AMENDED IN ASSEMBLY MARCH 26, 2009

california legislature—2009–10 regular session

ASSEMBLY BILL No. 966

Introduced by Committee on Public Employees, Retirement and Social Security (Hernandez (Chair), Fong (Vice Chair), Beall, and Torrico)

February 26, 2009

An act to amend Section 2610 of the Family Code, and to amend Sections 20037.6, 20037.7, 20037.8, 20037.9, 20037.10, 20037.11, 20037.12, 20039.5, 20069, 20164, 20195, 20221, 20228, 20281.5, *20283*, 20305, 20475, 20479, 20636.1, 20962, 20967, 21117, 21118, 21252, 21264, 21296, 21753, 22839, 22864, 22960.15, 75006, 75028.5, and 75507 of, to add Sections *20831.2*, 21310.5, and 75080.5 to, and to repeal Sections 20041 and 20043 of, the Government Code, relating to public employee benefits.

legislative counsel's digest

AB 966, as amended, Committee on Public Employees, Retirement and Social Security. Public employee benefits.

(1) The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service, credit, and final compensation. PERL defines final compensation in this regard for members of certain state bargaining units who became a state member of the system on or after January 1, 2006, or January 1, 2007, with specified exceptions.

This bill would specify that the provisions described above apply to members in state bargaining units 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 who were employed by the state for the first time on or after January 1, 2006, or January 1, 2007.

(2) PERL requires that the entire compensation of a local member of PERS be used for the calculation of service rendered as an employee of the contracting agency for specified contracts, including contracts entered prior to July 1, 1952, that contained an election in this regard. PERL provides a definition of final compensation for a local member of the Public Employees' Retirement System in connection with this requirement.

This bill would delete these provisions.

(3) PERL permits officers, warrant officers, and enlisted personnel of the California National Guard to become members of PERS upon filing a written election and making the necessary contributions to the retirement fund. Existing law defines final compensation and state service in this regard. Existing law prohibits a National Guard member from receiving health care benefits under the Public Employees' Medical and Hospital Care Act based on his or her service with the California National Guard.

This bill would revise the definition of final compensation for a National Guard member to specify that it is the highest annual compensation that was earned during a consecutive 12-month period while rendering service with the California National Guard. The bill would also make technical changes, including revising the definition of state service with regard to a National Guard member to specify that it does not apply to qualification for health and dental benefits.

(4) PERL prescribes the period of limitation within which an action for adjustment of errors and omissions regarding payments into or out of the retirement fund must be filed, and generally sets that period at 3 years. The law provides that the period of limitation commences with the discovery of the erroneous payment in cases in which payment is erroneous because of death or remarriage, as specified.

This bill would provide in cases in which payment is erroneous because of death or remarriage, as described above, that the period of limitation is 10 years.

(5) PERL permits the Board of Directors of PERS to select, purchase, or acquire in the name of the system real property, improved or unimproved, and to construct or remodel, and equip, an office building, including appropriate satellite structures, as specified.

This bill would permit the Board of Directors of PERS to select, purchase, or acquire real property and to construct or remodel, and equip, business recovery centers in California for use by the system as an alternate facility, emergency operations center, or data center that the board determines is appropriate for disaster preparedness.

(6) PERL requires every state agency, school employer, and the chief administrative officer of a contracting agency to provide immediate written notice to the Board of Directors of PERS of the change in status of any member resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death.

This bill would revise these provisions to provide that the notice be filed in the manner prescribed by PERS.

(7) PERL requires the Board of Directors of PERS to annually employ a certified public accountant, who is not in public employment, to audit the financial statements of this system.

This bill would specify that these provisions do not affect the ability of the State Auditor or the Department of Finance to conduct other types of audits of the system as otherwise authorized.

(8) PERL provides that an employer that fails to enroll an employee into PERS membership when he or she becomes eligible, or within 90 days of that date, when the employer knows or should have known of that eligibility, is required to pay all arrears costs for member contributions and administrative costs of $500 per member. PERL provides that a contribution adjustment is not required when a member paid less than the correct amount of normal contributions, if the board finds that the error was not known to the member and was not the result of erroneous information provided by the employee to the system or to his or her employer.

This bill would prohibit an employer from passing on to an employee costs associated with the employer's failure to enroll an employee into membership, as described above. The bill would also require an employer that fails to withhold and submit an employee's normal contributions within the applicable time limitations to notify PERS and to take no action until authorized by PERS.

~~(8)~~

(9) PERL ~~prohibits~~ *excludes* an employee who serves on a less than full-time basis from membership *in* the Public Employees' Retirement System unless that person comes within specified exceptions. PERL provides an exception for a person whose employment is on a seasonal, limited-term, on-call, or other irregular basis, and the person works more than 125 days, or 1,000 hours within the fiscal year, as specified.

