

AMENDED IN SENATE AUGUST 5, 1996
AMENDED IN SENATE JUNE 19, 1996
AMENDED IN ASSEMBLY MARCH 28, 1996

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 3032

Introduced by Assembly Member Burton

February 23, 1996

An act to amend Sections 22008, 22112.5, 22134, 22139, 22451.5, 22451.7, 23805, 23806, 23809, 23855, 23856, 24002, 24006, 24007, 24009, 24016, 24017, 24106, 24108, 24211, 24212, 24213, 24414, and 26139 of, to add Sections 22119.2—~~and 22123.5, 22123.5,~~ and 26112.5 to, to repeal Sections 22112, 22114, 23807, 23808, 23857, and 24008 of, and to repeal and add Sections 22111, 22123, and 24600 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 3032, as amended, Burton. School employees: retirement.

The State Teachers' Retirement Law provides disability and family benefits for dependent unmarried children who are under 18 years of age and dependent unmarried children who are under 22 years of age and full-time students, as defined.

This bill would provide disability and family benefits for all dependent unmarried children up to the attainment of 22

years of age and would define the terms “child’s portion” and “children’s portion” for purposes of benefits.

The State Teachers’ Retirement Law defines the terms “compensation” and “salary” for purposes of determining benefits and contributions and provides that employer and member contribution rates are based upon members’ compensation and salaries.

This bill would repeal that provision and would instead define the terms “creditable compensation” and “final compensation” for purposes of determining benefits and contributions. The bill would provide that any employer or person who knowingly or willfully reports compensation and salary inconsistent with the provisions of the bill would be required to reimburse the system for any overpayments. The bill would make technical changes in other provisions.

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

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

1 SECTION 1. Section 22008 of the Education Code is
2 amended to read:

3 22008. For the purposes of payments into or out of the
4 retirement fund for adjustments of errors or omissions,
5 the period of limitation of actions shall be applied, except
6 as provided in Sections 23302 and 24613, as follows:

7 (a) No action may be commenced by or against the
8 ~~board or the system,~~ *the system, or the plan more than*
9 three years after all obligations to or on behalf of the
10 member, former member, or beneficiary have been
11 discharged.

12 (b) ~~In cases where~~ *If* the system makes an error that
13 results in incorrect payment to a member, ~~beneficiary,~~
14 ~~dependent child, or dependent parent~~ *former member,*
15 *or beneficiary,* the system’s right to commence recovery
16 shall expire three years from the date the incorrect
17 payment was made.

18 (c) If an ~~erroneous~~ *incorrect* payment is made due to
19 lack of information or inaccurate information regarding
20 the eligibility of a ~~member, beneficiary, dependent child,~~



1 ~~or dependent parent to receive benefits under this part~~
2 ~~member, former member, or beneficiary to receive~~
3 ~~benefits under the plan,~~ the period of limitation shall
4 commence with the discovery of the ~~erroneous~~ *incorrect*
5 payment.

6 (d) Notwithstanding any other provision of this
7 section, if an ~~erroneous~~ *incorrect* payment has been
8 made on the basis of fraud or intentional
9 misrepresentation by a member, beneficiary, or other
10 party in relation to or on behalf of a member, or
11 beneficiary, the three-year period of limitation shall not
12 be deemed to commence or to have commenced until the
13 system discovers the ~~erroneous~~ *incorrect* payment.

14 (e) The collection of overpayments under
15 subdivisions (b), (c), and (d) shall be made pursuant to
16 Section 24617.

17 SEC. 2. Section 22111 of the Education Code is
18 repealed.

19 SEC. 3. Section 22111 is added to the Education Code,
20 to read:

21 22111. “Child’s portion” or “children’s portion”
22 means the amount of a disability allowance, disability
23 retirement allowance, family allowance, or survivor
24 benefit allowance payable for a dependent child or
25 dependent children.

26 SEC. 4. Section 22112 of the Education Code is
27 repealed.

28 SEC. 5. Section 22112.5 of the Education Code is
29 amended to read:

30 22112.5. (a) “Class of employees” means a number of
31 employees considered as a group because they are
32 employed to perform similar duties, are employed in the
33 same type of program, or share other similarities related
34 to the nature of the work being performed.

35 (b) A class of employees may be comprised of one
36 person if no other person employed by the employer
37 performs similar duties, is employed in the same type of
38 program, or shares other similarities related to the nature
39 of the work being performed and that same class is in
40 common use among other employers.



1 (c) The board shall ~~reserve the right to determine~~
2 *have the right to override the determination by an*
3 *employer as to whether or not a group or an individual*
4 *constitutes a “class of employees” within the meaning of*
5 *this section.*

6 (d) *The amendments to this section during the*
7 *1995–96 Regular Session of the Legislature shall be*
8 *deemed to have become operative on July 1, 1996.*

9 SEC. 6. Section 22114 of the Education Code is
10 repealed.

11 SEC. 7. Section 22119.2 is added to the Education
12 Code, to read:

13 22119.2. (a) “Creditable compensation” means
14 salary and other remuneration *payable* in cash by an
15 employer to a member for creditable service. Creditable
16 compensation shall include:

17 (1) Money paid in accordance with a salary schedule
18 based on years of training and years of experience as
19 specified in Section 45028 for creditable service
20 performed up to *and including* the full-time equivalent
21 for the position in which the service is performed.

22 (2) For members not paid according to a salary
23 schedule, money paid for creditable service performed
24 up to *and including* the full-time equivalent for the
25 position in which the service is performed.

26 (3) Money paid for the member’s absence from
27 performance of creditable service as approved by the
28 employer, except as provided in paragraph ~~(3)~~ (7) of
29 subdivision (b).

30 (4) Member contributions ~~paid~~ *picked up* by an
31 employer pursuant to Section 22903 or 22904.

