

AMENDED IN SENATE JUNE 22, 2011
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~~

unscheduled overtime, payments for unused vacation, sick leave, or compensatory time off, exceeding what may be earned and payable in a each 12-month period during the final average salary period, and specified payments made at the termination of employment from being included in compensation earnable. *The bill would additionally prohibit employer-provided housing allowances and employer-provided vehicle allowances from being included in compensation earnable for members first hired on or after January 1, 2012.* The bill would ~~prohibit any compensation determined by the board to have been~~ require the board to establish a procedure for assessing and determining whether an element of compensation was paid for the principal purpose of enhancing a member's retirement benefit and would prohibit that compensation 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~~

The bill would require the board to provide notice to the member and employer upon a final determination that compensation was paid for the principal purpose of enhancing a member's retirement benefit. The bill would authorize the member or employer to obtain judicial review of the board's action by filing a petition for writ of mandate, as specified. The bill would permit a member or employer to present evidence that compensation was not paid for the principal 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 *for administrative expenses incurred* 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

1 identified as being paid for the principal purpose of enhancing a
 2 member’s retirement benefit.

3 (b) To require each retirement system to establish accountability
 4 provisions for participating employers that include an ongoing
 5 audit process and to allow the retirement system to assess penalties
 6 on employers for noncompliance.

7 (c) To prohibit final settlement pay and *the cash-out of* multiple
 8 year accruals of vacation time, annual leave, personal leave, or
 9 sick leave from being included in retirement calculations.

10 (d) To eliminate the practice of working for a participating
 11 employer while collecting a retirement benefit, also known as
 12 double-dipping, by prohibiting a retiree from returning to work as
 13 a retired annuitant or as a contract employee until at least 180 days
 14 have elapsed since that person’s retirement.

15 SEC. 2. Section 31461 of the Government Code is amended
 16 to read:

17 31461. (a) “Compensation earnable” by a member means the
 18 average compensation as determined by the board, for the period
 19 under consideration upon the basis of the average number of days
 20 ordinarily worked by persons in the same grade or class of positions
 21 during the period, and at the same rate of pay. The computation
 22 for any absence shall be based on the compensation of the position
 23 held by the member at the beginning of the absence. Compensation,
 24 as defined in Section 31460, that has been deferred shall be deemed
 25 “compensation earnable” when earned, rather than when paid.

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

28 (1) *Any compensation determined by the board to have been*
 29 *paid for the principal purpose of enhancing a member’s retirement*
 30 *benefit under that system. That compensation may include:*

31 (A) *Compensation that had previously been provided in-kind*
 32 *to the member by the employer or paid directly by the employer*
 33 *to a third party other than the retirement system for the benefit of*
 34 *the member, and which was converted to and received by the*
 35 *member in the form of a cash payment in the final average salary*
 36 *period.*

37 (B) *Any one-time or ad hoc payment made to a member, but not*
 38 *to all similarly situated members in the member’s grade or class.*

39 (C) *Any payment that is made solely due to the termination of*
 40 *the member’s employment, but is received by the member while*

1 *employed, except those payments that do not exceed what is earned*
2 *and payable in each 12-month period during the final average*
3 *salary regardless of when reported or paid.*

4 (1)

5 (2) Payments for unused vacation, annual leave, personal leave,
6 sick leave, or compensatory time off, however denominated,
7 whether paid in a lump sum or otherwise, in an amount that exceeds
8 that which may be earned and payable in a 12-month period ~~each~~
9 *12-month period during the final average salary period, regardless*
10 *of when reported or paid.*

11 (2)

12 (3) Payments for additional services rendered outside of normal
13 working hours, whether paid in a lump sum or otherwise.

14 ~~(3) Bonus payments.~~

15 ~~(4) Housing allowance.~~

16 ~~(5) Severance pay.~~

17 ~~(6) Unscheduled overtime.~~

18 ~~(7) Vehicle allowance.~~

19 (4) *Unscheduled overtime.*

20 (5) *Payments made at the termination of employment, except*
21 *those payments that do not exceed what is earned and payable in*
22 *each 12-month period during the final average salary period,*
23 *regardless of when reported or paid.*

24 (c) *In addition to the provisions of subdivision (b), for members*
25 *first hired on or after January 1, 2012, compensation earnable*
26 *also does not include:*

