

AMENDED IN ASSEMBLY MAY 2, 1996  
AMENDED IN ASSEMBLY APRIL 16, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2400**

**Introduced by Assembly Member Miller**

February 16, 1996

---

---

An act to amend Section 22600 of the Education Code, to amend Sections 20303, 20305, and 20610 of, to add ~~Sections 20616.5 and 20619~~ *Section 20616.5* to, and to repeal Section 20616 of, the Government Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2400, as amended, Miller. School employees: local retirement systems.

(1) Existing law provides that all teachers in the public schools are members of the State Teachers' Retirement System and that other school employees are members of the Public Employee's Retirement System. Existing law authorizes local agencies, including school districts, to establish pension trusts for the benefit of their officers and employees.

This bill would provide that members of a local system established under the pension trust provisions are excluded from the State Teachers' Retirement System and the Public Employees' Retirement System.

(2) The Public Employees' Retirement Law provides that county superintendents of schools do not have the authority

to elect various optional benefits or to terminate the contract for inclusion in the retirement system.

This bill would delete that exclusion thereby permitting election of optional benefits and the termination of that contract. ~~The bill would establish a procedure for individual school district supplemental contracts.~~

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  
2 that cities, counties, and other public agencies are  
3 authorized to contract with the Public Employees’  
4 Retirement System to provide benefits for officers and  
5 employees, subject to statutory exclusions and conditions  
6 and the terms of their contracts.

7 (b) It is the intent of the Legislature in enacting this  
8 act that the Board of Administration of the Public  
9 Employees’ Retirement System interpret and enforce its  
10 decisions relating to the contractual arrangements of  
11 those public agencies consistent with the intent of the law  
12 relating to contract exclusions and employee eligibility  
13 when covered by a local retirement system.

14 (c) It is further the intent of the Legislature to provide  
15 that school districts, county offices of education, and  
16 community college districts shall have the right to  
17 maintain and implement local agency plans to participate  
18 in the Public Employees’ Retirement System through  
19 county superintendents of schools, or to contract directly  
20 with the system, as determined by the governing body of  
21 the local agency.

22 SEC. 2. Section 22600 of the Education Code is  
23 amended to read:

24 22600. (a) Persons employed in a position requiring  
25 membership in this system, including, but not limited to,  
26 employees of school districts, community college  
27 districts, and county offices of education, but who are  
28 members of a local system established pursuant to Article  
29 1.5 (commencing with Section 53215) of Chapter 2 of



1 Division 2 of Title 5 of the Government Code or a county  
2 retirement system are excluded from membership in the  
3 system. A person so excluded shall retain the right to  
4 receive a retirement allowance for nonlocal service that  
5 is creditable in the system unless he or she withdraws his  
6 or her contributions for that allowance.

7 (b) Notwithstanding any other provision of law, this  
8 chapter shall not be construed to authorize the board to  
9 nullify, restrict, or negate the right of any person to  
10 participate in a local system.

11 SEC. 3. Section 20303 of the Government Code is  
12 amended to read:

13 20303. (a) Persons who are members of any other  
14 retirement or pension system supported wholly or in part  
15 by funds of the United States government, any state  
16 government or political subdivision thereof and who are  
17 receiving credit in the other system for service are, as to  
18 that service, excluded from this system.

19 (b) If a public agency establishes or maintains a  
20 retirement system pursuant to Article 1.5 (commencing  
21 with Section 53215) of Chapter 2 of Title 5, the employees  
22 who are members of that system shall be excluded from  
23 this system and from health care benefit coverage  
24 pursuant to Part 5 (commencing with Section 22751).  
25 This section shall not affect the right of a public agency  
26 to include its employees in that health care benefit  
27 coverage or other benefit plans as a result of collective  
28 bargaining agreements. That exclusion shall not be  
29 affected by the terms of any contract between this system  
30 and the agency. For purposes of this section an employee  
31 shall be deemed to be receiving credit for any period of  
32 employment for which an employer is making  
33 contributions to a Section 401(a) of Title 26 of the United  
34 States Code tax qualified plan unless that exception is  
35 provided for in this section.

36 (c) If an employee participating in this system  
37 receives less than fifty percent of a year of service credit  
38 in a fiscal year, and the employee is eligible for a  
39 retirement system established or maintained by the  
40 public agency pursuant to Article 1.5 (commencing with



1 Section 53215) of Chapter 2 of Title 5 the employee shall  
2 participate in that system. That participation shall begin  
3 in the first year following the fiscal year in which the  
4 employee first receives less than 50 percent of a year of  
5 service credit in this system and shall continue thereafter.

