

AMENDED IN SENATE MAY 7, 2009
AMENDED IN SENATE APRIL 22, 2009

SENATE BILL

No. 280

Introduced by Senator Calderon

February 24, 2009

An act to amend Section 22714 of, and to add Section 24616.5 to, the Education Code, relating to state teachers' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 280, as amended, Calderon. State teachers' retirement.

~~(1) The~~

The State Teachers' Retirement Law authorizes a school district, community college district, or county office of education to grant members of the Defined Benefit Program of the State Teachers' Retirement Plan 2 additional years of service credit if certain conditions are satisfied and the member retires for service within a designated period. Under that law, a member granted additional credit for service under these provisions forfeits that credit if he or she is reemployed within 5 years after retirement by the district from which he or she retired.

This bill would provide that a member of the State Teachers' Retirement System who was granted service credit pursuant to the retirement incentive program described above, between January 1, 2004, and December 31, 2009, and who returned to work with the employer in violation of the provisions of that program, would not forfeit the benefit related to the service credit if the member ceases work with the employer, as specified, and the member agrees in writing that he or she will not return to work with the employer in violation of the conditions of the program. The bill would require an employer that

grants service credit pursuant to that retirement incentive program on and after January 1, 2010, to have the retiring member sign a statement indicating that he or she has read and understood the terms for receiving the service credit, as specified, and would require that a member who violates these terms would forfeit, prospectively, the service credit and benefit resulting from the service credit. The bill would require an employer who grants service credit pursuant to the program to provide a written statement indicating that the employer has read and understands the terms of that program and specifically that the employer will not rehire a member to whom it has granted the service credit until 5 years have elapsed. The bill would provide that an employer who rehires an employee in violation of the terms of the program is responsible for reimbursing the State Teachers' Retirement System all moneys paid to the member as a result of the additional service credit, plus any associated administrative costs, and would provide the employer the option of making these payments over 8 years.

~~This bill would require the State Teachers' Retirement System, upon discovering that a member who has received additional service credit, as described above, is working as a teacher less than 5 years after receiving the credit, in violation of provisions imposed as a condition of receiving that credit, to provide certain notifications to the member in writing by first-class mail, return receipt requested. The bill would provide that a member who is in violation of these provisions would not forfeit the benefits arising from the additional credit if he or she terminates employment with the employer providing the additional service credit, as specified, and provides the system an affidavit, made under penalty of perjury, stating that, among other things, he or she was unaware of the prohibition and returned to teach at the request of the employer. By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

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

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

1 SECTION 1. Section 22714 of the Education Code is amended
2 to read:

3 22714. (a) Whenever the governing board of a school district
4 or a community college district or a county office of education,
5 by formal action, determines pursuant to Section 44929 or 87488
6 that, because of impending curtailment of, or changes in, the
7 manner of performing services, the best interests of the district or
8 county office of education would be served by encouraging
9 certificated employees or academic employees to retire for service
10 and that the retirement will result in a net savings to the district or
11 county office of education, an additional two years of service credit
12 shall be granted under this part to a member of the Defined Benefit
13 Program if all of the following conditions exist:

14 (1) The member is credited with five or more years of service
15 credit and retires for service under Chapter 27 (commencing with
16 Section 24201) during a period of not more than 120 days or less
17 than 60 days, commencing no sooner than the effective date of the
18 formal action of the employer that shall specify the period.

19 (2) The employer transfers to the retirement fund an amount
20 determined by the Teachers' Retirement Board to equal the
21 actuarial equivalent of the difference between the allowance the
22 member receives after receipt of service credit pursuant to this
23 section and the amount the member would have received without
24 the service credit and an amount determined by the Teachers'
25 Retirement Board to equal the actuarial equivalent of the difference
26 between the purchasing power protection supplemental payment
27 the member receives after receipt of service credit pursuant to this
28 section and the amount the member would have received without
29 the service credit. The payment for purchasing power shall be
30 deposited in the Supplemental Benefit Maintenance Account
31 established by Section 22400 and shall be subject to Section 24415.
32 The transfer to the retirement fund shall be made in a manner and
33 a time period, not to exceed eight years, that is acceptable to the
34 Teachers' Retirement Board. The employer shall transfer the
35 required amount for all eligible employees who retire pursuant to
36 this section.

1 (3) The employer transmits to the retirement fund the
2 administrative costs incurred by the system in implementing this
3 section, as determined by the Teachers' Retirement Board.

4 (4) The employer has considered the availability of teachers or
5 academic employees to fill the positions that would be vacated
6 pursuant to this section.

