

Senate Bill No. 159

CHAPTER 830

An act to amend Sections 20023, 20412, 20615, 20615.5, and 21321 of the Government Code, relating to public employees.

[Approved by Governor October 12, 1995. Filed
with Secretary of State October 13, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 159, Russell. Public employees: retirement.

(1) The Public Employees' Retirement Law prescribes the pay and allowances includable to compute compensation for benefit purposes.

This bill would authorize the retirement board to determine special compensation under specified circumstances and would make other related changes.

(2) The Public Employees' Retirement Law would be reorganized by SB 541 of the 1995-96 Regular Session.

This bill would make clarifying and corrective changes in specified provisions of that bill.

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

SECTION 1. Section 20023 of the Government Code is amended to read:

20023. (a) "Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.3.

(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. "Payrate" for a member who is not in a group or class means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(2) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(3) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20615, provided that the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, shall not be special compensation unless regulations promulgated by the board specifically determine that value to be "special compensation."

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under the Fair Labor Standards Act (29 U.S.C. Secs. 201-219, inclusive) shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e) (1) As used in this part, "group or class of employment" means a number of employees considered together because they



share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. Under no circumstances shall one employee be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, “final settlement pay” means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

(g) (1) Notwithstanding subdivision (a), “compensation earnable” for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for any absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and that for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), “payrate” for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, in payment for the member’s services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. “Payrate” for state members shall include:

(A) Any amount deducted from a member’s salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6 of Division 5 of Title 2.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of the Internal Revenue Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of the Internal Revenue Code.

(iv) Participation in a flexible benefits program.



(B) Any payment in cash by the member's employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code.

(C) Employer "pick up" of member contributions that meets the requirements of Section 414(h)(2) of the Internal Revenue Code.

(D) Any disability or workers' compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Any other payments the board may determine to be within "payrate."

(3) Notwithstanding subdivision (c), "special compensation" for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished a member by his or her employer in payment for the member's services.

(B) Any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential.

(C) Compensation for uniforms, except as provided in Section 20022.1.

(D) Any other payments the board may determine to be within "special compensation."

(4) Neither "payrate" nor "special compensation" for state members shall include any of the following:

(A) The provision by the state employer of any medical or hospital service or care plan or insurance plan for its employees (other than the purchase of annuity contracts as described below in this subdivision), any contribution by the employer to meet the premium or charge for such a plan, or any payment into a private fund to provide health and welfare benefits for employees.

(B) Any payment by the state employer of the employee portion of taxes imposed by the Federal Insurance Contribution Act.

(C) Amounts not available for payment of salaries and that are applied by the employer for the purchase of annuity contracts including those that meet the requirements of Section 403(b) of the Internal Revenue Code.

(D) Any benefits paid pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6.

(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred



compensation plans; provided, that the amounts deducted from a member's wages for participation in a deferred compensation plan shall not be considered to be "employer payments."

(F) Payments for unused vacation, sick leave, or compensating time off, whether paid in lump sum or otherwise.

(G) Final settlement pay.

(H) Payments for overtime, including pay in lieu of vacation or holiday.

(I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

(J) Amounts not available for payment of salaries and which are applied by the employer for any of the following:

(i) The purchase of a retirement plan which meets the requirements of Section 401(k) of the Internal Revenue Code.

(ii) Payment into a money purchase pension plan and trust which meets the requirements of Section 401(a) of the Internal Revenue Code.

(K) Payments made by the employer to or on behalf of its employees who have elected to be covered by a flexible benefits program, where those payments reflect amounts that exceed the employee's salary.

(L) Any other payments the board may determine are not "payrate" or "special compensation."

(5) If the provisions of this subdivision, including the board's determinations pursuant to subparagraph (F) of paragraph (2) and subparagraph (D) of paragraph (3), are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or 3560, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act. No memorandum of understanding reached pursuant to Section 3517.5 or 3560 may exclude from the definition of either "payrate" or "special compensation" a member's base salary payments or payments for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. If any items of compensation earnable are included by memorandum of understanding as "payrate" or "special compensation" for retirement purposes for represented and higher education employees pursuant to this paragraph, the Department of Personnel Administration or the Trustees of the California State University shall obtain approval from the board for that inclusion.

(6) (A) Subparagraph (B) of paragraph (3) of this subdivision prescribes that compensation earnable includes any compensation



for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential; and includes compensation for uniforms, except as provided in Section 20022.1; and subparagraph (I) of paragraph (4) excludes from compensation earnable compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobile, and bonuses for duties performed after regular work shift.

(B) Notwithstanding subparagraph (A) of this paragraph, the Department of Personnel Administration shall determine which payments and allowances that are paid by the state employer shall be considered compensation for retirement purposes for any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(C) Notwithstanding subparagraph (A) of this paragraph, the Trustees of the California State University shall determine which payments and allowances that are paid by the trustees shall be considered compensation for retirement purposes for any managerial employee, as defined in subdivision (l) of Section 3562, or supervisory employee as defined in Section 3580.3.