This bill would instead provide that an employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of 6 months is excluded from PERS membership unless specified exceptions apply. Among those exceptions, the bill would provide that a position is not excluded if it requires service equivalent to an average of 20 hours a week for one year or longer. The bill would also revise the exception described above, regarding seasonal, limited-term, or on-call employment, to have it apply if the person completes 125 days or 1,000 hours, as specified.

~~(9)~~

(10) PERL permits a contracting agency to amend its contract with PERS without election among its employees, as specified, if the contracting agency has fully discharged obligations imposed on it with respect to the amendments, and if the amendment meets certain requirements, including that the amendments apply uniformly to a member in specified member classes.

This bill would include local safety officers and school safety members within the member classes to which the amendments must apply uniformly.

~~(10)~~

(11) PERL prohibits making a contract or contract amendment to provide retirement benefits for some, but not all members of specified membership classifications.

This bill would include local safety officers and school safety members within these classifications.

~~(11)~~

(12) PERL defines compensation earnable with respect to a school member of PERS, and in this regard, particularly defines payrate for noncertificated members for whom the normal work schedule is less than 40 hours a week. For the purpose of calculating retirement benefits based on part-time service, PERL requires that compensation earnable be taken as the compensation that would have been earnable if the employment had been on a full-time basis and the member had worked full time, except as specified.

This bill would redefine noncertificated members as classified members for these purposes and make clarifying changes in the definition of payrate in this context. The bill would specify that compensation earnable must also conform to other specified standards for members and school members.

~~(12)~~

(13) PERL requires that a state miscellaneous member or industrial member, other than a university member, or a local member of PERS be retired for service if he or she has elected to participate in partial service retirement, as specified, has been credited with 20 years of state service, and has attained normal retirement age.

This bill would eliminate the requirement of 20 years service credit for the purpose of these provisions.

~~(13)~~

(14) PERL requires that the effective date of a written application for retirement submitted to the board more than 9 months after the member's discontinuance of state service be determined by the Board of Administration of PERS consistent with criteria established for the correction of errors and omissions.

This bill would require that the effective date of a written application for retirement submitted to the board more than 9 months after the member's discontinuance of state service be the first day of the month in which the member's application is received at an office of the board or by an employee of PERS designated by the board.

~~(14)~~

(15) PERL provides for the preservation of the purchasing power of benefits through a system of adjustments in benefits based on changes in living costs. The law also establishes provisions to ensure the federal tax-exempt status of the system and to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions. Existing federal law limits the amount a defined benefit plan may pay a participant annually, and requires that this limitation be adjusted annually by regulation to account for increases in the cost of living.

This bill would specify that the amount payable to a member, including any cost-of-living adjustments, is prohibited from exceeding the limit on annual benefit payments prescribed by federal law, and would incorporate specified provisions of federal law by reference. The bill would also make related changes.

~~(15)~~

(16) The Public Employees Medical and Hospital Care Act requires that 30 days prior to, or 30 days after, retirement and during the open enrollment period, a state employee enrolled in a flexible benefit plan administered by the state be given the option to enroll in a health benefit plan, as specified.

This bill would change the period described above to provide that a state employee may be given the option to enroll 30 days prior to, or 60 days following, retirement and during the open enrollment period.

~~(16)~~

(17) The Public Employees' Medical and Hospital Care Act requires that premiums charged for enrollment in a health benefit program reasonably reflect the cost of the benefits, provided that this does not limit the Board of Administration of PERS from adjusting premiums charged under any health benefit plan or contract to reflect regional variations in providing services, which adjustments are at the sole discretion of the board.

This bill would authorize the board to use reserves generated by one or more self-funded health benefit plans to reduce the premiums charged for enrollment in one or more separate self-funded health benefit plans offered by the board, as specified.

~~(17)~~

(18) The Judges' Retirement Law establishes the Judges' Retirement System to provide retirement benefits for retired judges. Existing law also establishes the Judges' Retirement System II Law for judges elected or appointed on or after November 9, 1994. Both of these laws provide for the payment of accrued allowances that remain unpaid at the time of the death of a judge pursuant to a specified order.

This bill would require that a person who is retired under the Judges' Retirement System who is again appointed or elected to serve as a judge reinstate from retirement and become a member of the system, as specified. The bill would also revise provisions governing the payment of accrued, unpaid allowances in both judges' retirement systems to provide for their payment to either the estate of the deceased or the duly authorized representative of the estate when the court receives a court order appointing an executor, administrator, or personal representative. If the estate does not require probate, the bill would also authorize the payment to be made to a successor trustee, or to a beneficiary of the deceased named in a valid will, as applicable.

~~(18)~~

(19) The bill would also make technical changes.

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

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

SECTION 1. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:

(A) Article 2 (commencing with Section 21290) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.