7 (b) (1) The school district shall demonstrate and certify to the
8 county superintendent that the formal action taken would result in
9 a net savings to the district.

10 (2) The county superintendent shall certify to the Teachers'
11 Retirement Board that the result specified in paragraph (1) can be
12 demonstrated. The certification shall include, but is not limited to,
13 the information specified in subdivision (c) of Section 14502.1.

14 (3) The school district shall reimburse the county superintendent
15 for all costs to the county superintendent that result from the
16 certification.

17 (c) (1) The county office of education shall demonstrate and
18 certify to the Superintendent of Public Instruction that the formal
19 action taken would result in a net savings to the county office of
20 education.

21 (2) The Superintendent of Public Instruction shall certify to the
22 Teachers' Retirement Board that the result specified in paragraph
23 (1) can be demonstrated. The certification shall include, but is not
24 limited to, the information specified in subdivision (c) of Section
25 14502.1.

26 (3) The Superintendent of Public Instruction may request
27 reimbursement from the county office of education for all
28 administrative costs that result from the certification.

29 (d) (1) The community college district shall demonstrate and
30 certify to the chancellor's office that the formal action taken would
31 result in a net savings to the district.

32 (2) The chancellor shall certify to the Teachers' Retirement
33 Board that the result specified in paragraph (1) can be
34 demonstrated. The certification shall include, but is not limited to,
35 the information specified in subdivision (c) of Section 84040.5.

36 (3) The chancellor may request reimbursement from the
37 community college district for all administrative costs that result
38 from the certification.

39 (e) The opportunity to be granted service credit pursuant to this
40 section shall be available to all members employed by the school

1 district, community college district, or county office of education
2 who meet the conditions set forth in this section.

3 (f) The amount of service credit shall be two years.

4 (g) A member of the Defined Benefit Program who retires under
5 this part for service under Chapter 27 (commencing with Section
6 24201) with service credit granted under this section and who
7 subsequently reinstates shall forfeit the service credit granted under
8 this section.

9 (h) Except as described in Section 24616.5, a member of the
10 Defined Benefit Program who retires under this part for service
11 under Chapter 27 (commencing with Section 24201) with service
12 credit granted under this section and who takes any job with the
13 school district, community college district, or county office of
14 education that granted the member the service credit less than five
15 years after receiving the credit shall forfeit the ongoing benefit he
16 or she receives from the additional service credit granted under
17 this section.

18 (i) This section does not apply to a member otherwise eligible
19 if the member receives any unemployment insurance payments
20 arising out of employment with an employer subject to this part
21 within one year following the effective date of the formal action
22 under subdivision (a), or if the member is not otherwise eligible
23 to retire for service.

24 ~~SEC. 2. Section 24616.5 is added to the Education Code, to~~
25 ~~read:~~

26 ~~24616.5. (a) Upon discovering that a member who has received~~
27 ~~additional service credit pursuant to Section 22714 is working as~~
28 ~~a teacher less than five years after receiving the credit in violation~~
29 ~~of subdivision (h) of Section 22714, the system shall notify the~~
30 ~~member in writing by first-class mail, return receipt requested,~~
31 ~~that he or she is in violation of the conditions under which he or~~
32 ~~she received the additional credit. The system shall further notify~~
33 ~~the member that he or she will forfeit the benefit resulting from~~
34 ~~any additional service credit, and will be liable for restitution of~~
35 ~~any overpayment, unless all of the following occur:~~

36 ~~(1) The member terminates employment with the employer~~
37 ~~providing the additional service credit on or before 30 days after~~
38 ~~receipt of the notice from the system.~~

1 ~~(2) The member provides the system on or before 30 days after~~
2 ~~receipt of the notice an affidavit, made under penalty of perjury,~~
3 ~~stating that:~~

4 ~~(A) The member was unaware of the prohibition on employment~~
5 ~~with the employer granting the additional service credit described~~
6 ~~in subdivision (h) of Section 22714.~~

7 ~~(B) The member was invited to return to employment as a~~
8 ~~teacher by the employer granting the additional service credit.~~

9 ~~(C) The member's employment with the employer granting the~~
10 ~~additional service credit has terminated, or will terminate, within~~
11 ~~the period required by this section.~~

12 ~~(b) If, on or before 30 days after receipt of the notice required~~
13 ~~in subdivision (a), a member terminates employment with the~~
14 ~~employer granting the additional service credit and, within that~~
15 ~~time, also provides the system the affidavit described in subdivision~~
16 ~~(a), then the member shall not forfeit the benefit resulting from~~
17 ~~the additional service credit and the system shall not attempt to~~
18 ~~recover any payments made in this connection, absent evidence~~
19 ~~of fraud or intentional misrepresentation of facts.~~

