

AMENDED IN ASSEMBLY APRIL 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3221

Introduced by Assembly Member Gallegos

February 23, 1996

An act to amend Section 22135 of, and to repeal and add Sections 22508 and 22509 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 3221, as amended, Gallegos. School employees: retirement.

The State Teachers' Retirement Law authorizes members after entry into other school employment covered by a different retirement system, to elect within 90 days to continue in the State Teachers' Retirement System.

The bill would exclude those members from membership in the State Teachers' Retirement System unless the members elect within 60 days to continue in that system.

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 22135 of the Education Code is
2 amended to read:
3 22135. (a) Notwithstanding subdivisions (a) and (b)
4 of Section 22134, "final compensation" means the highest

1 annual compensation earnable by an active member who
2 is a classroom teacher who retires, becomes disabled, or
3 dies, after June 30, 1990, during any period of 12
4 consecutive months during his or her membership in the
5 plan. The last 12 consecutive months of employment shall
6 be used by the system in determining final compensation
7 unless designated to the contrary in writing by the
8 member.

9 (b) Section 22134, except subdivision (a) of that
10 section, shall apply to classroom teachers who retire after
11 June 30, 1990, and any statutory reference to Section
12 22134 or “final compensation” with respect to a classroom
13 teacher who retires, becomes disabled, or dies, after June
14 30, 1990, shall be deemed to be a reference to this section.

15 (c) As used in this section, “classroom teacher” means
16 any of the following:

17 (1) All teachers and substitute teachers in positions
18 requiring certification qualifications who spend, during
19 the last 10 years of their employment with the same
20 employer which immediately precedes their retirement,
21 60 percent or more of their contract time each year
22 providing direct instruction. For the purpose of
23 determining continuity of employment within the
24 meaning of this subdivision, an authorized leave of
25 absence for sabbatical or illness, or other collectively
26 bargained or employer-approved leaves shall not
27 constitute a break in employment.

28 (2) Other certificated personnel who spend, during
29 the last 10 years of their employment with the same
30 employer that immediately precedes their retirement, 60
31 percent or more of their contract time each year
32 providing direct services to pupils, including, but not
33 limited to, librarians, counselors, nurses, speech
34 therapists, resource specialists, audiologists,
35 audiometrists, hygienists, optometrists, psychologists,
36 driver safety instructors, and personnel on special
37 assignment to perform school attendance and adjustment
38 services.

39 (d) As used in this section, “classroom teacher” does
40 not include any of the following:



1 (1) Certificated employees whose job descriptions
2 require an administrative credential.

3 (2) Certificated employees whose job descriptions
4 include responsibility for supervision of certificated staff.

5 (3) Certificated employees who serve as advisers,
6 coordinators, consultants, or developers or planners of
7 curricula, instructional materials, or programs, who
8 spend, during the last 10 years of their employment with
9 the same employer that immediately precedes their
10 retirement, less than 60 percent of their contract time in
11 direct instruction.

12 (4) Certificated employees whose job descriptions
13 require provision of direct instruction or services, but
14 who are functioning in nonteaching assignments.

15 (5) Classified employees.

16 (e) This section shall apply only to teachers employed
17 by an employer that has, pursuant to Chapter 10.7
18 (commencing with Section 3540) of Division 4 of Title 1
19 of the Government Code, entered into a written
20 agreement with an exclusive representative, that makes
21 this section applicable to all of its classroom teachers, as
22 defined in subdivision (c).