32 (5) Amounts deducted by an employer from the
33 member’s salary, including deductions for participation
34 in a deferred compensation plan; deductions for the
35 purchase of annuity contracts, tax-deferred retirement
36 plans, or other insurance programs; and deductions for
37 participation in a plan that meets the requirements of
38 Section 125, 401(k), or 403(b) of Title 26 of the United
39 States Code.



1 ~~(6) Money paid by an employer in addition to salary if~~
2 ~~the additional money is paid in the same dollar amount or~~
3 ~~the same percentage to an entire class of employees.~~

4 *(6) Money paid by an employer in addition to salary*
5 *paid under paragraph (1) or (2) if paid to all employees*
6 *in a class in the same dollar amount, the same percentage*
7 *of salary, or the same percentage of the amount being*
8 *distributed.*

9 (7) Any other payments the board determines to be
10 “creditable compensation.”

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

13 (1) Money paid for service performed in excess of the
14 full-time equivalent for the position.

15 (2) Money paid for overtime or summer school
16 service, or money paid for the aggregate service
17 performed as a member of this plan in excess of one year
18 of service credit for any one school year.

19 (3) Money paid for service that is not creditable
20 service pursuant to Section 22119.5.

21 ~~(4) Money paid by an employer in addition to salary if~~
22 ~~the additional money is not paid in the same dollar~~
23 ~~amount or the same percentage to an entire class of~~
24 ~~employees.~~

25 *(4) Money paid by an employer in addition to salary*
26 *paid under paragraph (1) or (2) if not paid to all*
27 *employees in a class in the same dollar amount, the same*
28 *percentage of salary, or the same percentage of the*
29 *amount being distributed.*

30 (5) Fringe benefits provided by an employer.

31 (6) Job-related expenses paid or reimbursed by an
32 employer.

33 (7) Money paid for unused accumulated leave.

34 ~~(8) All or any part of an amount allocated by an~~
35 ~~employer in addition to salary to which the employer~~
36 ~~attaches a requirement for expenditure by the member.~~

37 ~~(9)~~

38 (8) Compensatory damages or money paid to a
39 member in excess of creditable compensation as a
40 compromise settlement or as severance pay.



1 ~~(10)~~
 2 (9) Annuity contracts, tax-deferred retirement
 3 programs, or other insurance programs, including, but
 4 not limited to, plans that meet the requirements of
 5 Section 125, 401(k), or 403(b) of Title 26 of the United
 6 States Code that are purchased by an employer for the
 7 member.

8 ~~(11)~~
 9 (10) Any payments determined by the board to have
 10 been made by an employer for the ~~sole principal~~ purpose
 11 of enhancing a member's benefits under the plan. An
 12 increase in the salary of a member who is the only
 13 employee in a class pursuant to subdivision (b) of Section
 14 22112.5 that arises out of an employer's restructuring of
 15 compensation during the member's final compensation
 16 period shall be presumed to have been granted for the
 17 ~~sole principal~~ purpose of enhancing benefits under the
 18 plan and shall not be creditable compensation. If the
 19 board determines sufficient evidence is provided to the
 20 system ~~to rebut the presumption that the salary increase~~
 21 ~~was granted for the sole purpose of enhancing the~~
 22 ~~member's benefits to rebut this presumption,~~ the
 23 increase in salary shall be deemed creditable
 24 compensation.

25 ~~(12)~~
 26 (11) Any other payments the board determines not to
 27 be "creditable compensation."

28 (c) Any employer or person who knowingly or
 29 willfully reports compensation in a manner inconsistent
 30 with subdivision (a) or (b) shall reimburse the plan for
 31 any overpayment of benefits that occurs because of that
 32 inconsistent reporting and may be subject to ~~persecution~~
 33 *prosecution* for fraud, theft, or embezzlement in
 34 accordance with the Penal Code. The system may
 35 establish procedures to ensure that compensation
 36 reported by an employer is in compliance with this
 37 section.

38 (d) The definition of "creditable compensation" in
 39 this section is designed in accordance with sound funding
 40 principles that support the integrity of the retirement



1 fund. These principles include, but are not limited to,
2 consistent treatment of compensation throughout the
3 career of the individual member, consistent treatment of
4 compensation for an entire class of employees, the
5 prevention of adverse selection, and the exclusion of
6 adjustments to, or increases in, compensation for the sole
7 principal purpose of enhancing benefits.

8 (e) This section shall be deemed to have become
9 operative on July 1, 1996.

10 SEC. 8. Section 22123 of the Education Code is
11 repealed.

12 SEC. 9. Section 22123 is added to the Education Code,
13 to read:

14 22123. (a) “Dependent child” or “dependent
15 children” under the disability allowance and family
16 allowance programs means a member’s unmarried
17 offspring or stepchild who is not older than 22 years of age
18 and who is financially dependent upon the member on
19 the effective date of the member’s disability allowance or
20 the date of the member’s death.

21 (b) “Offspring” shall include the member’s child who
22 is born within the 10-month period commencing on the
23 earlier of the member’s disability allowance effective
24 date or the date of the member’s death.

25 (c) “Offspring” shall include a child adopted by the
26 member.

27 (d) “Dependent child” shall not include the member’s
28 offspring or stepchild who is adopted by a person other
29 than the member’s spouse.

30 (e) “Dependent child” under the family allowance
31 program shall not include:

32 (1) The member’s offspring or stepchild who was
33 financially dependent on the member on the date of the
34 member’s death if a disability allowance was payable to
35 the member prior to his or her death and the disability
36 allowance did not include an amount payable for that
37 offspring or stepchild.

38 (2) A stepchild or adopted child acquired subsequent
39 to the death of the member.



