

Assembly Bill No. 1166

CHAPTER 678

An act to amend Section 22138.5, of and to repeal Section 22175 of, the Education Code, and to amend Sections 20200, 20201, 20322, 20398, 20403, 20575, 20578, 20636, 21493, 21752, 21757, 22013, 22013.1, 22013.3, 22013.4, 22013.6, 22013.7, 22013.75, 22013.76, 22013.8, 22013.82, 22013.85, 22013.9, 22013.95, 22013.955, 22013.96, 22013.97, 22013.10, 22013.11, 22014, 22014.1, and 22014.5 of, and to add Section 20057.1 to, the Government Code, relating to public employees.

[Approved by Governor September 21, 1998. Filed
with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1166, House. Public employees: retirement.

(1) The State Teachers' Retirement Law defines "full time" for purposes of calculating benefits.

This bill would prescribe standards for purposes of determining full time for specified adult education and community college positions.

(2) The Public Employees' Retirement Law under various circumstances requires opinions or rulings to be obtained from federal agencies respecting compliance with federal law.

This bill would require any public agency applying to participate in the Public Employees' Retirement System on and after January 1, 1999, to submit a specified opinion from the United States Department of Labor.

(3) The Public Employees' Retirement Law establishes a loan program to assist in the purchase of homes in this state.

This bill would authorize home loans throughout the United States.

(4) The Public Employees' Retirement Law excludes specified local elected or appointed officers from membership in the system.

This bill would clarify the operative date of that exclusion.

(5) The Public Employees' Retirement Law prescribes state peace officer/firefighter and state safety membership based upon employment classifications.

This bill would clarify the membership category of specified positions.

(6) The Public Employees' Retirement Law prescribes terms and conditions for terminating agency contracts for participation in the retirement system.

This bill would clarify certain termination provisions.

(7) The Public Employees' Retirement Law requires benefit adjustments as a result of specified federal limitations.

This bill would revise those provisions to reflect changes in the federal limitations.

(8) The bill would incorporate additional changes to Section 22013.7 of the Government Code to take effect if both bills are enacted and this bill is enacted last.

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

SECTION 1. Section 22138.5 of the Education Code is amended to read:

22138.5. (a) “Full time” means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, “full time” shall not be less than the minimum standards specified in this section.

(b) The minimum standard for full time in kindergarten through grade 12 shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year except as provided in paragraphs (2) and (3).

(2) (A) One hundred ninety days per year or 1,520 hours per year for all principals and program managers, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs, and for administrators except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer’s governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

(c) The minimum standard for full time in community colleges shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full time assignment for a particular class of employees.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer’s governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.



(5) Five hundred twenty-five instructional hours per year for all credit instructors employed on a part-time basis. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per year for all adult education instructors. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) The board shall have final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified herein.

SEC. 2. Section 22175 of the Education Code is repealed.

SEC. 3. Section 20057.1 is added to the Government Code, to read:

20057.1. To qualify as a “public agency” within the meaning of this part, any organization that qualifies under amendments to the definitions of “public agency” effective on or after January 1, 1999, shall also obtain a written advisory opinion from the United States Department of Labor stating that the participation of the officers and employees of the organization in this system does not affect this system’s exemption as a governmental plan under Section 1001 et seq. of Title 29 of the United States Code.

SEC. 4. Section 20200 of the Government Code is amended to read:

20200. (a) Notwithstanding any other provision of law, the board may establish a program utilizing the retirement fund to assist system members, through financing, to obtain homes throughout the United States.

(b) For the purpose of this section, the term “member” means any person who is receiving, or is entitled to receive, a retirement allowance funded by this system, the Legislators’ Retirement System, the Judges’ Retirement System, or the Judges’ Retirement System II, notwithstanding any vesting requirement and without regard to present eligibility to retire.

(c) The board shall adopt regulations governing the program that shall, among other things, provide:

(1) That home loans be made available to members for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.



(2) That private lending institutions throughout the United States shall originate and service its home loans pursuant to agreements entered into between those institutions and the board.

(3) That the recipients of the loans occupy the homes as their permanent residences in accord with rules and regulations established by the board.

(4) That its home loans shall be available only for the purchase or refinancing of homes throughout the United States and that under no condition shall a member have more than one outstanding loan.