23 (f) The written agreement shall include a mechanism
24 to pay for all increases in allowances provided for by this
25 section through employer contributions or employee
26 contributions or both, which shall be collected and
27 retained by the employer in a trust fund to be used solely
28 and exclusively to pay the system for all increases in
29 allowances provided by this section and related
30 administrative costs, a mechanism for disposition of the
31 employee's contributions if employment is terminated
32 before retirement, and for the establishment of a trust
33 fund board. The trust fund board shall administer the
34 trust fund and shall be composed of an equal number of
35 members representing classroom teachers chosen by the
36 bargaining agent and the employer. If the employer
37 agrees to pay the total cost of the benefit improvement,
38 the establishment of a trust fund and a trust fund board
39 shall be optional to the employer. The employer, within
40 30 days of receiving an invoice from the system, shall



1 reimburse the retirement fund the amount determined
2 by the Teachers' Retirement Board to be equal to the
3 actuarial equivalent of the difference between the
4 allowance the member or beneficiary receives pursuant
5 to this section and the allowance the member or
6 beneficiary would have received if the member's final
7 compensation had been computed under Section 22134
8 and the proportionate share of the cost to the plan, as
9 determined by the Teachers' Retirement Board, of
10 administering this section. The payment shall include the
11 cost of all increases in allowances provided for by this
12 section for all years of service credited to the member as
13 of the benefit effective date. Interest shall be charged at
14 the regular interest rate for any payment not received
15 within 30 days of receipt of the invoice. Payments not
16 received within 30 days after receipt of the invoice may
17 be collected pursuant to Section 23007.

18 (g) Upon the execution of the agreement, the
19 employer shall notify all certificated employees of the
20 agreement and any certificated employee of the
21 employer, who is a member *of* the Public Employees'
22 Retirement System pursuant to Section 22508, that he or
23 she may, within 60 days following the date of notification,
24 elect to terminate his or her membership in the Public
25 Employees' Retirement System and become a member of
26 this plan. However, only service credited under this plan
27 subsequent to the date of that election shall be subject to
28 this section.

29 (h) An employer that agrees to become subject to this
30 section, shall, on a form and within the timeframes
31 prescribed by the system, certify the applicability of this
32 section to a member pursuant to the criteria set forth in
33 this section when a retirement, disability, or family
34 allowance becomes payable.

35 (i) For a nonmember spouse, final compensation shall
36 be determined pursuant to paragraph (2) of subdivision
37 (c) of Section 22664. The employer, within 30 days of
38 receiving an invoice from the system, shall reimburse the
39 retirement fund pursuant to subdivision (f). Interest shall
40 be charged at the regular interest rate for payment not



1 received within the prescribed timeframe. Payments not
2 received within 30 days of invoicing may be collected
3 pursuant to Section 23007.

4 SEC. 2. Section 22508 of the Education Code is
5 repealed.

6 SEC. 3. Section 22508 is added to the Education Code,
7 to read:

8 22508. (a) A member who becomes employed by a
9 school district, community college district, or a county
10 superintendent to perform duties that require
11 membership in a different public retirement system, shall
12 be excluded from membership in this plan, unless the
13 member elects in writing within 60 days from the date of
14 hire in the position requiring membership in a different
15 public retirement system to continue as a member of this
16 plan. If an election is made, the subsequent service
17 performed up to the full-time equivalent for the position
18 shall be considered creditable service for purposes of this
19 part.

20 (b) A person who is a member of the Public
21 Employees' Retirement System who becomes employed
22 by a school district, community college district, or a
23 county superintendent to perform creditable service
24 subject to coverage by this plan shall become a member
25 of this plan unless the person elects within 60 days from
26 the date of hire to continue as a member of the Public
27 Employees' Retirement System.

28 SEC. 4. Section 22509 of the Education Code is
29 repealed.

30 SEC. 5. Section 22509 is added to the Education Code,
31 to read:

32 22509. (a) Within 10 working days of the date of hire,
33 the employer shall inform the employee of the right to
34 make an election pursuant to Section 22508 and shall
35 make available to the employee written information
36 provided by the retirement systems to assist the
37 employee in making an election.

38 (b) The election shall be made on a form prescribed by
39 the retirement systems.



1 (c) Any election made pursuant to Section 22508 shall
2 be filed with the office of the State Teachers' Retirement
3 System and the other public retirement system. Once
4 received and accepted by the system, the election shall
5 become effective as of the first day of employment in the
6 position that qualified the member to make an election.

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