1 (f) “Financially dependent” for purposes of this
2 section means that at least one-half of the child’s support
3 was being provided by the member on the member’s
4 disability allowance effective date or the date of the
5 member’s death. The system may require that income tax
6 records or other data be submitted to substantiate the
7 child’s financial dependence. In the absence of
8 substantiating documentation, the system may
9 determine that the child was not dependent on the
10 effective date of the member’s disability allowance or the
11 date of the member’s death.

12 (g) “Member” as used in this section shall have the
13 same meaning specified in Section 23800.

14 SEC. 10. Section 22123.5 is added to the Education
15 Code, to read:

16 22123.5. (a) “Dependent child” or “dependent
17 children” under the disability retirement and survivor
18 ~~benefits~~ *benefit allowance* programs means a member’s
19 offspring or stepchild who is not older than 21 years of age
20 and who is financially dependent upon the member on
21 the effective date of the member’s disability retirement
22 or the date of the member’s death.

23 (b) “Offspring” shall include the member’s child who
24 is born within the 10-month period commencing on the
25 earlier of the member’s disability retirement effective
26 date or the date of the member’s death.

27 (c) “Offspring” shall include a child adopted by the
28 member.

29 (d) “Dependent child” shall not include the member’s
30 offspring or stepchild who is adopted by a person other
31 than the member’s spouse.

32 (e) *“Dependent child” under the survivor benefit*
33 *allowance program shall not include a stepchild or*
34 *adopted child acquired subsequent to the death of the*
35 *member.*

36 (f) “Financially dependent” for purposes of this
37 section means that at least one-half of the child’s support
38 was being provided by the member on the member’s
39 disability retirement effective date or the date of the
40 member’s death. The system may require that income tax



1 records or other data be submitted to substantiate the
2 child's financial dependence. In the absence of
3 substantiating documentation, the system may
4 determine that the child was not dependent on the
5 effective date of the member's disability retirement or
6 the date of the member's death.

7 (f)

8 (g) "Member" as used in this section shall have the
9 same meaning specified in Section 23850.

10 SEC. 11. Section 22134 of the Education Code is
11 amended to read:

12 22134. (a) "Final compensation" means the highest
13 average annual compensation earnable by a member
14 during any period of three consecutive years ~~during his~~
15 ~~or her membership in~~ *while an active member of* the plan
16 or time during which he or she was not a member but for
17 which the member has received credit under the plan,
18 except time that was so credited for service performed
19 outside this state prior to July 1, 1944. The last three
20 consecutive years of employment shall be used by the
21 system in determining final compensation unless
22 designated to the contrary in writing by the member.

23 (b) For purposes of this section, periods of service
24 separated by breaks in service may be aggregated to
25 constitute a period of three consecutive years, if the
26 periods of service are consecutive except for the breaks.

27 (c) The determination of final compensation of a
28 member who is also a member of the Public Employees'
29 Retirement System, the Legislators' Retirement System,
30 the University of California Retirement System, or the
31 San Francisco City and County Employees' Retirement
32 System shall take into consideration the compensation
33 earnable while a member of the other system, provided
34 that all of the following exist:

35 (1) The member was in state service or in the
36 employment of a local school district or of a county
37 superintendent of schools.

38 (2) Service under the other system was not performed
39 concurrently with service under this plan.



1 (3) Retirement under this plan is concurrent with the
2 member's retirement under the other system.

3 (d) The compensation earnable for the first position in
4 which California service is credited shall be used when
5 additional compensation earnable is required to
6 accumulate three consecutive years for the purpose of
7 determining final compensation under Section 23804.

8 (e) The board may specify a different final
9 compensation with respect to allowances based on
10 part-time service performed prior to July 1, 1956, for
11 which credit was given under this plan under board rules
12 in effect prior to that date.

13 (f) The board may specify a different final
14 compensation with respect to disability allowances,
15 disability retirement allowances, family allowances, and
16 children's portions of survivor benefit allowances payable
17 on and after January 1, 1978. The earnable salaries for
18 periods of part-time service shall be adjusted by the ratio
19 that part-time service has to full-time service.

20 (g) The amendment of former Section 22127 made by
21 Chapter 782 of the Statutes of 1982 does not constitute a
22 change in, but is declaratory of, the existing law.

23 SEC. 12. Section 22139 of the Education Code is
24 amended to read:

25 22139. "Full-time student" means a dependent child
26 between 18 and 22 years of age, *who is* in full-time
27 attendance at an educational institution. An individual
28 shall not qualify as a full-time student if attendance at an
29 educational institution is paid for ~~and~~ *or* provided by the
30 individual's employer or is in the course of on-the-job
31 training, unless the on-the-job training is part of the
32 regularly established school training for which credit
33 toward a diploma, certificate, or graduation is given. An
34 individual shall not qualify as a full-time student for any
35 full-time course of study that is directly paid for and
36 sponsored under the Job Corps of the Economic
37 Opportunity Act of 1964 (Public Law 88-452), as
38 amended, or paid for or sponsored by any armed forces
39 for this state or the United States of America. The final
40 determination whether a person qualifies as a full-time



1 student shall be made by the board in light of *the*
2 standards and practices of the institution involved.

3 SEC. 13. Section 22451.5 of the Education Code is
4 amended to read:

5 22451.5. (a) Upon request by the system, a member
6 shall provide proof of his or her date of birth to resolve any
7 discrepancy between the member's date of birth as
8 originally documented on the records of the system and
9 the member's date of birth as subsequently submitted.

10 (b) A member shall provide proof of the date of birth
11 of a person designated by the member as beneficiary
12 under an option selected pursuant to Chapter 28
13 (commencing with Section 24300) if the beneficiary is not
14 also a member of the ~~system~~ *plan*.