(5) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan-to-value ratio of: (A) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (B) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (C) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code, in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(6) That there may be prepayment penalties assessed on its loans in accordance with rules and regulations established by the board.

(7) That the criteria and terms for its loans shall provide the greatest benefit to members consistent with the financial integrity of the program and the sound investment of the retirement fund.

(8) Any other terms and conditions as the board shall deem appropriate.

(d) This section shall be known as, and may be cited as, the Dave Elder Public Employees' Retirement System Member Home Loan Program Act.

SEC. 5. Section 20201 of the Government Code is amended to read:

20201. (a) It is the intent of the Legislature that the provisions of this section be available to assist members in obtaining homes throughout the United States. The Legislature intends that home loans made pursuant to Section 20200 and this section shall be secured primarily by the property acquired except as authorized pursuant to paragraph (1) of subdivision (b) and shall not exceed the fair market value of the property acquired.

(b) The board shall include in any program established pursuant to Section 20200 a procedure whereby a member may obtain 100-percent financing for the purchase of a single-family dwelling unit in accordance with the following criteria:

(1) The member shall obtain one loan with a loan-to-value ratio not to exceed 95 percent secured by the purchased home and a



second personal loan with a loan-to-value ratio not to exceed 5 percent secured by a portion of the accumulated contributions and vested accrued benefits in the member's individual account. A member can only have one outstanding personal loan.

(2) The loan secured by the purchased home shall be consistent with the loan-to-value ratios specified in the schedules established pursuant to Section 20200.

(3) The amount of a conforming loan on a single-family dwelling unit shall not exceed 95 percent of the Federal National Mortgage Association (FNMA) conforming loan limits. The amount shall be adjusted annually as determined by the Federal National Mortgage Association (FNMA). In no event, shall the loan amount exceed three hundred fifty thousand dollars (\$350,000).

(4) In no event may the personal loan secured by the accumulated contributions and vested accrued benefits in the member's individual account exceed 50 percent of the current value amount of the accumulated contributions.

(5) The pledge of security under this section shall remain in effect until the loan is paid in full.

(c) In the event of a default on the personal loan secured by the member's contributions as authorized by this section, the board may deduct an amount from the member's contributions on deposit and adjust the member's accrued benefit, up to the amount pledged as security, prior to making any disbursement of retirement benefits.

(d) The secured personal loan permitted under this section shall be made available only to currently employed members who meet eligibility criteria the board deems advisable.

(e) If the member is married at the time the home is purchased with a personal loan secured by the member's contributions as authorized by this section, then the member's spouse shall agree in writing to the pledge of security, as to his or her community interest in the amount pledged regardless of whether title to the home is in joint tenancy.

(f) The pledge of security under this section shall take binding effect, notwithstanding Section 21255. In the event of default, the accumulated contributions in the member's account shall be reduced as necessary to recover any outstanding loan balance, not to exceed the pledged amount.

(g) Appropriate administrative costs of implementing this section shall be paid by the members utilizing this section. Those costs may be included in the loan amount.

(h) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to members consistent with the financial integrity of the member home loan program and the sound and prudent investment of the retirement fund.



(i) The amendments to this section by Chapter 1094 of the Statutes of 1994 shall be deemed to have become operative on November 1, 1993.

(j) The board shall administer this section under other terms and conditions it deems appropriate and in keeping with the investment standard set forth in Section 20151. The board may adopt procedural guidelines as necessary for its administration of this section and to assure compliance with applicable state and federal laws.

SEC. 6. Section 20322 of the Government Code is amended to read:

20322. (a) An elective officer is excluded from membership in this system unless the officer files with the board an election in writing to become a member. The officer may elect at any time, and has the option of making contributions to this system in the amount that the officer would have contributed had the officer not been excluded, plus an amount equal to the interest, to the date or dates of his or her payment, that would have been credited to those contributions had he or she not been excluded. The contributions and interest shall be paid to this system at times, in amounts, and in a manner, fixed by the board. If the officer affirmatively exercises the option:

(1) He or she shall receive credit for previous state service in the same manner as if he or she had not been excluded, and

(2) His or her rate of contributions shall be based on the nearest age at the time he or she first was excluded.