6 (d) For the purpose of this section, persons who  
7 merely are receiving pensions or retirement allowances,  
8 or other payments, from any source whatever, on account  
9 of service rendered to an employer other than the state  
10 and while they were not in state service, are not, because  
11 of that receipt, members of any other retirement or  
12 pension system.

13 (e) For the purposes of this section only, persons who  
14 merely participate in a deferred compensation plan  
15 established pursuant to Chapter 4 (commencing with  
16 Section 19993) of Part 2.6 of Division 5 of Title 2 or  
17 established pursuant to Article 1.1 (commencing with  
18 Section 53212) of Chapter 2 of Part 1 of Division 2 of Title  
19 5, are not, because of that participation, members of any  
20 other retirement or pension system.

21 (f) For the purposes of this section only, persons who  
22 participate in a supplementary money purchase pension  
23 plan and trust that meets the requirements of Section  
24 401(a) of Title 26 of the United States Code are not,  
25 because of that participation, members of any other  
26 retirement or pension system, so long as the contracting  
27 agency has received a ruling from the Internal Revenue  
28 Service stating that the money purchase pension plan and  
29 trust qualifies under Section 401(a) and furnishes proof  
30 thereof upon request by the board.

31 SEC. 4. Section 20305 of the Government Code is  
32 amended to read:

33 20305. (a) An employee serving on a less than  
34 full-time basis is excluded from this system unless:

35 (1) He or she is a member at the time he or she renders  
36 less than full-time service and is not otherwise excluded  
37 pursuant to this article or by a provision of a contract.

38 (2) His or her position requires regular, part-time  
39 service for one year or longer for at least an average of 20  
40 hours a week, or requires service that is equivalent to at



1 least an average of 20 hours a week, unless he or she elects  
2 membership pursuant to Section 20325.

3 (3) His or her employment is, in the opinion of the  
4 board, on a seasonal, limited-term, on-call, emergency,  
5 intermittent, substitute, or other irregular basis, and is  
6 compensated and meets one of the following conditions:

7 (A) The appointment or employment contract fixes a  
8 term of full-time, continuous employment in excess of six  
9 months or, if a term is not fixed, full-time employment  
10 continues for longer than six months, in which case  
11 membership shall be effective not later than the first day  
12 of the first pay period of the seventh month of  
13 employment.

14 (B) The person works more than 125 days, if employed  
15 on a per diem basis or, if employed on other than a per  
16 diem basis, 1,000 hours within the fiscal year, in which  
17 case, membership shall be effective not later than the first  
18 day of the first pay period of the month following the  
19 month in which 125 days or 1,000 hours of service were  
20 completed. For purposes of this subdivision, “day” means  
21 each eight-hour period of employment worked by an  
22 employee paid on a per diem basis so that membership is  
23 effective after he or she has completed 1,000 hours of  
24 compensated service in a fiscal year.

25 (C) The person is employed by the Department of  
26 Forestry and Fire Protection in one of the positions that  
27 provide state safety membership pursuant to Section  
28 20400 or state peace officer/firefighter membership  
29 pursuant to Section 20392.

30 (4) He or she is a temporary faculty member of the  
31 California State University who works two consecutive  
32 semesters or three consecutive quarters at half-time or  
33 more and is not otherwise excluded pursuant to this  
34 article, in which case, membership shall be effective with  
35 the start of the next consecutive semester or quarter if the  
36 appointment requires service of half-time or more.

37 (5) He or she is a member of the Board of Prison  
38 Terms, the State Personnel Board, or the State Air  
39 Resources Board and elects to become a member  
40 pursuant to Section 20320.



1 (6) He or she is participating in partial service  
2 retirement, pursuant to Article 1.7 (commencing with  
3 Section 19996.30) of Chapter 7 of Part 2.6.

4 (7) He or she is included by specific provision of the  
5 board relating to the exclusion of less than full-time  
6 employees.

7 (b) This section shall supersede any contract provision  
8 excluding persons in any temporary or seasonal  
9 employment basis and shall apply only to persons  
10 entering employment on and after January 1, 1975.  
11 Except as provided in Section 20502, no contract or  
12 contract amendment entered into after January 1, 1981,  
13 shall contain any provision excluding persons on an  
14 irregular employment basis.