15 (c) Documentation substantiating the date of birth of
16 a member's dependent child shall be provided ~~if a~~
17 ~~disability allowance, a disability retirement allowance, a~~
18 ~~family allowance, or a survivor benefit allowance~~ *if an*
19 *allowance* payable under this part will include an amount
20 for that dependent child.

21 (d) At the time application is made for payment of a
22 family allowance or survivor benefit allowance to a
23 surviving spouse or dependent parent, a member's
24 surviving spouse or dependent parent shall provide proof
25 of his or her date of birth.

26 (e) At the discretion of the board, an original
27 document, a certified copy of the original, or a photocopy
28 shall be acceptable to establish proof of the date of birth.

29 SEC. 14. Section 22451.7 of the Education Code is
30 amended to read:

31 22451.7. The system may withhold benefit payments
32 until proof of the date of birth of a member, beneficiary
33 under an option selected pursuant to Chapter 28
34 (commencing with Section 24300), surviving spouse,
35 dependent child or dependent parent has been received
36 and accepted by the system.

37 SEC. 15. Section 23805 of the Education Code is
38 amended to read:



1 23805. A family allowance is payable in the amount
2 and to the specified persons in the following order of
3 priority:

4 (a) To the deceased member's surviving spouse who
5 has financial responsibility for at least one dependent
6 child, an amount equal to 40 percent of the member's
7 final compensation or the disabled member's projected
8 final compensation plus 10 percent of the member's final
9 compensation or the disabled member's projected final
10 compensation for each child, up to a maximum allowance
11 of 90 percent.

12 (b) If there is no surviving spouse or upon the death
13 of the surviving spouse, to each dependent child, an
14 amount equal to 10 percent of the deceased member's
15 final compensation or the disabled member's projected
16 final compensation, up to a maximum allowance of 50
17 percent. If there are more than five dependent children,
18 they shall share equally in the maximum allowance of 50
19 percent.

20 (c) To the surviving spouse at age 60 years or over if
21 there is no dependent child, an allowance equal to the
22 amount that would have been payable to the spouse as
23 beneficiary under Option 3 as provided in Section 24300,
24 computed on the member's projected final compensation
25 and projected service to normal retirement age. The
26 allowance payable under this subdivision shall be
27 increased by application of the benefit improvement
28 factor for time that elapses between the date the member
29 would have attained normal retirement age and the date
30 the family allowance under this subdivision begins to
31 accrue. The allowance calculation shall include service
32 credit for the unused sick leave that had accrued to the
33 member or disabilitant as of the date of his or her death.
34 Eligibility for the inclusion of service credit for unused
35 sick leave credit and the calculation of that service credit
36 shall be determined pursuant to Section 22717.

37 (d) If there is neither surviving spouse nor dependent
38 child, to the dependent parent, age 60 years or over, an
39 allowance equal to the amount that would have been
40 payable to the dependent parent as beneficiary under



1 Option 3 as provided in Section 24300 computed on the
2 member's projected final compensation and projected
3 service to normal retirement age. The allowance
4 calculation shall include service credit for the unused sick
5 leave that had accrued to the member as of the date of his
6 or her death. Eligibility for the inclusion of service credit
7 for unused sick leave and the calculation of that service
8 credit shall be determined pursuant to Section 22717. If
9 there are two dependent parents, only one family
10 allowance shall be payable under this subdivision and that
11 allowance shall be computed on the assumption that the
12 younger parent is the option beneficiary and the
13 allowance shall be divided equally for as long as there are
14 two dependent parents. Thereafter, the full allowance
15 shall be payable to the surviving dependent parent.

16 (e) The surviving spouse or dependent parent may
17 elect to begin receiving the family allowance payable
18 under subdivision (c) or (d) immediately upon the later
19 of the death of the member or when there is no
20 dependent child, or to defer receipt of the allowance to
21 the date the surviving spouse or dependent parent attains
22 age 60 years. If allowance payments commence prior to
23 the date the surviving spouse or dependent parent attains
24 age 60 years, the allowance payable shall be actuarially
25 reduced.

26 (f) If there is no dependent child, a surviving spouse
27 or dependent parent or parents may elect, prior to
28 receipt of the first payment under subdivision (c) or (d),
29 to receive the member's accumulated retirement
30 contributions in a lump sum subject to a reduction for any
31 disability allowance or family allowance payments
32 previously made.

33 SEC. 16. Section 23806 of the Education Code is
34 amended to read:

35 23806. (a) A dependent child who is not in the care
36 of the surviving spouse shall be included in the calculation
37 of the family allowance. That child's portion of the
38 allowance shall be paid to the guardian of the estate of the
39 child, the natural or adoptive parent having custody of



1 the child, or if none, then to the trustee of the trust
2 established for the benefit of the child.

3 (b) In the case of a dependent child age 18 years or
4 older, the child's portion of the allowance shall be paid to
5 the guardian of the estate of the child, trustee of the trust
6 established for the benefit of the child, or if none, then to
7 the child.

8 SEC. 17. Section 23807 of the Education Code is
9 repealed.

10 SEC. 18. Section 23808 of the Education Code is
11 repealed.

12 SEC. 19. Section 23809 of the Education Code is
13 amended to read:

14 23809. The family allowance payable to the surviving
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1 (c) The allowance calculation shall include service
2 credit for the unused sick leave that had accrued to the
3 member as of the date of his or her death. Eligibility for
4 the inclusion of unused sick leave service credit and the
5 calculation of that service credit shall be determined
6 pursuant to Section 22717.

7 (d) The surviving spouse may elect to begin receiving
8 the survivor benefit allowance immediately as of the date
9 of the member's death or to defer receipt of the allowance
10 to the date the member would have attained age 60 years.
11 If allowance payments to the surviving spouse commence
12 prior to the date the member would have attained age 60
13 years, the allowance payable shall be actuarially reduced.