(b) As used in this part, "elective officer" includes any officer of the Senate or Assembly who is elected by vote of the members of either or both of the houses of the Legislature, and any appointive officer of a city or county occupying a fixed term of office, as well as officers of the state or contracting agencies elected by the people, and persons elected to a city council or a county board of supervisors.

(c) Notwithstanding any other provision of subdivision (a) or (b), elected or appointed officers of a county superintendent of schools, school district, or community college district, or of a contracting agency, who serve on public commissions, boards, councils, or similar legislative or administrative bodies are excluded from membership in this system. This exclusion shall only apply to those elected or appointed officers, other than city or county officers, who are first elected or appointed to an office on or after July 1, 1994, or who are elected or appointed to a term of office not consecutive with the term of office held on June 30, 1994. For city or county elected or appointed officers, this exclusion shall only apply to those officers who are first elected or appointed to an office on or after January 1, 1997, or who are elected or appointed to a term of office not consecutive with the term of office held on December 31, 1996. This exclusion shall not apply to persons elected to a city council or county board of supervisors.



(d) Any person holding the office of city attorney or the office of assistant city attorney, whether employed, appointed, or elected, is excluded from the definition of “elective officer” as defined in subdivision (b). This subdivision shall apply only to persons first employed, elected, or appointed on or after July 1, 1994, or following any break in state service while serving in the office if the office was held on June 30, 1994.

(e) In accordance with Section 20125 the board shall be the sole judge of which elected or appointed positions qualify the incumbent as an “elective officer” in this system under this section.

(f) Notwithstanding any other provision of law, with respect to elective officers of contracting agencies, payment by a contracting agency of employer contributions and any other amounts for employer paid benefits under this system shall not be construed as receipt of salary or compensation by the elective officer for purposes of any statutory salary or compensation limitation.

SEC. 7. Section 20398 of the Government Code is amended to read:

20398. “State peace officer/firefighter member” also includes:

(a) State officers and employees designated as peace officers as defined in Sections 830.1, 830.2, 830.3, 830.38, 830.4, and 830.5 of the Penal Code, except a patrol member, or a firefighter whose principal duties consist of active firefighting/fire suppression, who is either 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, provided, that those officers and employees have responsibility for the direct supervision of state peace officer/firefighter personnel specified in Sections 20391, 20392, 20393, and 20395. The Department of Personnel Administration shall annually determine which classes meet the above conditions and are not classes specified in Sections 20391, 20392, 20393, and 20395, and report its findings to the Legislature and to this system, to be effective July 1 of each year.

(b) Members who are reclassified pursuant to this section may file an irrevocable election to remain subject to their prior retirement formula and the corresponding rate of contributions. The Director of Corrections may, upon appointment to that office on or after January 1, 1999, file an irrevocable election to be subject to the industrial formula and the corresponding rate of contributions. The elections must be filed within 90 days of notification by the board. Members who so elect shall be subject to the reduced benefit factor specified in Section 21353 only for the service included in the federal system.

SEC. 8. Section 20403 of the Government Code is amended to read:

20403. “State safety member” shall also include officers and employees in (a) the Department of Corrections employed to



perform the duties now performed in positions with the following class titles: Deputy Director, Department of Corrections; Deputy Director, Institutions, Camps and Program Services Division; Deputy Director, Parole and Community Services; Warden; Warden—San Quentin; Superintendent II and III, Department of Corrections; Deputy Superintendent; Correctional Administrator; Program Administrator, Correctional Institution; all classes of Correctional Program Supervisor; Correctional Captain; Correctional Lieutenant; Correctional Sergeant; Correctional Officer; all classes of Women's Correctional Supervisor; Assistant Deputy Director, Parole and Community Services; all classes of Parole Administrator, Adult Parole; all classes of Parole Agent, Adult Parole; Assistant Director, Investigations and Law Enforcement Liaison; Senior Special Agent; Special Agent; all classes of Women's Parole Agent; Medical Facility Superintendent; Superintendent, California Institution for Women; all classes of Correctional Counselor; Chief and Assistant Chief Transportation Officer, (b) the Department of the Youth Authority employed to perform the duties now performed in positions with the following class titles: Director, Department of the Youth Authority; Chief, Division of Parole and Community Services; Deputy Chief, Division of Parole and Community Services; Program Administrator, Correctional School; Assistant Superintendent, Correctional School; all classes of Superintendent, Correctional School; Youth Authority Camp Superintendent; Assistant Superintendent, Youth Authority Camp; Chief, Division of Institutions; Treatment Team Supervisor; all classes of Transportation Officers, Youth Authority; Security Officer; all classes of Group Supervisors; all classes of Parole Agent, Youth Authority; all classes of Youth Counselor; Supervisor Community Treatment Programs; Correctional Casework Training Supervisor; Correctional Casework Trainee; all classes of Correctional Counselor, (c) the Board of Prison Terms employed to perform duties now performed in positions with the following class titles: all classes of Parole Agent; all classes of Correctional Counselor and the Chief of Investigation, (d) the Youthful Offender Parole Board employed to perform duties now performed in positions with the following class titles: all classes of Parole Agent, and (e) the Prison Industry Authority employed to perform duties now performed in positions with the following class titles: General Manager; Assistant General Manager, Administration and Marketing Branch; Chief, Industry Implementation Division; and Activation Manager.

