

AMENDED IN SENATE AUGUST 4, 2004

AMENDED IN SENATE JUNE 22, 2004

AMENDED IN ASSEMBLY MAY 20, 2004

AMENDED IN ASSEMBLY MARCH 18, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1852**

---

---

**Introduced by Assembly Member Mullin**

January 29, 2004

---

---

An act to amend Sections 22851, 24221, and 28001 of the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1852, as amended, Mullin. State teachers' retirement.

(1) Existing law authorizes a member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program of the State Teachers' Retirement Plan to receive credit, as specified, for the period of time during which he or she served in the uniformed services if the member or participant makes the employee contributions to the retirement fund that he or she would have otherwise been required to make during that period and other conditions exist.

Under this bill, a member or participant would receive credit for the period of time during which he or she served in the uniformed services, up to one year, without paying any employee contributions, if the period of service occurred between September 11, 2001, and July 30, 2005, and other conditions exist.

(2) Existing law authorizes members of the Defined Benefit Program of the State Teachers’ Retirement Plan who retire prior to January 1, 2011, at a specified age or at a specified age with 30 years of service, to elect to receive a specified lump-sum payment upon retirement and an actuarially reduced monthly allowance.

This bill would authorize any member who retires prior to that date to make that election. The bill would also specify the method to be used by the Teachers’ Retirement Board to calculate the member’s actuarially reduced monthly allowance, that results in no net actuarial impact to the program.

(3) The bill would appropriate \$53,000 from the Teachers’ Retirement Fund to the Teachers’ Retirement Board to implement the bill’s provisions.

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

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

1 SECTION 1. Section 22851 of the Education Code is  
2 amended to read:

3 22851. The right to pension benefits under this part of a  
4 member who returns to employment with the same employer that  
5 had employed the member immediately prior to the eligible period  
6 of service in the uniformed services, and is subject to Chapter 43  
7 (commencing with Section 4301) of Title 38 of the United States  
8 Code shall be determined under this section.

9 (a) (1) A member shall be treated as not having incurred a  
10 break in service by reason of that member’s eligible period or  
11 periods of service in the uniformed services.

12 (2) Each eligible period of service served by a member in the  
13 uniformed services shall, upon return to employment, with the  
14 same employer that had employed the member immediately prior  
15 to the eligible period of service in the uniformed services, be  
16 deemed to constitute service with the employer or employers  
17 toward plan vesting and eligibility for membership in the Defined  
18 Benefit Program.

19 (3) A member who returns to employment, with the same  
20 employer that had employed the member immediately prior to the  
21 eligible period of service in the uniformed services is not entitled  
22 to any benefits under this part with respect to service in the



1 uniformed services to which the member would not otherwise  
2 have been entitled had the member remained continuously  
3 employed and not undertaken that service in the uniformed  
4 services.

5 (b) For purposes of calculating benefits, a member who returns  
6 to employment with the same employer that had employed the  
7 member immediately prior to the eligible period of service in the  
8 uniformed services shall be entitled to service credit under this part  
9 for the eligible period of service in the uniformed services upon his  
10 or her payment of the member contributions required under  
11 Section 22901 that otherwise would have been due for that period  
12 of service had the member remained continuously employed and  
13 not undertaken that service in the uniformed services. No payment  
14 of member contributions may exceed the amount the member  
15 would have been required to contribute under this part had the  
16 member not served in the uniformed services and had remained  
17 continuously employed by the employer throughout the eligible  
18 period of service in the uniformed services. If a member fails to  
19 remit the member contributions that would have been required  
20 under Section 22901 with respect to the eligible period of service  
21 in the uniformed services, no service credit shall be provided under  
22 this part for the period to which the unpaid contributions relate.