14 (e) If the spouse elects, pursuant to Section 23852, to
15 receive the survivor benefit allowance, an additional 10
16 percent of final compensation shall be payable for each
17 dependent child who is not older than age 21 years, up to
18 a maximum of 50 percent of final compensation. The
19 child's portion shall begin to accrue on the day following
20 the member's date of death and shall be payable even if
21 the spouse elects to postpone receipt of the spouse's
22 survivor benefit allowance until the date the member
23 would have attained age 60 years.

24 SEC. 21. Section 23856 of the Education Code is
25 amended to read:

26 23856. (a) A dependent child who is not in the care
27 of the surviving spouse shall be included in the calculation
28 of the children's portion of the survivor benefit
29 allowance. That child's portion of the allowance shall be
30 paid to the guardian of the estate of the child, the natural
31 or adoptive parent having custody of the child, or if none,
32 then to the trustee of the trust established for the benefit
33 of the child.

34 (b) In the case of a dependent child who is age 18 years
35 or older, the child's portion of the allowance shall be paid
36 to the guardian of the estate of the child, trustee of the
37 trust established for the benefit of the child, or if none,
38 then to the child.

39 SEC. 21.5. Section 23857 of the Education Code is
40 repealed.



1 ~~23857. A stepchild or adopted child acquired~~
2 ~~subsequent to the death of the member shall not be~~
3 ~~entitled to any allowance and shall be excluded in the~~
4 ~~determination of allowances under this chapter.~~

5 SEC. 22. Section 24002 of the Education Code is
6 amended to read:

7 24002. The board may authorize payment of a
8 disability allowance to any member who is qualified upon
9 application by the member, the *member's* guardian or
10 conservator, or the *member's* employer, if the application
11 is made during any one of the following periods:

12 (a) While the member is employed or on a
13 compensated leave of absence.

14 (b) While the member is physically or mentally
15 incapacitated for performance of ~~his or her duty~~ *service*
16 and the incapacity has been continuous from the last day
17 *of service* for which compensation ~~was paid~~ *is payable* to
18 the member.

19 (c) While the member is on a leave of absence without
20 compensation, granted for reason other than mental or
21 physical incapacity for performance of ~~his or her duty~~
22 *service*, and within four months after the last day of
23 ~~employment~~ *service* for which compensation ~~was paid~~ *is*
24 *payable* to the member, or within 12 months ~~while on an~~
25 ~~official district~~ *of that date if the member is on an*
26 *employer-approved* leave to study at an approved college
27 or university.

28 (d) Within four months after the termination of the
29 member's employment ~~— in a position requiring~~
30 ~~membership in the system~~ *subject to coverage by the*
31 *plan*, if the application was not made under subdivision
32 (b) and was not made more than four months after the
33 last day *of service* for which compensation ~~was paid~~ *is*
34 *payable* to the member.

35 (e) A member with a dependent child who becomes
36 disabled prior to normal retirement age, and whose sick
37 leave will extend beyond normal retirement age, may be
38 awarded a disability allowance with an effective date
39 after normal retirement age, if application is filed prior to
40 attaining normal retirement age.



1 (f) The member is not applying for a disability
2 allowance because of a physical or mental condition that
3 existed at the time the most recent membership in ~~this~~
4 ~~system~~ *the plan* commenced and ~~that~~ *which* remains
5 substantially unchanged at the time of application.

6 SEC. 23. Section 24006 of the Education Code is
7 amended to read:

8 24006. Upon qualification for disability, a member
9 shall receive an annual allowance equal to 50 percent of
10 final compensation payable in monthly installments. The
11 allowance shall be increased by 10 percent of final
12 compensation for each dependent child, to a maximum
13 of four dependent children.

14 SEC. 24. Section 24007 of the Education Code is
15 amended to read:

16 24007. A member who qualifies for a disability
17 allowance under this chapter and who has attained age 45
18 years, but who has not yet attained age 60 years, shall have
19 his or her allowance calculated upon service with each
20 year of credited California service providing 5 percent of
21 final compensation. The disabled member shall receive
22 the lesser of this ~~benefit or that amount or the amount~~
23 ~~provided by Section 24006 for the disabled member's~~
24 ~~allowance. The benefits for a dependent child shall be~~
25 ~~determined~~ *Section 24006. A child's portion of the*
26 *allowance shall be determined* pursuant to Section 24006.

27 SEC. 25. Section 24008 of the Education Code is
28 repealed.

29 SEC. 26. Section 24009 of the Education Code is
30 amended to read:

31 24009. A disability allowance payable pursuant to
32 Sections 24006 and 24007 that includes a child's portion
33 shall be reduced when a dependent child becomes
34 ineligible. The reduction shall take into account the
35 increases made by application of the improvement factor.
36 However, the member's disability allowance shall not be
37 less than it would have been if there had never been a
38 dependent child.

39 SEC. 27. Section 24016 of the Education Code is
40 amended to read:

1 24016. (a) For any one or more months in which the
2 total of a disabled member's allowance, excluding
3 children's portions, and earnings exceed 100 percent of
4 indexed final compensation, 100 percent of the amount in
5 excess shall be considered an overpayment and recovery
6 shall be made.

7 (b) This action ~~does~~ *shall* not apply to disabled
8 members who have allowances terminated under Section
9 24015 or who are enrolled in an approved rehabilitation
10 program.

11 SEC. 28. Section 24017 of the Education Code is
12 amended to read:

13 24017. If a person who began receiving a disability
14 allowance after June 30, 1972, is enrolled in an approved
15 rehabilitation program and the total of the disability
16 allowance, excluding children's portions, and earnings
17 exceed 100 percent of indexed final compensation, 50
18 percent of the amount in excess shall be considered an
19 overpayment and recovery shall be made.