SEC. 9. Section 20575 of the Government Code is amended to read:

20575. Notwithstanding any other provision of this part to the contrary, upon request of a terminating agency, the board shall enter into an agreement with the governing body of a terminating agency in order to ensure that (a) the final compensation used in the



calculation of benefits of its employees shall be calculated in the same manner as the benefits of employees of agencies that are not terminating, regardless of whether they retire directly from employment with the terminating agency or continue in other public service; and (b) related necessary adjustments in the employer's contribution rate are made, from time to time, by the board prior to the date of termination to ensure that benefits are adequately funded or any other actuarially sound payment technique, including a lump-sum payment at termination, is agreed to by the governing body of the terminating agency and the board.

The terminating agency that will cease to exist shall notify the board not sooner than three years nor later than one year prior to its termination date of its intention to enter into agreement pursuant to this section. The terms of the agreement shall be reflected in an amendment to the agency's contract with the board.

If the board, itself, determines that it is not in the best interests of the system, it may choose not to enter into an agreement pursuant to this section.

SEC. 10. Section 20578 of the Government Code is amended to read:

20578. Notwithstanding any other provision of law, on and after January 1, 1991, the rights and benefits of a former employee of a contracting agency which terminated on or before January 1, 1991, or of his or her beneficiary, shall be the same as if the agency had continued as a contracting agency. Any monthly allowance of that individual, or of his or her beneficiary, that was reduced pursuant to Section 20577 because the contracting agency failed to pay the board the amount of the difference, shall not be subject to continued reduction on or after January 1, 1991. As of January 1, 1991, benefits shall be paid at the level provided in the contract prior to that reduction. However, if a former employee of a contracting agency that terminated on or before January 1, 1991, becomes employed by another covered employer after the date of termination, including an employer subject to reciprocity, the benefits shall be calculated by using the highest compensation earned by the individual.

In accordance with Section 20580, an individual who has withdrawn his or her accumulated contributions from the terminated agency shall not be permitted to redeposit any withdrawn contributions upon again becoming a member of this system.

All assets and liabilities of contracting agencies which have terminated shall be pooled into a single account to provide exclusively for the payment of benefits. All benefits shall be reduced proportionally pursuant to Section 20577 prior to the transfer of assets to the pool if the amount of the terminating agency's assets are less than the actuarial equivalent described in clause (1) of Section 20576 and if the agency fails to pay the difference.



SEC. 11. Section 20636 of the Government Code is amended to read:

20636. (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 21752.5.

(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 20691, 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 Section 201 et seq. of Title 29 of the United States Code 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.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States 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 Title 26 of the United States 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 20632.



(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, annual leave, personal leave, 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 Title 26 of the United States Code.

(ii) Payment into a money purchase pension plan and trust which meets the requirements of Section 401(a) of Title 26 of the United States 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 20632; 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. 12. Section 21493 of the Government Code is amended to read:

21493. (a) If a person had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors of the person in the following order:

(1) The decedent's spouse.

(2) The decedent's natural or adopted children, including a natural child adopted by another who meets the following criteria:

(A) The natural parent and adopted child lived together at any time as parent and child or the natural parent was married to or was cohabiting with the other natural parent at the time the child was conceived and died before the birth of the child; and

(B) The child was adopted by the spouse of either of the natural parents or after the death of either of the natural parents or the child is a natural child adopted by another as that phrase is defined or construed by the Probate Code.

