

AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY APRIL 14, 2011
AMENDED IN ASSEMBLY APRIL 11, 2011
AMENDED IN ASSEMBLY FEBRUARY 24, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 340

**Introduced by Assembly Member Furutani
(Coauthor: Assembly Member Ma)**

February 10, 2011

An act to amend Section 31461 of, and to add Sections 31540, 31540.2, 31541, 31569, and 31680.9 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 340, as amended, Furutani. County employees' retirement.

(1) The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts, as defined, to provide a system of retirement benefits to their employees. CERL defines compensation earnable for the purpose of calculating benefits as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay, as determined by the retirement board.

This bill would prohibit a variety of payments, including bonus payments, housing allowances, severance pay, vehicle allowances, and payments for unused vacation, sick leave, or compensatory time off, exceeding what may be earned and payable in a 12-month period, from

being included in compensation earnable. The bill would prohibit any compensation determined by the board to have been paid for the purpose of enhancing a member's retirement benefit from being included in compensation earnable. The bill would except from this prohibition compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement. The bill would permit a member or employer to present evidence that compensation was not paid for the purpose of enhancing a member's benefit and would permit the board to revise its determination upon receipt of sufficient evidence to that effect.

The bill would also require a county or district, when reporting compensation to a retirement board, to identify the pay period in which the compensation was earned regardless of when it was reported or paid. The bill would authorize the board to assess a county or district a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that a county or district knowingly failed to comply with these requirements, as specified. The bill would authorize a retirement board to audit a county or district and to require a county or district to provide information, or make information available for examination or copying at a specified time and place, to determine the correctness of retirement benefits, reportable compensation, and enrollment in, and reinstatement to, the system.

(2) CERL generally provides that each person entering employment becomes a member of a retirement system on the first day of the calendar month after his or her entrance into service, unless otherwise provided by regulations adopted by the board. CERL permits people in certain employment classifications to elect membership in the retirement system, including elective officers, and prohibits membership for persons providing temporary technical or professional services under contract.

This bill would require a county or district that fails to enroll an employee into membership within 90 days of when he or she becomes eligible, when the employer knows or should have known that the person was eligible, to pay all costs in arrears for member contributions and administrative costs of \$500 per member.

(3) CERL permits members of a county retirement system who have retired to be reemployed without reinstatement into the system in certain circumstances including in a position requiring special skills or knowledge.

This bill, on and after January 1, 2012, would prohibit a person who has been retired for service from a CERL retirement system from being reemployed in any capacity without reinstatement into the system by a district or county operating a county retirement system established under CERL unless at least 180 days have elapsed since the person's date of retirement, except as specified. The bill would prohibit a person whose employment without reinstatement is authorized under CERL from receiving service credit for that employment. The bill would require that a retired member employed in violation of provisions regarding employment without reinstatement to reimburse the retirement system for any retirement allowance received during that period and pay for administrative expenses incurred in responding to the violation. The bill would also require the county or district to reimburse the retirement system in this regard in specified circumstances.

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

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

- 1 SECTION 1. The Legislature finds and declares that the
2 amendments made to the County Employees Retirement Law of
3 1937 by this act are intended to achieve the following reforms:
4 (a) To give the retirement boards the authority and the
5 responsibility to audit and deny compensation items that are
6 identified as being paid for the principal purpose of enhancing a
7 member's retirement benefit.
8 (b) To require each retirement system to establish accountability
9 provisions for participating employers that include an ongoing
10 audit process and to allow the retirement system to assess penalties
11 on employers for noncompliance.
12 (c) To prohibit final settlement pay and multiple year accruals
13 of vacation time, annual leave, personal leave, or sick leave from
14 being included in retirement calculations.
15 (d) To eliminate the practice of working for a participating
16 employer while collecting a retirement benefit, also known as
17 double-dipping, by prohibiting a retiree from returning to work as
18 a retired annuitant or as a contract employee until at least 180 days
19 have elapsed since that person's retirement.
20 SEC. 2. Section 31461 of the Government Code is amended
21 to read:

1 31461. (a) “Compensation earnable” by a member means the
2 average compensation as determined by the board, for the period
3 under consideration upon the basis of the average number of days
4 ordinarily worked by persons in the same grade or class of positions
5 during the period, and at the same rate of pay. The computation
6 for any absence shall be based on the compensation of the position
7 held by the member at the beginning of the absence. Compensation,
8 as defined in Section 31460, that has been deferred shall be deemed
9 “compensation earnable” when earned, rather than when paid.