(B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.

(C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).

SEC. 2. Section 20037.6 of the Government Code is amended to read:

20037.6. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after July 1, 2006, and is represented by State Bargaining Unit 2, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 2.

(c) This section does not apply to:

(1) Former state employees who return to state employment on or after July 1, 2006.

(2) State employees hired prior to July 1, 2006, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees hired prior to July 1, 2006, who become subject to representation by State Bargaining Unit 2 on or after July 1, 2006.

(4) State employees on an approved leave of absence who return to active employment on or after July 1, 2006.

SEC. 3. Section 20037.7 of the Government Code is amended to read:

20037.7. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after January 1, 2007, and is represented by State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or 21, means the highest average annual compensation earnable by the member during the consecutive

36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or 21.

(c) This section does not apply to:

(1) Former state employees previously employed before January 1, 2007, who return to state employment on or after January 1, 2007.

(2) State employees hired prior to January 1, 2007, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees hired prior to January 1, 2007, who become subject to representation by State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or 21 on or after January 1, 2007.

(4) State employees on an approved leave of absence employed before January 1, 2007, who return to active employment on or after January 1, 2007.

SEC. 4. Section 20037.8 of the Government Code is amended to read:

20037.8. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after January 1, 2007, and is represented by State Bargaining Unit 12 or 13, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 12 or 13.

(c) This section does not apply to:

(1) Former state employees previously employed before January 1, 2007, who return to state employment on or after January 1, 2007.

(2) State employees hired prior to January 1, 2007, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees hired prior to January 1, 2007, who become subject to representation by State Bargaining Unit 12 or 13 on or after January 1, 2007.

(4) State employees on an approved leave of absence employed before January 1, 2007, who return to active employment on or after January 1, 2007.

SEC. 5. Section 20037.9 of the Government Code is amended to read:

20037.9. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after January 1, 2007, and is represented by State Bargaining Unit 16 or 19, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 16 or 19.

(c) This section does not apply to:

(1) Former state employees previously employed before January 1, 2007, who return to state employment on or after January 1, 2007.

(2) State employees hired prior to January 1, 2007, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees hired prior to January 1, 2007, who become subject to representation by State Bargaining Unit 16 or 19 on or after January 1, 2007.

(4) State employees on an approved leave of absence employed before January 1, 2007, who return to active employment on or after January 1, 2007.

SEC. 6. Section 20037.10 of the Government Code is amended to read:

20037.10. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after January 1, 2007, and is represented by State Bargaining Unit 7, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 7.

(c) This section does not apply to:

(1) Service credit accrued while classified as a state peace officer/firefighter while a member of Bargaining Unit 7.

(2) Former state employees previously employed before January 1, 2007, who return to state employment on or after January 1, 2007.

(3) State employees hired prior to January 1, 2007, who were subject to Section 20281.5 during the first 24 months of state employment.

(4) State employees hired prior to January 1, 2007, who become subject to representation by State Bargaining Unit 7 on or after January 1, 2007.

(5) State employees on an approved leave of absence employed before January 1, 2007, who return to active employment on or after January 1, 2007.

SEC. 7. Section 20037.11 of the Government Code is amended to read:

20037.11. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after January 1, 2007, and is represented by State Bargaining Unit 10, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 10.

(c) This section does not apply to:

(1) Former state employees previously employed before January 1, 2007, who return to state employment on or after January 1, 2007.

(2) State employees hired prior to January 1, 2007, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees hired prior to January 1, 2007, who become subject to representation by State Bargaining Unit 10 on or after January 1, 2007.

(4) State employees on an approved leave of absence employed before January 1, 2007, who return to active employment on or after January 1, 2007.

SEC. 8. Section 20037.12 of the Government Code is amended to read:

20037.12. (a) Notwithstanding Sections 20035 and 20037, final compensation for a person who is employed by the state for the first time and becomes a state member of the system on or after January 1, 2007, and is represented by State Bargaining Unit 18, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

(b) This section applies to service credit accrued while a member of State Bargaining Unit 18.

(c) This section does not apply to:

(1) Former state employees previously employed before January 1, 2007, who return to state employment on or after January 1, 2007.

(2) State employees hired prior to January 1, 2007, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees hired prior to January 1, 2007, who become subject to representation by State Bargaining Unit 18 on or after January 1, 2007.

(4) State employees on an approved leave of absence employed before January 1, 2007, who return to active employment on or after January 1, 2007.

SEC. 9. Section 20039.5 of the Government Code is amended to read:

20039.5. Notwithstanding Article 5 (commencing with Section 20350) of Chapter 3, or any other provision of this part, "final compensation" for the purposes of determining any pension or benefit for service with the California National Guard with respect to a National Guard member means the highest average annual compensation that was earned during a consecutive 12-month period while rendering service with the California National Guard. The final compensation of a National Guard member under another retirement or pension system shall not apply to the calculation of his or her retirement allowance with respect to service with the California National Guard.