(3) The decedent's parents.

(4) The decedent's brothers and sisters.

(b) If a deceased person had no effective beneficiary designation and there are no survivors in the groups specified in subdivision (a) who are entitled to the benefit under this section, the benefit shall be paid to the estate of the decedent, if the estate is either probated or subject to probate. Any benefit payable by this system may be paid either to the estate or to the duly authorized representative or representatives of the estate upon receipt by this system of a court order appointing an executor, administrator, or personal representative.

(c) If there are no survivors in the groups specified in subdivision (a) and the estate of the person described in subdivision (b) does not require probate, irrespective of whether probate is filed, the benefit shall be paid directly to the decedent's trust.

(d) If there are no survivors in the groups specified in subdivision (a) and the estate of the person described by subdivision (b) does not require probate, irrespective of whether probate is filed, and the decedent has not established a trust as described by subdivision (c), the benefit shall be paid directly to the surviving next of kin in the following order.

(1) Stepchildren.

(2) Grandchildren, including stepgrandchildren.

(3) Nieces and nephews.

(4) Great grandchildren.

(5) Cousins.

(e) For purposes of determining the application of subdivisions (b), (c), and (d) the amount of the benefit payable from this system shall not be included in calculating the worth of the estate.



(f) For purposes of this section, the term “stepchild” shall mean a person who had a regular parent-child relationship with the deceased person.

SEC. 13. Section 21752 of the Government Code is amended to read:

21752. (a) (1) In accordance with Section 21756, a member’s annual retirement benefits, adjusted to the actuarial equivalent of a straight-life annuity if payable in a form other than a straight-life annuity or a qualified joint and survivor annuity as provided under Section 21460, and determined without regard to any employee contributions or rollover contributions, as defined in Sections 402(a)(5), 403(a)(4), and 408(d)(3)) of Title 26 of the United States Code, otherwise payable to the member under Part 3 (commencing with Section 20000) and under any other defined benefit plan maintained by the employer that is subject to Section 415 of Title 26 of the United States Code, shall not exceed, in the aggregate, the dollar limit applicable pursuant to Section 415(b)(1)(A) of Title 26 of the United States Code; as appropriately modified by Section 415(b)(2)(F) and (G) of Title 26 the United States Code.

(2) However, the annual retirement benefit payable to a member shall be deemed not to exceed the limitations prescribed in paragraph (1) if the benefit does not exceed ten thousand dollars (\$10,000) and the member has at no time participated in a tax qualified defined contribution plan maintained by the employer.

(b) These limitations shall be applied pursuant to Section 415(b)(10) of the Title 26 of the United States Code.

(c) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

SEC. 14. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of benefits pursuant to Part 3 (commencing with Section 20000), including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits or any combinations thereof in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a program of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Part 3. The benefits provided by that program may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination shall include, but not be limited to, the following: legal constraints, administrative



feasibility, and cost-effectiveness. The board may periodically modify the replacement benefits program and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The administrative costs of the replacement benefits program shall be satisfied out of funds credited to the accounts of the participant members, and shall not be paid from the retirement fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 to benefits provided under Part 3 and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit program result in increased benefit costs to an employer, member, or annuitant.

SEC. 15. Section 22013 of the Government Code is amended to read:

22013. "Policeman" as used in this part includes members of the California Highway Patrol, state safety members of the Public Employees' Retirement System employed by the Department of Justice, sheriffs, undersheriffs, deputy sheriffs, marshals and deputy marshals, and any other employee of a public agency other than the state or University of California in a position designated as a policeman's position by the board for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 16. Section 22013.1 of the Government Code is amended to read:

22013.1. "Policeman" as used in this part also includes persons employed in the Department of Fish and Game in connection with its warden service, whose principal duties consist of active law enforcement service, including immediate supervision by persons employed to perform the duties now performed under the titles of chief and assistant chief of warden service, and captain of patrol boats for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 17. Section 22013.3 of the Government Code is amended to read:

22013.3. "Policeman" as used in this part also includes persons employed in positions set forth in Section 20403 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 18. Section 22013.4 of the Government Code is amended to read:

22013.4. "Policeman" as used in this part also includes persons designated by Section 31470.6 as persons whose principal duties consist of "active law enforcement" for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 19. Section 22013.6 of the Government Code is amended to read:



22013.6. “Policeman” as used in this part also includes persons employed in positions set forth in Sections 20438 and 31469.4 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

This section shall be operative only in counties which elect to terminate the social security coverage of county probation officers and juvenile hall employees in that county and elect to include such officers and employees within the safety membership retirement category.