20 SEC. 29. Section 24106 of the Education Code is
21 amended to read:

22 24106. Upon retirement for disability pursuant to this
23 chapter, a member shall receive a retirement allowance
24 that shall consist of all of the following:

25 (a) An annual allowance equal to 50 percent of final
26 compensation payable in monthly installments.

27 (b) An additional 10 percent of final compensation for
28 each dependent child, up to a maximum of 40 percent of
29 final compensation. If there are more than four
30 dependent children, they shall share equally in the
31 maximum allowance of 40 percent. A dependent child
32 may waive his or her right to his or her portion of the
33 allowance in accordance with procedures established by
34 the system.

35 (c) An annuity that shall be the actuarial equivalent of
36 the accumulated annuity deposit contributions standing
37 to the credit of the member's account on the effective
38 date of the disability retirement.

39 SEC. 30. Section 24108 of the Education Code is
40 amended to read:



1 24108. A retirement allowance payable pursuant to
2 Section 24106 that includes a child's portion shall be
3 reduced when a dependent child becomes ineligible. The
4 reduction shall take into account the increases made by
5 application of the improvement factor. However, the
6 retired member's allowance shall not be less than it could
7 have been if there had never been a dependent child.

8 SEC. 31. Section 24211 of the Education Code is
9 amended to read:

10 24211. When a member who has been granted a
11 disability allowance after June 30, 1972, returns to
12 employment subject to coverage by the plan and
13 performs:

14 (a) Less than three years of ~~credited~~ *creditable* service
15 after termination of the disability allowance, the member
16 shall receive a retirement allowance which is the sum of
17 the allowance calculated on service credit accrued after
18 the termination date of the disability allowance, the age
19 of the member on the last day of the month in which the
20 retirement allowance begins to accrue, and final
21 compensation using compensation earnable and
22 projected final compensation, plus the greater of either
23 of the following:

24 (1) A service retirement allowance calculated on
25 service credit accrued as of the effective date of the
26 disability allowance, the age of the member on the last
27 day of the month in which the retirement allowance
28 begins to accrue, and projected final compensation to the
29 termination date of the disability allowance.

30 (2) The disability allowance the member was receiving
31 immediately prior to termination of that allowance,
32 excluding children's portions.

33 (b) Three or more years of credited service after
34 termination of the disability allowance, the member shall
35 receive a retirement allowance that is the greater of the
36 following:

37 (1) A service retirement allowance calculated on all
38 actual and projected service, the age of the member on
39 the last day of the month in which the retirement
40 allowance begins to accrue, and final compensation using



1 compensation earnable, or projected final compensation,
2 or a combination of both.

3 (2) The disability allowance the member was
4 receiving immediately prior to termination of that
5 allowance, excluding children's portions.

6 SEC. 32. Section 24212 of the Education Code is
7 amended to read:

8 24212. If a disability allowance granted after June 30,
9 1972, is terminated for reasons other than those specified
10 in Section 24213 and the member does not return to
11 employment subject to coverage by the plan, the service
12 retirement allowance, when payable, shall be based on
13 projected service, projected final compensation, and the
14 age of the member on the last day of the month in which
15 the retirement allowance begins to accrue. The
16 allowance payable under this section, excluding annuities
17 payable from accumulated annuity deposit contributions,
18 shall not be greater than the terminated disability
19 allowance excluding children's portions.

20 SEC. 33. Section 24213 of the Education Code is
21 amended to read:

22 24213. (a) When a member who has been granted a
23 disability allowance after June 30, 1972, attains normal
24 retirement age, or at a later date when there is no
25 dependent child, the disability allowance shall be
26 terminated and the member shall be eligible for service
27 retirement. The retirement allowance shall be calculated
28 on the projected final compensation and projected
29 service to normal retirement age. The allowance payable
30 under this section, excluding annuities payable from
31 accumulated annuity deposit contributions, shall not be
32 greater than the terminated disability allowance.

33 (b) Upon retirement, the member may elect to
34 modify the service retirement allowance payable in
35 accordance with any option provided under this part.

36 SEC. 34. Section 24414 of the Education Code is
37 amended to read:

38 24414. (a) Beginning in the 1989-90 fiscal year, and
39 until the first fiscal year in which the Supplemental
40 Benefit Maintenance Account established by Section



1 22400 derives sufficient resources from the General Fund
2 pursuant to Section 22954 to provide purchasing power of
3 68.2 percent as authorized by Section 24415, the board
4 shall transfer from the retirement fund to the
5 Supplemental Benefit Maintenance Account those funds
6 that are necessary to provide purchasing power of 68.2
7 percent as authorized by Section 24415. This subdivision
8 shall become inoperative in the first fiscal year following
9 the joint determination by the board and the Director of
10 Finance that the funds scheduled for transfer from the
11 General Fund pursuant to Section 22954 to the
12 Supplemental Benefit Maintenance Account are
13 adequate to meet the purposes of Section 24415.

14 (b) The funds advanced pursuant to subdivision (a)
15 and any funds appropriated by Item 1920-111-835 of the
16 Budget Act of 1989 from the retirement fund to provide
17 purchasing power protection payments shall be repaid
18 from those funds transferred pursuant to Section 22954
19 that are in excess of the resources required to meet the
20 purposes of Section 24415. Repayment shall commence in
21 any year in which those excess funds exist and shall
22 continue until the time all funds advanced under this
23 section and any funds appropriated by Item 1920-111-835
24 of the Budget Act of 1989 from the retirement fund to
25 provide purchasing power protection payments are
26 repaid. Repayment shall include regular interest from the
27 time funds are advanced or appropriated until the time
28 of repayment. After full repayment is made, the Director
29 of Finance shall, notwithstanding Section 22954, adjust
30 the percentage of the General Fund transfer in the
31 amount which causes the balance in the account to equal
32 a three-year reserve at the end of the subsequent fiscal
33 year. The Director of Finance may base the adjusted rate
34 on data provided by the board for projected payments in
35 subject years, projected payroll, projected interest
36 accrual to the account, and any other factors deemed
37 relevant by the board.