SEC. 10. Section 20041 of the Government Code is repealed.

SEC. 11. Section 20043 of the Government Code is repealed.

SEC. 12. Section 20069 of the Government Code is amended to read:

20069. (a) "State service" means service rendered as an employee or officer (employed, appointed, or elected) of the state, the California Institute for Regenerative Medicine and the officers and employees of its governing body, the university, a school employer, or a contracting agency, for compensation, and only while he or she is receiving compensation from that employer therefor, except as provided in Article 4 (commencing with Section 20990) of Chapter 11.

(b) "State service," solely for purposes of qualification for benefits and retirement allowances under this system, shall also include service rendered as an officer or employee of a county if the salary for the service constitutes compensation earnable by a member of this system under Section 20638.

(c) "State service," except for purposes of qualification for health or dental benefits, shall also include compensated service rendered by an officer, warrant officer, or a person of the enlisted ranks of the California National Guard who has elected to become a member pursuant to Section 20326 and who has not canceled his or her membership pursuant to Section 20327.

SEC. 13. Section 20164 of the Government Code is amended to read:

20164. (a) The obligations of this system to its members continue throughout their respective memberships, and the obligations of this system to and in respect to retired members continue throughout the lives of the respective retired members, and thereafter until all obligations to their respective beneficiaries under optional settlements have been discharged. The obligations of the state and contracting agencies to this system in respect to members employed by them, respectively, continue throughout the memberships of the respective members, and the obligations of the state and contracting agencies to this system in respect to retired members formerly employed by them, respectively, continue until all of the obligations of this system in respect to those retired members, respectively, have been discharged. The obligations of any member to this system continue throughout his or her membership, and thereafter until all of the obligations of this system to or in respect to him or her have been discharged.

(b) For the purposes of payments into or out of the retirement fund for adjustment of errors or omissions, whether pursuant to Section 20160, 20163, or 20532, or otherwise, the period of limitation of actions shall be three years, and shall be applied as follows:

(1) In cases where this system makes an erroneous payment to a member or beneficiary, this system's right to collect shall expire three years from the date of payment.

(2) In cases where this system owes money to a member or beneficiary, the period of limitations shall not apply.

(c) Notwithstanding subdivision (b), in cases where payment is erroneous because of the death of the retired member or beneficiary or because of the remarriage of the beneficiary, the period of limitation shall be 10 years and shall commence with the discovery of the erroneous payment.

(d) Notwithstanding subdivision (b), where any payment has been made as a result of fraudulent reports for compensation made, or caused to be made, by a member for his or her own benefit, the period of limitation shall be 10 years and that period shall commence either from the date of payment or upon discovery of the fraudulent reporting, whichever date is later.

(e) The board shall determine the applicability of the period of limitations in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error or omission.

SEC. 14. Section 20195 of the Government Code is amended to read:

20195. (a) The board may select, purchase, or acquire in the name of the system, the fee or any lesser interest in real property, improved or unimproved, and may construct or remodel, and equip, an office building, including appropriate satellite structures, in the County of Sacramento, California, for its use and for the use of other state retirement systems excepting the State Teachers' Retirement System, other departments, boards, and agencies of the state, or appropriate private commercial entities as space may be available from time to time. The office building and satellite structures shall conform to the Capital Master Plan if located within an area subject to the plan.

(b) The board may select, purchase, or acquire in the name of the system, the fee or any lesser interest in real property, improved or unimproved, and may construct or remodel, and equip, business recovery centers in California for use by the system as an alternate facility, emergency operations center, or data center that the board determines is appropriate for disaster preparedness.

(c) If the board acquires bare land, improvements shall be constructed according to plans approved by the State Public Works Board and Department of General Services.

(d) If the board acquires land with improvements thereon, the improvements shall be remodeled or completed in accordance with plans approved by the State Public Works Board and Department of General Services.

(e) If condemnation of the property selected is necessary, the board may elect to deposit the funds deemed necessary with the Treasurer. The funds are appropriated for purchase of the selected property subject to the Property Acquisition Law.

(f) Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to bidding procedures set forth in Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

SEC. 15. Section 20221 of the Government Code is amended to read:

20221. Each state agency, school employer, and the chief administrative officer of a contracting agency or any other person who its governing body may designate shall furnish all of the following:

(a) Immediate notice to the board, in the manner prescribed by the system, of the change in status of any member resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death.

(b) Any additional information concerning any member that the board may require in the administration of this system.

(c) The services of its officer and departments that the board may request in connection with claims by members against this system.

