported to the system pursuant to Chapter 17 (commencing with Section 23000).

(B) Any employee and employer contributions for that service and subsequent service in the same position shall be remitted to the system pursuant to Chapter 17 (commencing with Section 23000).

(3) If an election is made pursuant to this subdivision, the following shall apply:

(A) A person not subject to the California Public Employees' Pension Reform Act of 2013 in the other public retirement system shall not be subject to that act in the Defined Benefit Program.

(B) A person subject to the California Public Employees' Pension Reform Act of 2013 in the other public retirement system shall be subject to that act in the Defined Benefit Program.

(4) If an election is not made pursuant to this subdivision, all service performed will continue to be subject to coverage by the other public retirement system.

(d) The election shall be made in writing and filed with the office of the system on a form prescribed by the system on or before June 30, 2016, and a copy of the election shall be filed with the other public retirement system.

(e) Only a person who has performed service creditable under subdivision (a) of Section 22119.6 can make an election under this section.

(f) An election made pursuant to this section shall be irrevocable.

(g) The board shall be under no obligation to identify, locate, or notify a person who has performed service creditable pursuant to subdivision (a) of Section 22119.6 and is eligible to make an election pursuant to this section.

SEC. 10. Section 26113 of the Education Code is amended to read:

26113. (a) "Creditable service" means any of the activities described in subdivision (b) performed for any of the following employers:

(1) A prekindergarten through grade 12 employer, including the state, in a position requiring certification qualifications as designated in regulations adopted by the Commission on Teacher Credentialing pursuant to Section 44001.

(2) A community college employer by a faculty member, as defined in Section 87003, in an academic position, as defined in subdivision (b) of Section 87001, or by an educational administrator, as defined in subdivision (b) of Section 87002, subject to the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges pursuant to Section 87356, or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training.

(3) A charter school employer under the provisions of an approved charter for the operation of a charter school for which the charter school is eligible to receive state apportionment.

(b) The types of activities are any of the following:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupational programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of employees who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to California public school curriculum.

(5) The examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program.

(6) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other California public school health professionals.

(7) Services as a California public school librarian.

(8) Activities connected with the enforcement of the laws relating to compulsory education, coordination of child welfare activities involving the school and the home, and the school adjustment of pupils.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this subdivision.

(10) Trustee service as described in Section 26403.

(c) “Creditable service” also means any of the activities described in subdivision (b) when they are performed for an employer by:

(1) Superintendents of California public schools, and presidents and chancellors of community college employers.

(2) Consulting teachers employed by an employer to participate in the California Peer Assistance and Review Program for Teachers pursuant to Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25 of Division 3 of Title 2.

(d) “Creditable service” also means the performance of California public school activities related to, and an outgrowth of, the instructional and guidance program of the California public school when performed for the same employer for which the member is performing any of the activities described in subdivision (b) or (c).

(e) The board shall have final authority for determining creditable service to cover activities not already specified.

SEC. 11. Section 26135.7 of the Education Code is amended to read:

26135.7. (a) “Retired participant activities” means one or more activities identified in subdivision (b), (c), or (d) of Section 22119.5 or (b), (c), or (d) of Section 26113 within the California public school system and performed by a participant retired for service under this part as one of the following:

(1) An employee of an employer.

(2) An employee of a third party, except as specified in subdivision (b).

- (3) An independent contractor.
- (b) The activities of an employee of a third party shall not be included in the definition of “retired participant activities” if all of the following conditions apply:
 - (1) The employee performs an assignment of 24 months or less.
 - (2) The third-party employer does not participate in a California public pension system.
 - (3) The activities performed by the individual are not normally performed by employees of an employer, as defined in Section 22131.