10 (b) “Compensation earnable” does not include, in any case, the
11 following:

12 (1) Payments for unused vacation, annual leave, personal leave,
13 sick leave, or compensatory time off, however denominated,
14 whether paid in a lump sum or otherwise, in an amount that exceeds
15 that which may be earned and payable in a 12-month period,
16 *regardless of when reported or paid.*

17 (2) Payments for additional services rendered outside of normal
18 working hours, whether paid in a lump sum or otherwise.

19 (3) Bonus payments.

20 (4) Housing allowance.

21 (5) Severance pay.

22 (6) Unscheduled overtime.

23 (7) Vehicle allowance.

24 SEC. 3. Section 31540 is added to the Government Code, to
25 read:

26 31540. (a) Any compensation determined by the board to have
27 been paid for the purpose of enhancing a member’s retirement
28 benefit under that system shall not be included in compensation
29 earnable. If the board determines that compensation was paid for
30 the purpose of enhancing a member’s benefit, the member or the
31 employer may present evidence that the compensation was not
32 paid for that purpose. Upon receipt of sufficient evidence to the
33 contrary, a board may reverse its determination that compensation
34 was paid for the purpose of enhancing a member’s retirement
35 benefits.

36 (b) Compensation that a member was entitled to receive pursuant
37 to a collective bargaining agreement that was subsequently deferred
38 or otherwise modified as a result of a negotiated amendment of
39 that agreement shall be considered compensation earnable and

1 shall not be deemed to have been paid for the purpose of enhancing
2 a member's retirement benefit.

3 SEC. 4. Section 31540.2 is added to the Government Code, to
4 read:

5 31540.2. (a) When a county or district reports compensation
6 to the board, it shall identify the pay period in which the
7 compensation was earned regardless of when it was reported or
8 paid. Compensation shall be reported in accordance with Section
9 31461 and shall not exceed compensation earnable, as defined in
10 Section 31461.

11 (b) The board may assess a county or district a reasonable
12 amount to cover the cost of audit, adjustment, or correction, if it
13 determines that a county or district knowingly failed to comply
14 with subdivision (a). A county or district shall be found to have
15 knowingly failed to comply with subdivision (a) if the board
16 determines that either of the following applies:

17 (1) The county or district knew or should have known that the
18 compensation reported was not compensation earnable, as defined
19 in Section 31461.

20 (2) The county or district failed to identify the pay period in
21 which compensation earnable was earned, as required by this
22 section.

23 (c) A county or district shall not pass on to an employee any
24 costs assessed pursuant to subdivision (b).

25 SEC. 5. Section 31541 is added to the Government Code, to
26 read:

27 31541. The board may audit a county or district to determine
28 the correctness of retirement benefits, reportable compensation,
29 and enrollment in, and reinstatement to, the system. During an
30 audit, the board may require a county or district to provide
31 information, or make available for examination or copying at a
32 specified time and place, books, papers, data, or records, including,
33 but not limited to, personnel and payroll records, as deemed
34 necessary by the board.

35 SEC. 6. Section 31569 is added to the Government Code, to
36 read:

37 31569. A county or district that fails to enroll an employee into
38 membership within 90 days of when he or she becomes eligible,
39 when the employer knows or would reasonably be expected to
40 have known that the person was eligible, shall pay all costs in

1 arrears for member contributions and administrative costs of five
2 hundred dollars (\$500) per member as a reimbursement to the
3 system’s current year budget.

4 SEC. 7. Section 31680.9 is added to the Government Code, to
5 read:

6 31680.9. (a) Except as provided in Section 31680.1, any person
7 who has been retired for service on or after January 1, 2012, as a
8 member of a county retirement system established under this
9 chapter shall not be reemployed in any capacity either as an
10 employee, an independent contractor, or an employee of a third
11 party without reinstatement by a district or county operating a
12 county retirement system established under this chapter unless at
13 least 180 days have elapsed since the person’s date of retirement.

14 (b) A retired person whose employment, without reinstatement,
15 is authorized by this article shall not acquire service credit or
16 retirement rights under this part with respect to that employment.

17 (c) Any retired member employed in violation of this article
18 shall:

19 (1) Reimburse the retirement system for any retirement
20 allowance received during the period or periods of employment
21 that are in violation of law.

22 (2) Contribute toward the reimbursement of the retirement
23 system for administrative expenses incurred in responding to a
24 violation of this article, to the extent the member is determined by
25 the executive officer to be at fault.

26 (d) Any county or district that employs a retired member in
27 violation of this article shall contribute toward the reimbursement
28 of the retirement system for administrative expenses incurred in
29 responding to a violation of this article, to the extent the county
30 or district is determined by the executive officer of this system to
31 be at fault.

32 SEC. 8. The provisions of this act shall not be interpreted or
33 applied to reduce the pension of any person who has retired prior
34 to January 1, 2012.