SEC. 16. Section 20228 of the Government Code is amended to read:

20228. The board shall annually employ a certified public accountant, who is not in public employment, to audit the financial statements of this system. The term for which the board may contract to employ a certified public accountant shall not exceed five years. The board shall not contract to employ the same certified public accountant for two consecutive five-year terms. The costs of the audit shall be paid from the income of the retirement fund. The audit shall be made annually. The board shall file a copy of the audit report with the Governor, the Secretary of the Senate, and the Chief Clerk of the Assembly.

The board, for purposes of Section 7504, may file internally prepared financial statements with the Controller within six months of the end of the fiscal year, and shall file independently audited financial statements as soon as they are available.

The annual audits of the financial statements of the system shall not be duplicated by the Department of Finance or the State Auditor.

This section does not affect the ability of the State Auditor or the Department of Finance to conduct other types of audits of the system as otherwise authorized by statute. This system shall be exempt from a pro rata general administrative charge for auditing.

SEC. 17. Section 20281.5 of the Government Code is amended to read:

20281.5. (a) Notwithstanding Section 20281, a person who becomes a state miscellaneous member or state industrial member of the system on or after the effective date of this section because the person is first employed by the state and qualifies for membership shall be subject to the provisions of this section.

(b) Members subject to this section shall not accrue credit for service in the system and shall not make employee contributions to the system, including the contributions set forth in Section 20677.4, for employment with the state until the first day of the first pay period commencing 24 months after becoming a member of the system.

(c) Notwithstanding subdivision (a), this section shall not apply to any of the following:

(1) Persons who are already members or annuitants of the system at the time they are first employed by the state.

(2) Employees of the California State University, or the legislative or judicial branch of state government.

(3) Members of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement System, or the University of California Retirement Plan.

(4) Persons who are members of a reciprocal retirement system and whose employment was subject to a reciprocal retirement system within the six months prior to membership in this system.

(5) Persons whose service is not included in the federal system.

(6) Persons who are employed by the Department of the California Highway Patrol as students at the department's training school established pursuant to Section 2262 of the Vehicle Code.

(7) Persons who had ceased to be members pursuant to Section 20340 or 21075.

(8) Persons who are National Guard members pursuant to Section 20380.5.

(d) A separation of employment does not alter the 24-month period described by subdivision (b). A member who separates from state employment shall remain subject to this section if he or she returns to state employment as a state miscellaneous or state industrial member within that 24-month period.

(e) Any regulations adopted by the board to implement the requirements of this section shall not be subject to the review and approval of the Office of Administrative Law, pursuant to Chapter

3.5 (commencing with Section 11340) of Part 1 of Division 3. The regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 18. Section 20283 of the Government Code is amended to read:

20283. *(a)* Any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer knows or can reasonably be expected to have known of that eligibility shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars ($500) per member as a reimbursement to this system's current year budget.

(b) An employer shall not pass on to an employee any costs assessed pursuant to subdivision (a).

~~SEC. 18.~~

SEC. 19. Section 20305 of the Government Code is amended to read:

20305. (a) An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:

(1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract.

(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week for one year or longer, unless he or she elects membership pursuant to Section 20325.

(3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:

(A) The appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months, but full-time employment continues for longer than six months, in which case membership shall be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person completes 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, completes 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, “day” means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year.

(C) The person is employed by the Department of Forestry and Fire Protection in one of the positions that provide state safety membership pursuant to Section 20400 or state peace officer/firefighter membership pursuant to Section 20392.

(4) He or she is a temporary faculty member of the California State University and meets one of the following conditions:

(A) He or she works two consecutive semesters or three consecutive quarters at half-time or more, and is not otherwise excluded pursuant to this article, in which case, membership shall be effective with the start of the next consecutive semester or quarter if the appointment requires service of half-time or more.

(B) He or she works two consecutive semesters or three consecutive quarters at a minimum teaching load of six weighted units, and is not otherwise excluded pursuant to this article, in which case membership shall be effective at the start of the next consecutive semester or quarter, but not earlier than July 1, 2004, if the appointment requires service of six weighted units or more. This subparagraph does not apply to faculty members unless provided for in a memorandum of understanding agreed upon, on or after January 1, 2003, pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(5) He or she is a member of the Board of Prison Terms, the State Personnel Board, or the State Air Resources Board and elects to become a member pursuant to Section 20320.

(6) He or she is participating in partial service retirement, pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6.

(7) He or she is included by specific provision of the board relating to the exclusion of less than full-time employees.

(b) This section shall supersede any contract provision excluding persons in any temporary or seasonal employment basis and shall apply only to persons entering employment on and after January 1, 1975. Except as provided in Section 20502, no contract or contract amendment entered into after January 1, 1981, shall contain any provision excluding persons on an irregular employment basis.

