

AMENDED IN SENATE JUNE 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2028**

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**Introduced by Assembly Member Cooper**

February 16, 2016

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An act to add Section 20969.3 to the Government Code, relating to public employees' ~~retirement~~ *retirement, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as amended, Cooper. ~~School and safety employees: wrongful termination: service credit. Public employees' retirement: involuntary termination: reinstatement.~~

Existing law, the Public Employees' Retirement Law (PERL), creates the Public Employees' Retirement System (PERS) for the purpose of providing pension benefits to state employees and employees of contracting agencies and prescribes the rights and duties of members of the system and their beneficiaries. PERS provides defined benefits to members based on final compensation, credited service, and age at retirement, subject to certain variations. *PERL requires a person who has retired under PERS following an involuntary termination of his or her employment to be reinstated to membership in that system, effective as of the date from which salary is awarded, if the person is reinstated to employment pursuant to an administrative or judicial proceeding and certain other conditions are met, as specified. PERL also requires the assets of the system, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Public Employees' Retirement Fund, a continuously appropriated fund.*

~~Under PERL, time during which a member is absent from service without compensation is generally not considered in computing service for the purposes of those benefits. However, as an exception to this general rule, PERL provides that, for all retirement purposes of local safety members or employees of specified local educational entities, if the employee is subject to a mandatory furlough, the employee's credit for service and compensation earnable includes the amount of service that would have been credited and the compensation earnable that would have been reported had the employee not been subject to the mandatory furlough, as specified.~~

~~This bill, for an employee specified above who is wrongfully terminated, as defined, would require the employee's credit for service and compensation earnable to include the amount of service that would have been credited and the compensation earnable that would have been reported had the employee not been wrongfully terminated. *bill would additionally require the reinstatement in PERS of a member, without regard to retirement status, who is involuntarily terminated on or after January 1, 2017, and subsequently reinstated to that employment pursuant to an administrative, arbitral, or judicial proceeding. The bill would require contributions to be made to the system for any period for which salary is awarded in the proceeding and would provide the member with service credit for that period and reinstatement of benefits effective as of the date from which salary is awarded, as specified.* The bill would require ~~the~~ an employer of the ~~wrongfully~~ involuntarily terminated employee to notify the board of the final decision ordering reinstatement of the employee and would further require the employer to provide the board with any additional information as the board may require, *the member's reinstatement*, as specified. *By increasing contributions to be deposited into the Public Employees' Retirement Fund, a continuously appropriated fund, the bill would make an appropriation.* By requiring local government employers to provide this notification and information, this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1     SECTION 1. Section 20969.3 is added to the Government Code,  
2     to read:  
3     20969.3. (a) A member who was involuntarily terminated and  
4     who is subsequently reinstated to that employment, pursuant to  
5     an administrative, arbitral, or judicial proceeding, shall be  
6     reinstated with all retirement benefits that the member otherwise  
7     would have accrued. Administrative proceedings also include  
8     proceedings before the governing board of a school district, a  
9     charter school, a county office of education, or a community  
10    college district.  
11    (b) Reinstatement of benefits shall be effective as of the date  
12    from which salary is awarded in the administrative, arbitral, or  
13    judicial proceedings. Contributions shall be made for any period  
14    for which salary is awarded in the administrative, arbitral, or  
15    judicial proceedings in the amount that the member would have  
16    contributed had his or her employment not been terminated, and  
17    he or she shall receive credit as state service, as defined in Section  
18    20069, for the period for which salary is awarded and  
19    contributions are received.  
20    (c) This section shall apply to members who were subject to an  
21    involuntary termination effective on or after January 1, 2017.  
22    (d) An employer of the member described in subdivision (a)  
23    shall notify the board of the final decision ordering the member's  
24    reinstatement to employment within five days of the date the  
25    decision becomes final. The notification shall include the date of  
26    involuntary termination and the date on which the member was  
27    reinstated to employment after the decision.  
28    SEC. 2. If the Commission on State Mandates determines that  
29    this act contains costs mandated by the state, reimbursement to  
30    local agencies and school districts for those costs shall be made  
31    pursuant to Part 7 (commencing with Section 17500) of Division  
32    4 of Title 2 of the Government Code.  
33    ~~SECTION 1. Section 20969.3 is added to the Government~~  
34    ~~Code, to read:~~

1     ~~20969.3.— (a) For all retirement purposes, including benefit~~  
 2 ~~eligibility and calculations of retirement allowances under this part~~  
 3 ~~for a person employed by a county office of education, a school~~  
 4 ~~district, a school district that is a contracting agency, a community~~  
 5 ~~college district, or a local safety member, as defined in Section~~  
 6 ~~20420, who was wrongfully terminated, the employee’s credit for~~  
 7 ~~service and compensation earnable shall include the amount of~~  
 8 ~~service that would have been credited and the compensation~~  
 9 ~~earnable that would have been reported had the employee not been~~  
 10 ~~wrongfully terminated.~~

11     ~~(b) An employer of an employee described in subdivision (a)~~  
 12 ~~shall notify the board of the final decision ordering reinstatement~~  
 13 ~~within five days of the date the decision becomes final. The~~  
 14 ~~notification shall include the date of wrongful termination and the~~  
 15 ~~date on which the employee was reinstated after the decision. The~~  
 16 ~~employer shall provide any additional information as the board~~  
 17 ~~may require to implement this section.~~

18     ~~(c) For purposes of this section, the following terms have the~~  
 19 ~~following meanings:~~

20     ~~(1) “Wrongful termination” means any termination action by~~  
 21 ~~an employer that has been reversed or modified by a final decision~~  
 22 ~~ordering reinstatement.~~

23     ~~(2) “Final decision ordering reinstatement” means a final~~  
 24 ~~decision of the employer, a court, an administrative agency, a~~  
 25 ~~personnel commission, or an arbitrator, that orders the~~  
 26 ~~reinstatement of the employee to employment with the employer.~~

27     ~~SEC. 2. If the Commission on State Mandates determines that~~  
 28 ~~this act contains costs mandated by the state, reimbursement to~~  
 29 ~~local agencies and school districts for those costs shall be made~~  
 30 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
 31 ~~4 of Title 2 of the Government Code.~~