27 (1) *Any employer-provided housing allowance.*

28 (2) *Any employer-provided vehicle allowance.*

29 SEC. 3. Section 31540 is added to the Government Code, to
30 read:

31 31540. (a) ~~Any compensation determined by the board to have~~
32 ~~been paid for the purpose of enhancing a member's retirement~~
33 ~~benefit under that system shall not be included in compensation~~
34 ~~earnable. The board shall establish a procedure for assessing and~~
35 ~~determining whether an element of compensation was paid for the~~
36 ~~principal purpose of enhancing a member's retirement benefit. If~~
37 ~~the board determines that compensation was paid for the principal~~
38 ~~purpose of enhancing a member's benefit, the member or the~~
39 ~~employer may present evidence that the compensation was not~~
40 ~~paid for that purpose. Upon receipt of sufficient evidence to the~~

1 contrary, a board may reverse its determination that compensation
2 was paid for the *principal* purpose of enhancing a member's
3 retirement benefits.

4 (b) *Upon a final determination by the board that compensation*
5 *was paid for the principal purpose of enhancing a member's*
6 *retirement benefit, the board shall provide notice of that*
7 *determination to the member and employer. The member or*
8 *employer may obtain judicial review of the board's action by filing*
9 *a petition for writ of mandate within 30 days of the mailing of that*
10 *notice.*

11 ~~(b)~~

12 (c) Compensation that a member was entitled to receive pursuant
13 to a collective bargaining agreement that was subsequently deferred
14 or otherwise modified as a result of a negotiated amendment of
15 that agreement shall be considered compensation earnable and
16 shall not be deemed to have been paid for the *principal* purpose
17 of enhancing a member's retirement benefit.

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

20 31540.2. (a) When a county or district reports compensation
21 to the board, it shall identify the pay period in which the
22 compensation was earned regardless of when it was reported or
23 paid. Compensation shall be reported in accordance with Section
24 31461 and shall not exceed compensation earnable, as defined in
25 Section 31461.

26 (b) The board may assess a county or district a reasonable
27 amount to cover the cost of audit, adjustment, or correction, if it
28 determines that a county or district knowingly failed to comply
29 with subdivision (a). A county or district shall be found to have
30 knowingly failed to comply with subdivision (a) if the board
31 determines that either of the following applies:

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

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

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

1 SEC. 5. Section 31541 is added to the Government Code, to
2 read:

3 31541. The board may audit a county or district to determine
4 the correctness of retirement benefits, reportable compensation,
5 and enrollment in, and reinstatement to, the system. During an
6 audit, the board may require a county or district to provide
7 information, or make available for examination or copying at a
8 specified time and place, books, papers, data, or records, including,
9 but not limited to, personnel and payroll records, as deemed
10 necessary by the board.

11 SEC. 6. Section 31569 is added to the Government Code, to
12 read:

13 31569. A county or district that fails to enroll an employee into
14 membership within 90 days of when he or she becomes eligible,
15 when the employer knows or would reasonably be expected to
16 have known that the person was eligible, shall pay all costs in
17 arrears for member contributions and administrative costs of five
18 hundred dollars (\$500) per member as a reimbursement to the
19 system's current year budget.

20 SEC. 7. Section 31680.9 is added to the Government Code, to
21 read:

22 31680.9. (a) Except as provided in Section 31680.1, any person
23 who has been retired for service on or after January 1, 2012, as a
24 member of a county retirement system established under this
25 chapter shall not be reemployed in any capacity either as an
26 employee, an independent contractor, or an employee of a third
27 party without reinstatement by a district or county operating a
28 county retirement system established under this chapter unless at
29 least 180 days have elapsed since the person's date of retirement.

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

33 (c) Any retired member employed in violation of this article
34 shall:

35 ~~(1) Reimburse shall reimburse~~ the retirement system for any
36 retirement allowance received during the period or periods of
37 employment that are in violation of law.

38 ~~(2) Contribute toward the reimbursement of the retirement~~
39 ~~system for administrative expenses incurred in responding to a~~

1 ~~violation of this article, to the extent the member is determined by~~
2 ~~the executive officer to be at fault.~~

3 (d) Any county or district that employs a retired member in
4 violation of this article shall contribute toward the reimbursement
5 of the retirement system for administrative expenses incurred in
6 responding to a violation of this article, to the extent the county
7 or district is determined by the executive officer of this system to
8 be at fault.

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