20 ~~(e) If a member, prior to January 1, 2010, has forfeited a benefit~~
21 ~~resulting from additional service credit received pursuant to Section~~
22 ~~22714, and the forfeit was a result of work as a teacher entered at~~
23 ~~the request of the employer that granted the additional service~~
24 ~~credit, the member shall have that benefit restored, and all~~
25 ~~deductions or payments made in this connection returned, if all of~~
26 ~~the following occur:~~

27 ~~(1) The member has terminated employment with the employer~~
28 ~~granting the additional service credit.~~

29 ~~(2) The member provides the system on or before January 31,~~
30 ~~2010, an affidavit, made under penalty of perjury, stating that:~~

31 ~~(A) The member was unaware of the prohibition on employment~~
32 ~~with the employer granting the additional service credit described~~
33 ~~by subdivision (h) of Section 22714.~~

34 ~~(B) The member was invited to return to employment as a~~
35 ~~teacher by the employer granting the additional service credit.~~

36 ~~(C) The member has terminated employment with the employer~~
37 ~~granting the additional service credit.~~

38 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

7 *SEC. 2. Section 24616.5 is added to the Education Code, to*
8 *read:*

9 *24616.5. (a) (1) A member who received service credit*
10 *pursuant to Section 22714 between January 1, 2004, and December*
11 *31, 2009, and who lost the benefit that resulted from the service*
12 *credit as a result of returning to work for the employer that granted*
13 *the credit less than five years after receiving the credit shall have*
14 *that benefit fully reinstated, and shall have all moneys paid to the*
15 *system as a result of losing the service credit reimbursed, if the*
16 *both of the following are true:*

17 *(A) The member has ceased employment with the employer that*
18 *granted the service credit or ceases employment with the employer*
19 *on or before 30 days after notification by the system that the*
20 *employment is in violation of the conditions pursuant to which the*
21 *member received the service credit.*

22 *(B) The member agrees in writing that he or she will not return*
23 *to the employer that granted the service credit until five years have*
24 *elapsed since receiving the credit.*

25 *(2) A member who received service credit pursuant to Section*
26 *22714 between January 1, 2004, and December 31, 2009, who,*
27 *on and after January 1, 2010, is first discovered to be working for*
28 *the employer that granted the credit less than five years after*
29 *receiving the credit shall not lose the benefit resulting from the*
30 *credit if both of the following are true:*

31 *(A) The member ceases employment with the employer on or*
32 *before 30 days after notification by the system that the employment*
33 *is in violation of the conditions pursuant to which the member*
34 *received the service credit.*

35 *(B) The member agrees in writing that he or she will not return*
36 *to the employer that granted the service credit until five years have*
37 *elapsed since receiving the credit.*

38 *(3) A member described in paragraph (1) or (2) who fails to*
39 *fulfill the requirements of those paragraphs or who, after fulfilling*
40 *the requirements of those paragraphs, returns to work with the*

1 employer that granted the service credit in violation of the
2 requirements of Section 22714 shall permanently forfeit the service
3 credit and benefit resulting from the service credit as provided in
4 subdivision (b).

5 (b) On and after January 1, 2010, any employer that grants
6 service credit pursuant to Section 22714 shall have the retiring
7 member sign a statement indicating that he or she has read and
8 understood the terms of that section and specifically that the
9 member will not return to employment with the employer that
10 granted the service credit until five years have elapsed since
11 receiving the credit. If the member subsequently returns to
12 employment with the employer that granted the service credit in
13 violation of the requirements of Section 22714, the member shall
14 permanently forfeit the service credit and benefit resulting from
15 the service credit, provided that the member shall not be required
16 to return moneys already paid to the member.

17 (c) (1) On and after January 1, 2010, any employer that grants
18 service credit pursuant to Section 22714 shall provide to the system
19 a written statement indicating that the employer has read and
20 understands the terms of that section and specifically that the
21 employer will not rehire a member to whom it has granted the
22 service credit until five years have elapsed since the member
23 received the credit.

24 (2) If an employer rehires a member before the elapse of five
25 years in violation of Section 22714 and the written statement
26 provided under paragraph (1), the employer shall reimburse to
27 the system all moneys paid to the member as a result of the
28 additional service credit granted by the employer, plus any
29 associated administrative costs. The employer shall have the option
30 of making these payments over an eight-year period.