~~SEC. 19.~~

SEC. 20. Section 20475 of the Government Code is amended to read:

20475. Notwithstanding Section 20474, a contracting agency may amend its contract or previous amendments to its contract, without election among its employees, to reduce benefits, to terminate provisions that are available only by election of the agency to become subject thereto, to provide different benefits or provisions or to provide a combination of those changes with respect to service performed after the effective date of the contract amendment made pursuant to this section, if the contracting agency has fully discharged all of the obligations imposed by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 with respect to the contract amendments, and if the amendment provides that:

(a) The contract amendments apply uniformly with respect to all members within each of the following classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, local sheriffs, local safety members, school safety members, or all local safety members other than local police officers, local firefighters, county peace officers, local sheriffs, local safety members, or school safety members.

(b) A member shall be subject to the contract as amended only if, after the effective date of the contract amendment, the member either (1) receives service credit for the first time within a classification, or (2) the member returns to service within a classification following termination of membership as provided for in subdivision (b) of Section 20340 unless the member has redeposited or elects prior to 90 days after returning to service to redeposit contributions pursuant to Section 20750, in which case the member shall not be subject to the contract amendment.

Amendments to the contract and amendments of previous amendments to the contract may be effected pursuant to this section only once during any three-year period with respect to each of the classifications.

~~SEC. 20.~~

SEC. 21. Section 20479 of the Government Code is amended to read:

20479. Notwithstanding any other provision of law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, no contract or contract amendment shall be made to provide retirement benefits for some, but not all members of the following membership classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, local sheriffs, local safety officers, or school safety members.

No contract or contract amendments shall provide different retirement benefits for a subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications.

This section does not preclude changing membership classification from one membership classification to another membership classification or exclusion of groups of members by contract.

For purposes of this section, "benefit" shall not be limited to the benefits set forth in Section 20020.

~~SEC. 21.~~

SEC. 22. Section 20636.1 of the Government Code is amended to read:

20636.1. (a) Notwithstanding Section 20636, and Section 45102 of the Education Code, "compensation earnable" by a school member means the payrate and special compensation of the member, as defined by subdivisions (b) and (c), 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. For purposes of this part, for classified members, full-time employment is 40 hours per week, and payments for services rendered, not to exceed 40 hours per week, shall be reported as compensation earnable for all months of the year in which work is performed. "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).

(A) For the purposes of this section, “classified members” shall mean members who retain membership under this system while employed with a school employer in positions not subject to coverage under the Defined Benefit Program under the State Teacher’s Retirement System.

(B) For the purposes of this section, and Sections 20962 and 20966, “certificated members” shall mean members who retain membership under this system while employed in positions subject to coverage under the Defined Benefit Program under the State Teacher’s Retirement System.

(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 school 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.

SEC. 23. Section 20831.2 is added to the Government Code, to read:

20831.2. Any employer that fails to withhold and submit an employee's normal contributions required by this chapter within the applicable time limitations shall notify the system and shall take no action until authorized by the system.

~~SEC. 22.~~

SEC. 24. Section 20962 of the Government Code is amended to read:

20962. (a) One year of service credit shall be granted for service rendered and compensated in a fiscal year in full-time employment for any of the following:

(1) One academic year of service for persons employed on an academic year basis by the University of California, the California State University system, or school employees who are certificated members, under terms and conditions prescribed by the board.

(2) Ten months of service for persons employed on a monthly basis.

(3) Two hundred fifteen days of service after June 30, 1951, and 250 days prior to July 1, 1951, for persons employed on a daily basis.

(4) One thousand seven hundred twenty hours of service after June 30, 1951, and 2,000 hours prior to July 1, 1951, for persons employed on an hourly basis.

(5) Nine months of service for state employees represented by State Bargaining Unit 3 and subject to the 9–12 pay plan or leave plan, provided a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this subdivision.

(b) A fractional year of credit shall be given for service rendered in a fiscal year in full-time employment for less than the time prescribed in this section.

~~SEC. 23.~~

SEC. 25. Section 20967 of the Government Code is amended to read:

20967. For the purpose of calculating retirement benefits based on part-time service, except under Section 21381, compensation earnable shall be taken as the compensation that would have been earnable if the employment had been on a full-time basis and the member had worked full time, and shall conform to the definitions given in Section 20636.1 for school members and Section 20636 for all other members.

~~SEC. 24.~~

SEC. 26. Section 21117 of the Government Code is amended to read:

21117. A state miscellaneous member or industrial member, other than a university member, shall be partially retired for service upon his or her written application to the board if he or she has elected to participate in partial service retirement pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6, and has attained the applicable normal retirement age as prescribed by regulations of the board.