23 (c) Any payment of member contributions to the Defined  
24 Benefit Program in this section shall be made by the member  
25 during the period beginning with the date of return to employment  
26 and may continue for three times the period of the member's  
27 eligible service in the uniformed services, not to exceed five years.  
28 Any payment of member contributions to the Defined Benefit  
29 Program in this section by a member who returned to employment  
30 prior to January 1, 1997, and qualifies for benefits in accordance  
31 with the Uniformed Services Employment and Reemployment  
32 Rights Act of 1994 (Chapter 43 (commencing with Section 4301)  
33 of Title 38 of the United States Code), shall be made by the  
34 member during the period beginning with the date of notification  
35 of eligibility by the employer to the system and may continue for  
36 three times the period of the member's eligible service in the  
37 uniformed services, not to exceed five years. Any subsequent  
38 request to purchase this service shall be subject to the provisions  
39 of Chapter 14 (commencing with Section 22800). If all  
40 contributions due under this part are not paid to the plan with



1 respect to the Defined Benefit Program within the specified  
2 repayment period and in accordance with subdivision (b) of  
3 Section 22851, the contributions shall be returned to the member  
4 at the end of the repayment period. Interest on member  
5 contributions made for the eligible period of service in the  
6 uniformed services may not be credited under this part until after  
7 the contributions due are paid and then only prospectively to the  
8 member's account in accordance with Section 22216.

9 (d) (1) Notwithstanding subdivision (b), a member is not  
10 required to pay contributions to receive credit pursuant to this  
11 section for the eligible period of service in the uniformed services  
12 if the service was performed on or after September 11, 2001, and  
13 the member returned to employment prior to July 30, 2005, with  
14 the same employer that had employed the member immediately  
15 prior to the eligible period of service.

16 (2) The maximum amount of credited service that a member  
17 employed on a full-time basis may receive without payment of  
18 contributions under this subdivision shall be one year. The  
19 maximum amount of credited service that a member employed on  
20 less than a full-time basis may receive without payment of  
21 contributions under this subdivision may not exceed the amount  
22 of credited service the member would have earned during the  
23 12-month period immediately following his or her entry into the  
24 eligible period of service in the uniformed services.

25 (3) This subdivision does not modify the employer's obligation  
26 to make contributions on behalf of the member pursuant to Section  
27 22852.

28 SEC. 2. Section 24221 of the Education Code is amended to  
29 read:

30 24221. (a) A member who retires for service prior to January  
31 1, 2011, may elect, on a form prescribed by the system, to receive  
32 a lump-sum payment and an actuarially reduced monthly  
33 allowance pursuant to this section in lieu of the monthly  
34 *unmodified* allowance that would otherwise be payable to the  
35 member pursuant to this chapter. The election under this section  
36 shall be made at the time the member files his or her application  
37 for service retirement allowance as provided in Section 24204.

38 (b) A member who makes the election described in subdivision  
39 (a) shall receive a one-time, lump-sum payment in an amount that  
40 equals or does not exceed the lesser of the following amounts:



1 (1) The actuarial present value of the amount by which (A) the  
2 monthly *unmodified* allowance payable to the member pursuant to  
3 this chapter exceeds (B) an amount equal to 2 percent of the  
4 member's final compensation multiplied by the number of years  
5 of credited service and divided by 12.

6 (2) Fifteen percent of the actuarial present value of the monthly  
7 *unmodified* allowance payable to the member under this chapter.

8 (c) Notwithstanding any other provision of this part, a member  
9 who makes the election described in subdivision (a) shall receive  
10 a monthly *unmodified* allowance, pursuant to this chapter, that  
11 shall be actuarially reduced to reflect the lump-sum amount paid  
12 under subdivision (b). *The actuarial reduced unmodified*  
13 *allowance may be modified pursuant to Section 24300.*

14 (d) A member may not apply a lump-sum payment made  
15 pursuant to this section for the purposes of redepositing previously  
16 refunded retirement contributions pursuant to Chapter 19  
17 (commencing with Section 23200) or purchasing service credit  
18 pursuant to Chapter 14 (commencing with Section 22800),  
19 Chapter 14.2 (commencing with Section 22820) or Chapter 14.5  
20 (commencing with Section 22850). The Legislature hereby finds  
21 and declares that if a member who elects to receive a partial  
22 lump-sum payment also elects to redeposit previously refunded  
23 *retirement* contributions or purchase service credit as a result of the  
24 receipt of the lump-sum payment, the Defined Benefit Program  
25 may experience a net actuarial impact.