38 (c) Notwithstanding Section 24415 or any other
39 provision of law, if the state's contributions to the
40 retirement fund provided by Section 22954 are, for any



1 reason whatsoever, reduced or terminated before the
2 retirement fund is fully repaid, as provided in subdivision
3 (b), for all advances or transfers made pursuant to
4 subdivision (a) and for any appropriations made by Item
5 1920-111-835 of the Budget Act of 1989 from the
6 retirement fund to provide purchasing power protection
7 payments, all duties of the board to make the advances or
8 transfers required by subdivision (a) and to make the
9 distributions required by Section 24415 shall immediately
10 cease and shall have no further force or effect.

11 (d) It is the intent of the Legislature, in enacting the
12 Supplemental Benefit Maintenance Program embodied
13 in this section and Section 22400, subdivision (b) of
14 Section 22954, Section 24415, subdivision (b) of Section
15 44929, and subdivision (b) of Section 87488, not to
16 manifest any promise, except as provided in subdivision
17 (c) of Section 22954, that, when accepted, would create
18 a contract, express or implied. Notwithstanding any other
19 provision of this part, nothing in the sections establishing
20 the Supplemental Benefit Maintenance Program shall be
21 construed as a basis for any implied contractual
22 obligation, or as an element of exchange of consideration
23 by a private party for consideration offered by the state,
24 or as an intent to grant private rights of contract, or as
25 conferring any vested right whatsoever on any present or
26 future member, present or future annuitant, present or
27 future surviving spouse of a present or future member or
28 a present or future annuitant, dependent child *or*
29 *dependent parent* of a present or future member or a
30 present or future annuitant, or present or future
31 beneficiary of the ~~system~~ plan.

32 (e) The board shall report annually to the Director of
33 Finance and the appropriate fiscal and policy committees
34 of the Legislature upon the benefits paid pursuant to
35 Section 24415 and all actions taken pursuant to Section
36 22954 and this section.

37 SEC. 35. Section 24600 of the Education Code is
38 repealed.

39 SEC. 36. Section 24600 is added to the Education
40 Code, to read:



1 24600. (a) A retirement allowance begins to accrue
2 on the effective date of the member's retirement and
3 ceases on the earlier of the day of the member's death or
4 the day on which the retirement allowance is terminated
5 for a reason other than the member's death.

6 (b) A retirement allowance payable to an option
7 beneficiary begins to accrue on the day following the day
8 of the retired member's death and ceases on the day of
9 the option beneficiary's death.

10 (c) A disability allowance begins to accrue on the
11 effective date of the member's disability allowance and
12 ceases on the earlier of the day of the member's death or
13 the day on which the disability allowance terminated for
14 a reason other than the member's death.

15 (d) A family allowance begins to accrue on the day
16 following the day of the member's death and ceases on
17 the day of the event that terminates eligibility for the
18 allowance.

19 (e) A survivor benefit allowance payable to a
20 surviving spouse pursuant to Chapter 23 (commencing
21 with Section 23850) begins to accrue on the day the
22 member would have attained 60 years of age or on the day
23 following the day of the member's death, as elected by the
24 surviving spouse, and ceases on the day of the surviving
25 spouse's death.

26 (f) A child's portion of an allowance begins to accrue
27 on the effective date of the allowance and ceases on the
28 earlier of termination of the child's eligibility or
29 termination of the allowance.

30 (1) Until January 1, 2002, a person who on December
31 31, 1996, is between 18 and 22 years of age and who is
32 eligible as a full-time student to receive a child's portion
33 of an allowance shall continue to be eligible for a child's
34 portion until the person attains 22 years of age or until the
35 first day of the month following the end of the school
36 quarter or semester that is in progress in the month the
37 person attains 22 years of age provided prior verification
38 of full-time student status is received by the board. If
39 verification is not received by the board prior to the date
40 the person attains 22 years of age, the allowance or the



1 child's portion of the allowance shall cease on the day the
2 full-time student attains 22 years of age.

3 (2) Notwithstanding subdivision (e) of Section 22123,
4 until January 1, 2002, a person who on December 31, 1996,
5 is between 18 and 22 years of age and who is not eligible
6 as a full-time student to receive a child's portion of an
7 allowance, may return to school on a full-time basis on or
8 after January 1, 1997, and become eligible for a child's
9 portion from the date of return to full-time student status
10 until 22 years of age or until the first day of the month
11 following the end of the school quarter or semester that
12 ~~was~~ *is* in progress in the month the person attains 22 years
13 of age provided prior verification of full-time student
14 status is received by the board. If verification is not
15 received by the board prior to the date the person attains
16 22 years of age, the allowance or the child's portion of the
17 allowance shall cease on the day the full-time student
18 attains 22 years of age. No benefits shall be payable under
19 this paragraph for a person who does not return to school
20 as a full-time student prior to attaining 22 years of age.

21 (g) Supplemental payments issued pursuant to
22 Sections 24701, 24702, and 24703 to retired members,
23 disabled members, and beneficiaries shall begin to accrue
24 pursuant to Sections 24701, 24702, and 24703 and shall
25 cease to accrue as of the termination dates specified in
26 subdivisions (a) to (f), inclusive, of this section.