15 (c) This section shall not be construed to include  
16 employees excluded from the system by the terms of a  
17 public agency contract with this system, nor shall this  
18 section supersede exclusions contained in Section 20303  
19 or 20894.

20 SEC. 5. Section 20610 of the Government Code is  
21 amended to read:

22 20610. Every county superintendent of schools shall  
23 enter into a contract with the board for the inclusion in  
24 this system of (a) all of the employees of the office of  
25 county superintendent whose compensation is paid from  
26 the county school service fund other than employees  
27 electing pursuant to Section 1313 of the Education Code  
28 to continue in membership in a county system; and (b)  
29 all of the employees of school districts and community  
30 college districts existing on July 1, 1949, or thereafter  
31 formed, within his or her jurisdiction, other than school  
32 districts that are contracting agencies or that maintain a  
33 district, joint district, or other local retirement system  
34 pursuant to Article 1.5 (commencing with Section 53215)  
35 of Chapter 2 of Division 2 of Title 5, in respect to service  
36 rendered in a status in which they are not eligible for  
37 membership in the State Teachers' Retirement System.  
38 The effective date of each contract shall be not later than  
39 July 1, 1949. For the purposes of this part those school  
40 district employees shall be considered to be employees of



1 the county superintendent of schools having jurisdiction  
2 over the school district by which they are employed and  
3 service to the district shall be considered as service to the  
4 county superintendent of schools.

5 SEC. 6. Section 20616 of the Government Code is  
6 repealed.

7 SEC. 7. Section 20616.5 is added to the Government  
8 Code, to read:

9 20616.5. Notwithstanding any other provision of law,  
10 school and community college districts may establish and  
11 maintain a district, joint district, or other local retirement  
12 system pursuant to Article 1.5 (commencing with Section  
13 53215) of Chapter 2 of Division 2 of Title 5, may enter into  
14 a contract with the board, or may designate the county  
15 superintendent of schools to enter into a contract on their  
16 behalf pursuant to Section 20610.

17 ~~SEC. 8. Section 20619 is added to the Government~~  
18 ~~Code, to read:~~

19 ~~20619. (a) Notwithstanding any other provision of~~  
20 ~~this part, any school district may individually enter into~~  
21 ~~a supplemental contract directly with the board to~~  
22 ~~provide optional school benefits pursuant to this part to~~  
23 ~~all of its employees who are members of the system.~~  
24 ~~Where an exclusive representative exists, the optional~~  
25 ~~school benefits shall be subject to collective bargaining.~~

26 ~~(b) The optional school benefits shall be available only~~  
27 ~~during the term of the supplemental contract or contract~~  
28 ~~amendment with the board, and only for those members~~  
29 ~~who retire or die during that term. No right to a benefit~~  
30 ~~shall accrue to any person who does not retire or die~~  
31 ~~during the term of the supplemental contract. The term~~  
32 ~~shall be specified in the supplemental contract and may~~  
33 ~~not begin earlier than the effective date of the~~  
34 ~~supplemental contract with the board. The term may not~~  
35 ~~be less than 90 days nor more than three years. A school~~  
36 ~~district may provide optional benefits for additional~~  
37 ~~specified terms by further amendment to its~~  
38 ~~supplemental contract with the board.~~

39 ~~(c) The school district, within 30 days of receiving an~~  
40 ~~invoice from the system, shall reimburse the system the~~



1 amount determined by the board to be equal to the  
2 actuarial equivalent of the difference between the  
3 allowance the member or beneficiary would have  
4 received without the benefits provided pursuant to this  
5 section, and a set fee, as determined by the board, for the  
6 costs of administering this section. The payment shall  
7 include the cost of all increases in benefits and allowances  
8 provided by this section. Interest shall be charged at the  
9 regular interest rate for any payment not received within  
10 30 days of the receipt of the invoice.

11 (d) This section shall not be applicable to any school  
12 district until the governing body, by majority vote, elects  
13 to be subject to its provisions and notifies the board in  
14 writing of the operative date and the termination date of  
15 the provisions and submits copies of all certificates of  
16 eligibility and any other information requested by the  
17 system.

18 (e) Employers electing to be subject to this chapter  
19 shall reimburse the system for all of the increased  
20 program and administrative costs that result from the  
21 election to be subject to this chapter in the manner  
22 determined by the board.