SEC. 2. Section 20412 of the Government Code, as added by Section 2 of Senate Bill No. 541 of the 1995–96 Regular Session, is amended to read:

20412. “State safety member” shall also include persons employed to perform full-time active firefighting duties performed on April 1, 1972, under the titles of “institution fire chief,” “institution fireman,” and “campus firefighter” by state agencies other than the Division of Forestry of the Department of Conservation. Persons employed under the title “campus firefighter” who were state miscellaneous members immediately prior to the operative date of the 1976 amendment adding “campus firefighters” to this section may elect to remain state miscellaneous members by filing written notice of their intent with the board no later than 90 days after January 1, 1977.

SEC. 3. Section 20615 of the Government Code is amended to read:

20615. Notwithstanding any other provision of law, a contracting agency or school employer may pay all or a portion of the normal contributions required to be paid by a member. Where the member is included in a group or class of employment, the payment shall be for all members in the group or class of employment. If an individual is not part of a group or class, the payment shall be limited to the



amount that the board determines is payable to similarly situated members in the closest related group or class, subject to the limitations of paragraph (2) of subdivision (e) of Section 20023. The payments shall be reported simply as normal contributions and shall be credited to member accounts.

Nothing in this section shall be construed to limit the authority of a contracting agency or school employer to periodically increase, reduce, or eliminate the payment by the contracting agency or school employer of all or a portion of the normal contributions required to be paid by members, as authorized by this section.

SEC. 4. Section 20615.5 of the Government Code is amended to read:

20615.5. (a) Where a contracting agency employer or a school employer has elected to pay all or a portion of the normal contributions of members of a group or class of employment pursuant to Section 20615, the employer may, pursuant to a labor policy or agreement, stop paying those contributions during the final compensation period applicable to the members and, instead, increase the payrate of the members by an amount equal to the normal contributions paid by the employer on behalf of the employees in the pay period immediately prior to the final compensation period or increase the payrate of the members by an amount established by a labor policy or agreement in existence and in effect on June 30, 1993. That amount shall not exceed the amount of the normal member contributions that are required to be paid by the members.

(b) This section shall not apply to any contracting agency or to any school employer unless and until the contracting agency or the school employer elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except an election among the employees is not required. In the case of contracts made after the date this section is operative, the section shall not apply unless incorporated by express provision in the contract. However, no school employer may act pursuant to this section unless and until the board approves a request for the amendment of the contract of a school employer to authorize termination of the payment. A school employer shall not submit a request for a contract amendment unless there is on file a request to terminate that payment from the county superintendent of schools office and each school district, community college district, and other school entity within the jurisdiction of that school employer.

(c) Before adopting this provision, the governing body of a contracting agency or school employer shall, with timely public notice, place the consideration of this section on the agendas of two consecutive public meetings of the governing body, at which time, full disclosure shall be made of the nature of the benefit, the additional employer contributions, and the funding therefor. Only



after the second of these public meetings may the governing body adopt this section. The employer shall notify the board of the employer's compliance with this subdivision at the time of the governing body's application to adopt this section.

(d) Persons hired after the effective date of an employer's contract amendment to include this section shall be informed by the employer of how this benefit relates to their total compensation and benefit package.

(e) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost, plus (2) in the case of a contract amendment, the additional contribution required to amortize the increase in accrued liability attributable to the benefit elected under this section over the unfunded actuarial liability period currently in the agency's contract, commencing from the date this section becomes effective in the agency's contract.

(f) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors necessary to calculate the employer's contribution shall be determined on the basis of actuarial assumptions and methods which, in combination, provide the board's best estimate of anticipated experience under the system. The board has the exclusive power and duty to make these determinations.

(g) Within 30 days of notification from the board to the contracting agency or school employer of the additional employer contributions required pursuant to this section, the contracting agency or school employer, or a recognized employee organization, or both, may file with the board a request for a review of the determination of the calculation of the additional employer contributions. The board shall promulgate regulations governing the conduct of the review, that shall include the means by which an employer or recognized employee organization may submit independent actuarial evidence regarding the additional contribution required by this section. The board shall make the final determination on the additional employer contributions needed to fund this contract amendment.

SEC. 5. Section 21321 of the Government Code, as added by Section 2 of Senate Bill No. 541 of the 1995-96 Regular Session, is amended to read:

21321. In addition to the increase in allowance authorized by and granted pursuant to Section 21313, and notwithstanding the limitation on those increases imposed by this article, the monthly allowance paid with respect to a school member or a local member employed by a school district or a county superintendent of schools, and with respect to a school member, as defined in Section 20019.2,



as added by Chapter 213 of the Statutes of 1977, who retired or died prior to January 1, 1974, shall be increased by the percentage set forth opposite the period in the following table during which retirement became effective or death occurred:

Period during which retirement or death occurred:	Percentage:
On or before December 31, 1965	15%
12 months ending December 31, 1966	14%
12 months ending December 31, 1967	13%
12 months ending December 31, 1968	12%
12 months ending December 31, 1969	9%
12 months ending December 31, 1970	6%
12 months ending December 31, 1971	5%
12 months ending December 31, 1972	4%
12 months ending December 31, 1973	3%

The percentage shall be applied to the allowance payable on January 1, 1979, after the increase, if any, authorized by Section 21315.

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