26 (e) An election pursuant to subdivision (a) may have no net  
27 actuarial impact to the Defined Benefit Program. The board shall  
28 adopt present value factors to establish a corresponding actuarially  
29 reduced monthly allowance, that results in no net actuarial impact  
30 to the Defined Benefit Program. The Legislature reserves the right  
31 to modify the provisions of this section to further the objective of  
32 permitting eligible members to receive a lump-sum distribution of  
33 a portion of their benefits, with a corresponding actuarial  
34 reduction in their monthly allowance, so that there is no net  
35 actuarial impact to the Defined Benefit Program.

36 SEC. 3. Section 28001 of the Education Code is amended to  
37 read:

38 28001. (a) The participant who returns to employment with  
39 the same employer that had employed the participant immediately  
40 prior to the eligible period of service in the uniformed services, in



1 accordance with the requirements of Chapter 43 (commencing  
2 with Section 4301) of Title 38 of the United States Code, shall be  
3 treated as not having incurred a break in the performance of  
4 creditable service by reason of that participant's period or periods  
5 of service in the uniformed services. The length of each period of  
6 service in the uniformed services shall not exceed five years unless  
7 otherwise permitted pursuant to Section 28004. Each period of  
8 service in the uniformed services by the participant shall, upon that  
9 participant's return to employment with the same employer or  
10 employers that had employed the participant immediately prior to  
11 the eligible period of service in the uniformed services, constitute  
12 employment toward the performance of creditable service  
13 provided that participant elects to remit the employee  
14 contributions that would have been made during the period of  
15 service in the uniformed services. The remittance of employee  
16 contributions shall be calculated pursuant to Sections 26501 and  
17 28003. That remittance may not exceed the amount the participant  
18 would have been required to contribute during that period of  
19 performance of creditable service had the participant remained  
20 continuously employed by the last employer and not served in the  
21 uniformed services throughout that period.

22 (b) Notwithstanding Section 26506, remittance of employee  
23 contributions in accordance with subdivision (a) shall be made by  
24 the employer pursuant to Section 26502 upon the employer's  
25 receipt of written consent of the participant specifying a schedule  
26 of repayments. That remittance shall commence during the period  
27 beginning with the date of return to employment and may continue  
28 for three times the period of the participant's eligible period of  
29 service in the uniformed services, not to exceed five years. The  
30 plan's receipt of the remittance payments to the plan with respect  
31 to the Cash Balance Benefit Program shall be credited pursuant to  
32 Chapter 7 (commencing with Section 26600) of this part. Interest  
33 on the payments of remitted employee contributions made for the  
34 period of service in the uniformed services shall not be credited ~~in~~  
35 to the participant's account until after those payments are received  
36 and only prospectively to the participant's account in accordance  
37 with Section 26604. Upon receipt of the remittance payments to  
38 the plan, the payments shall be subject to the same terms and  
39 conditions under the program as if the payments had been  
40 employee contributions made by the participant had the



1 participant not served for a period in the uniformed services. The  
2 current year contributions and contributions made for purposes of  
3 purchasing service may not exceed the maximum exclusion  
4 allowance as set forth in the Internal Revenue Code.

5 (c) A participant shall not be required to make the contributions  
6 to his or her employee account pursuant to subdivision (a) for the  
7 12-month period immediately following his or her entry into the  
8 eligible period of service in the uniformed services, if that service  
9 was performed on or after September 11, 2001, and the participant  
10 returned to employment prior to July 30, 2005, with the same  
11 employer that had employed the participant immediately prior to  
12 the eligible period of service. However, upon receipt of the  
13 employer contributions made pursuant to Section 28002, a credit  
14 shall be made to the participant's account in the amount of the  
15 employee contributions the participant would have otherwise  
16 made to his or her employee account pursuant to subdivision (a)  
17 for the eligible period of service in the uniformed services. This  
18 subdivision does not modify the employer's obligation to make  
19 contributions on behalf of the participant pursuant to Section  
20 28002.

21 SEC. 4. The sum of fifty-three thousand dollars (\$53,000) is  
22 hereby appropriated from the Teachers' Retirement Fund to the  
23 Teachers' Retirement Board to implement the provisions of this  
24 act.