SEC. 20. Section 22013.7 of the Government Code is amended to read:

22013.7. “Policeman” or “fireman,” as used in this part, also includes persons employed in positions set forth in Section 20414 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 20.5. Section 22013.7 of the Government Code is amended to read:

22013.7. “Policeman” or “fireman,” as used in this part, also includes persons employed in positions set forth in Sections 20403.5 and 20414 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 21. Section 22013.75 of the Government Code is amended to read:

22013.75. “Policeman,” as used in this part, also includes persons employed in positions identified in Section 20407 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 22. Section 22013.76 of the Government Code is amended to read:

22013.76. “Policeman,” as used in this part, also includes persons employed in positions identified in Section 20408 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 23. Section 22013.8 of the Government Code, as amended by Chapter 88 of the Statutes of 1998, is amended to read:

22013.8. “Policeman” as used in this part also includes persons employed in classifications listed in Sections 20405 and 20405.1, for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 24. Section 22013.82 of the Government Code, as added by Chapter 91 of the Statutes of 1998, is amended to read:

22013.82. “Policeman” as used in this part also includes persons employed in classifications listed in Section 20405.3, for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 25. Section 22013.85 of the Government Code is amended to read:



22013.85. “Policeman” as used in this part also includes persons employed in the classification listing in Section 20411 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 26. Section 22013.9 of the Government Code is amended to read:

22013.9. “Policeman” as used in this part also includes persons employed in positions set forth in Section 20406 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 27. Section 22013.95 of the Government Code is amended to read:

22013.95. “Policeman” or “fireman,” as used in this part, also includes persons employed in positions set forth in Section 20393 for the purposes of Section 218(d)(5) (A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 28. Section 22013.955 of the Government Code is amended to read:

22013.955. “Policeman” as used in this part also includes persons employed in the classifications set forth in Section 20397 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 29. Section 22013.96 of the Government Code is amended to read:

22013.96. “Policeman” or “fireman,” as used in this part, also includes persons employed in positions set forth in Section 20395, as amended in 1984 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 30. Section 22013.97 of the Government Code is amended to read:

22013.97. “Policeman” or “fireman,” as used in this part, also includes persons employed in positions set forth in Sections 20398 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 31. Section 22013.10 of the Government Code is amended to read:

22013.10. “Policeman” as used in this part, also includes persons employed in positions set forth in Section 20415 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 32. Section 22013.11 of the Government Code is amended to read:

22013.11. “Policeman” or “fireman,” as used in this part, also includes persons employed in positions set forth in Sections 20409 and 20410 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 33. Section 22014 of the Government Code is amended to read:

22014. “Fireman” as used in this part means any employee of the Division of Forestry, Department of Conservation, employed to



perform duties now performed under the following titles: State Forester; all classes of rangers; all classes of deputy state foresters; all classes of fire prevention and law enforcement officers; all classes of foresters; all classes of forestry foreman; all classes of forestry trainees; all classes of forestry equipment and civil engineers; forestry superintendent, conservation camps; forest firetruck driver; forestry fireman; forest firefighter; equipment maintenance foreman or forestry equipment operator; or employed in any other position the principal duties of which consist of active fire suppression, and any employee of a public agency other than the state or University of California in a position designated as a fireman's position by the board for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 34. Section 22014.1 of the Government Code is amended to read:

22014.1. "Fireman" as used in this part also means any officer or employee of a county having a population in excess of 5,000,000 who is employed by the forestry division of the county fire department and whose principal duties consist of active fire suppression for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 35. Section 22014.5 of the Government Code is amended to read:

22014.5. "Fireman" as used in this part includes persons employed as "campus firefighter" and other persons employed in positions described in Section 20412 for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 36. Section 20.5 of this bill incorporates amendments to Section 22013.7 of the Government Code proposed by both this bill and AB 1596. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 22013.7 of the Government Code, and (3) this bill is enacted after AB 1596, in which case Section 20 of this bill shall not become operative.