~~SEC. 25.~~

SEC. 27. Section 21118 of the Government Code is amended to read:

21118. (a) A local member shall be partially retired for service upon his or her written application to the board if he or she has elected to participate in partial service retirement pursuant to Sections 21110 through 21115, provided he or she has attained the applicable normal retirement age as prescribed by regulations of the board.

(b) This section shall not apply to a contracting agency or its employees until the contracting agency elects to be subject to it by amendment to its contract made in a manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

~~SEC. 26.~~

SEC. 28. Section 21252 of the Government Code is amended to read:

21252. (a) A member's written application for retirement, if submitted to the board within nine months after the date the member discontinued his or her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform his or her duties from the date the member discontinued state service to the time the written application for retirement was submitted to the board, shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than nine months after the member's discontinuance of state service shall be the first day of the month in which the member's application is received at an office of the board or by an employee of this system designated by the board.

(b) An application for retirement may only be submitted by or for a member who is living on the date the application is actually received by the system. If the member has been deemed incompetent to act on his or her own behalf continuously from the last day for which salary was payable, the effective date of retirement may not be earlier than one year prior to the month in which an application submitted by the guardian of the member's estate is received by the system.

(c) Notwithstanding any other provision of law, a member who separates from a retirement system that has established reciprocity with this system with the intention of retiring concurrently under both systems and who submits his or her application for retirement for service to the board within nine months after that separation, may have his or her application received and acted upon by this system as if the application were submitted pursuant to this section.

~~SEC. 27.~~

SEC. 29. Section 21264 of the Government Code is amended to read:

21264. Retired members of this system, and beneficiaries who are entitled to receive allowances or benefits under this part, may authorize deductions to be made from their retirement allowance payments or from the allowances and benefits, respectively, or from either or both if both are being received, in accordance with regulations or procedures established by the board for the payment of group insurance premiums and other premiums for benefits or protection provided for under Section 1151, including employer-sponsored voluntary insurance programs, for credit union payments or shares, or for the payment, with respect to any retired member of this system, of dues or for any other services pursuant to Article 6 (commencing with Section 1150) of Chapter 1 of

Division 4 of Title 4. The board shall determine the additional cost involved in making deductions under this section and the state agency, the public agency, the association, or the unit thereof, or the credit union shall pay the amount of the additional cost to the board for deposit in the retirement fund.

~~SEC. 28.~~

SEC. 30. Section 21296 of the Government Code is amended to read:

21296. Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. If the retirement application is not received within nine months of the requested effective date, in no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of this system designated by the board, or, if the nonmember has been incompetent to act on his or her own behalf continuously from the date of dissolution or legal separation, one year prior to the month in which an application by the guardian of his or her estate is so received. An application for retirement may only be filed by or for a nonmember who is living on the date the application is actually received by this system. The effective date of a nonmember application for retirement received more than nine months after the requested effective date shall be determined in accordance with Section 20160.

~~SEC. 29.~~

SEC. 31. Section 21310.5 is added to the Government Code, to read:

21310.5. The cost-of-living adjustments under Section 415(d) of the Internal Revenue Code to the limits described in Section 415(b) of the Internal Revenue Code, as prescribed by the regulations of the Department of the Treasury of the United States, are hereby incorporated by reference and shall continue to apply after a member's severance from employment or annuity starting date. The amount payable to a member in any limitation year, including any cost-of-living adjustments provided under this article, shall not be greater than the limit applicable under Section 415(b) of the Internal Revenue Code at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the associated regulations.

~~SEC. 30.~~

SEC. 32. Section 21753 of the Government Code is amended to read:

21753. Notwithstanding any other provision of law, and except as provided in Section 21310.5, the retirement allowance of a member shall be increased to reflect cost-of-living adjustments to the limits contained in Section 415 of Title 26 of the United States Code as provided in Section 415(d) of that code, provided that the member's allowance determined without regard to Section 415 equals or exceeds the applicable limit as indexed. Nothing in this section is intended to, nor shall be construed to, entitle a retired member to a cost-of-living adjustment to his or her allowance in excess of that provided pursuant to Part 3 (commencing with Section 20000).

~~SEC. 31.~~

SEC. 33. Section 22839 of the Government Code is amended to read:

22839. Thirty days prior to, or 60 days following, retirement and during the open enrollment period, a state employee enrolled in a flexible benefit plan administered by the state shall be given the option to enroll in a health benefit plan approved or maintained by the board and receive the applicable employer contribution, if the state employee would otherwise qualify as an annuitant.

~~SEC. 32.~~

SEC. 34. Section 22864 of the Government Code is amended to read:

22864. (a) Premiums charged for enrollment in a health benefit plan shall reasonably reflect the cost of the benefits provided.

(b) This part does not limit the board's authority to do any of the following:

(1) Enter into contracts with carriers providing compensation based on carrier performance.