27 (h) Notwithstanding any other provision of this part or
28 other law, distributions from the plan by the system shall
29 be made in accordance with Section 401(a)(9) of the
30 Internal Revenue Code of 1986, as amended, including
31 the incidental death benefit requirements of Section
32 401(a)(9)(G) and the regulations thereunder, and the
33 required beginning date of benefit payments that
34 represent the entire interest of the member in the plan
35 shall be as follows:

36 (1) In the case of a refund of contributions, as
37 described in Chapter 12 (commencing with Section
38 23100), not later than April 1 of the calendar year
39 following the later of both of the following:



1 (A) The calendar year in which the member attains
2 age 70¹/₂ years.

3 (B) The calendar year in which the member
4 terminates employment within the meaning of
5 subdivision (i).

6 (2) In the case of a retirement allowance, as defined in
7 Section 22150, beginning not later than April 1 of the
8 calendar year following the later of (A) the calendar year
9 in which the member attains age 70¹/₂ years; or (B) the
10 calendar year in which the member terminates
11 employment within the meaning of subdivision (i), to
12 continue over the life of the member or the lives of the
13 member and the member's option beneficiary, or over
14 the life expectancy of the member or the life expectancy
15 of the member and the member's option beneficiary.

16 (i) For purposes of subdivision (h), the phrase
17 "terminates employment" means the later of the
18 termination of employment subject to coverage by the
19 plan or the termination of employment in a position
20 requiring or permitting membership in another public
21 retirement system in this state the compensation from
22 which may be included in final compensation under
23 Section 22127.

24 SEC. 37. *Section 26112.5 is added to the Education*
25 *Code, to read:*

26 26112.5. (a) *"Class of employees" means a number of*
27 *employees considered as a group because they are*
28 *employed to perform similar duties, are employed in the*
29 *same type of program, or share other similarities related*
30 *to the nature of the work being performed.*

31 (b) *A class of employees may be comprised of one*
32 *person if no other person employed by the employer*
33 *performs similar duties, is employed in the same type of*
34 *program, or shares other similarities related to the nature*
35 *of the work being performed and that same class is in*
36 *common use among other employers.*

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

1 (d) *This section shall be deemed to have become*
2 *operative on July 1, 1996.*

3 SEC. 37.5. Section 26139 of the Education Code is
4 amended to read:

5 26139. (a) “Salary” means remuneration *payable* in
6 cash by an employer to a participant for creditable
7 service. Salary shall include:

8 (1) Money paid in accordance with a salary schedule
9 based on years of training and years of experience as
10 specified in Section 45028 for creditable service
11 performed.

12 (2) For participants not paid according to a salary
13 schedule, money paid for creditable service performed.

14 (3) Money paid for the participant’s absence from
15 performance of creditable service as approved by an
16 employer, *except as provided in paragraph (5) of*
17 *subdivision (b).*

18 (4) Employee contributions picked up by an employer
19 under Section 414(h)(2) of Title 26 of the United States
20 Code and Section 17501 of the Revenue and Taxation
21 Code.

22 (5) Amounts deducted by an employer from the
23 participant’s salary, including deductions for
24 participation in a deferred compensation plan;
25 deductions for the purchase of annuity contracts,
26 tax-deferred retirement plans, or other insurance
27 programs; and deductions for participation in a plan that
28 meets the requirements of Section 125, 401(k), or 403(b)
29 of Title 26 of the United States Code.

30 ~~(6) Money paid by an employer in addition to salary if~~
31 ~~the additional money is paid in the same dollar amount or~~
32 ~~the same percentage to an entire class of employees.~~

33 (6) *Money paid by an employer in addition to salary*
34 *paid under paragraph (1) or (2) if paid to all employees*
35 *in a class in the same dollar amount, the same percentage*
36 *of salary, or the same percentage of the amount being*
37 *distributed.*

38 (7) Any other payments the board determines by plan
39 amendment to be “salary.”

40 (b) “Salary” does not mean and shall not include:



1 (1) Money paid for service that is not creditable
2 service.

3 ~~(2) Money paid by an employer in addition to salary if~~
4 ~~the additional money is not paid in the same dollar~~
5 ~~amount or the same percentage to an entire class of~~
6 ~~employees.~~

7 *(2) Money paid by an employer in addition to salary*
8 *paid under paragraph (1) or (2) if not paid to all*
9 *employees in a class in the same dollar amount, the same*
10 *percentage of salary, or the same percentage of the*
11 *amount being distributed.*

12 (3) Fringe benefits provided by an employer.

13 (4) Job-related expenses paid or reimbursed by an
14 employer.

15 (5) Money paid for unused accumulated leave.

16 ~~(6) All or any part of an amount allocated by an~~
17 ~~employer in addition to salary to which an employer~~
18 ~~attaches a requirement for expenditure by a participant.~~

19 ~~(7)~~

20 (6) Compensatory damages or money paid to a
21 participant in excess of salary as a compromise settlement
22 or as severance pay.

23 ~~(8)~~

24 (7) Annuity contracts, tax-deferred retirement
25 programs, or other insurance programs, including, but
26 not limited to, plans that meet the requirements of
27 Section 125, 401(k), or 403(b) of Title 26 of the United
28 States Code that are purchased by an employer for a
29 participant.

30 ~~(9)~~

31 (8) Any payments determined by the board to have
32 been made by an employer for the ~~sole~~ *principal* purpose
33 of enhancing a participant's benefits under the plan.

34 ~~(10)~~

35 (9) Any other payments the board determines by plan
36 amendment not to be "salary."

37 (c) Any employer or person who knowingly or
38 willfully reports salary in a manner inconsistent with the
39 provisions of subdivisions (a) or (b) shall reimburse the
40 plan for any overpayment of benefits that occurs because



1 of such inconsistent reporting and may be subject to
2 prosecution for fraud, theft, or embezzlement in
3 accordance with provisions of the Penal Code. The
4 system may establish procedures to ensure that salary
5 reported by an employer is in compliance with this
6 section.

7 *(d) This section shall be deemed to have become*
8 *operative on July 1, 1996.*

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