(2) Credit premiums to an employer for expenditures that the board determines are likely to improve the health status of employees and annuitants or otherwise reduce health care costs.

(3) Adjust the premiums charged under any health benefit plan or contract to reflect regional variations in the cost of health care

services and other relevant factors. Any adjustment of these premiums shall be at the sole discretion of the board and shall only apply to the premiums charged to employees and annuitants of contracting agencies. The board may require a contracting agency and its employees and annuitants to pay the premium rate established pursuant to this paragraph, which may be different than the health benefit plan or contract premium rate that would otherwise be applicable to that agency.

(4) Use reserves generated by one or more self-funded health benefit plans to reduce the premiums charged for enrollment in one or more separate self-funded health benefit plans offered by the board. The board, in its sole discretion, shall determine whether a self-funded health benefit plan maintains reserves and the amount of reserves to be used pursuant to this part.

~~SEC. 33.~~

SEC. 35. Section 22960.15 of the Government Code is amended to read:

22960.15. "Eligible employee" means any person employed by the state, whose compensation is paid out of funds directly controlled by the state, and who is subject to coverage by the plan pursuant to the provisions of Section 22960.

~~SEC. 34.~~

SEC. 36. Section 75006 of the Government Code is amended to read:

75006. (a) Any allowance payable to a retired judge or to a surviving spouse or to an eligible surviving child which has accrued and remained unpaid at the time of the judge's or the surviving spouse's or surviving child's death, or any unclaimed warrant issued prior to the date of death and returned to the system, shall be paid pursuant to the following order:

(1) The survivor entitled to an allowance payable by this system.

(2) The beneficiary designated by the surviving spouse, eligible surviving child, or retired judge if there is no eligible survivor.

(3) The estate of the deceased, if there is no one entitled to payment under paragraph (1) or (2). The payment to the estate shall be paid to either the estate of the deceased or the duly authorized representative or representatives of the estate when this system receives a court order appointing an executor, administrator, or personal representative.

(4) If the estate does not require probate and the deceased has a trust, the payment may, in the judgment of the board, be paid to the successor trustee named in the trust.

(5) If the estate does not require probate and the deceased does not have a trust, the payment may, in the judgment of the board, be paid to the beneficiary or beneficiaries of the deceased named in a valid will.

(b) If there is no qualifying beneficiary pursuant to paragraphs (1) to (5), inclusive, of subdivision (a), the payment shall be paid to the surviving next of kin of the deceased pursuant to the order of distribution specified in Section 21493.

~~SEC. 35.~~

SEC. 37. Section 75028.5 of the Government Code is amended to read:

75028.5. After a judge has withdrawn his or her accumulated contributions upon discontinuance of his or her service, that service shall not count in the event he or she later becomes a judge again, until he or she pays into the Judges' Retirement Fund the amount of accumulated contributions withdrawn by him or her, plus interest thereon at the rate of interest then being required to be paid by members of the Public Employees' Retirement System under Section 20750 from the date of withdrawal to the date of his or her payment.

~~SEC. 36.~~

SEC. 38. Section 75080.5 is added to the Government Code, to read:

75080.5. (a) Except as described in subdivision (b), if a person who is retired under this system is appointed or elected to serve as a judge, he or she shall reinstate from retirement and again become a member of the Judges' Retirement System pursuant to this chapter.

(b) This section shall not apply to a retired judge who is assigned to serve in a court pursuant to Section 68543.5, and he or she shall not earn service credit or be entitled to retirement benefits under this part for that assignment.

~~SEC. 37.~~

SEC. 39. Section 75507 of the Government Code is amended to read:

75507. (a) Any allowance payable to a retired judge or to a surviving spouse or to an eligible surviving child that has accrued and remained unpaid at the time of the death of the judge or the death of a surviving spouse or surviving child, or any unclaimed warrant issued prior to the date of death and returned to the board, shall be paid pursuant to the following order:

(1) The survivor entitled to an allowance payable by the board.

(2) The beneficiary designated by the surviving spouse, eligible surviving child, or retired judge if there is no eligible survivor.

(3) The estate of the deceased, if there is no one entitled to payment under paragraph (1) or (2). The payment to the estate shall be paid to either the estate of the deceased or the duly authorized representative or representatives of the estate when this system receives a court order appointing an executor, administrator, or personal representative.

(4) If the estate does not require probate and the deceased has a trust, the payment may, in the judgment of the board, be paid to the successor trustee named in the trust.

(5) If the estate does not require probate and the deceased does not have a trust, the payment may, in the judgment of the board, be paid to the beneficiary or beneficiaries of the deceased named in a valid will.

(b) If there is no qualifying beneficiary pursuant to paragraphs (1) to (5), inclusive, of subdivision (a), the payment shall be paid to the surviving next of kin of the deceased pursuant to the order of distribution specified in Section 21493.

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