AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JULY 7, 2011

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MARCH 3, 2011

SENATE BILL No. 27

Introduced by Senators Simitian and Correa
(Principal coauthor: Senator Rubio)
(Coauthors: Senators Alquist, Calderon, De León, and Negrete McLeod)

December 6, 2010

An act to amend Sections 22112.5, 22119.2, 22461, 22905, 25009, 26302, and 26505 of, to amend and repeal Section 24214.5 of, to amend, repeal, and add Section 26806 of, and to add Sections 24214.6 and 26307 to, the Education Code, and to amend Sections 20221, 20630, 20636, 20636.1, and 21220 of, and to add Section 21220.3 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Simitian. ~~Public retirement: final compensation: computation: retirees.~~ *Public employees' retirement.*

(1) The State Teachers' Retirement Law (STRL) establishes the Defined Benefit Program of the State Teachers' Retirement System, which provides a defined benefit to members of the system based on final compensation, credited service, and age at retirement, subject to certain variations. STRL also establishes the Defined Benefit Supplement Program, which provides supplemental retirement, disability, and other benefits, payable either in a lump-sum payment, an annuity, or both to members of the State Teachers' Retirement Plan.

STRL defines creditable compensation for these purposes as remuneration that is payable in cash to all persons in the same class of employees, as specified, for performing creditable service.

This bill would revise the definition of creditable compensation for these purposes and would identify certain payments, reimbursements, and compensation that are creditable compensation to be applied to the Defined Benefit Supplement Program. The bill would prohibit one employee from being considered a class. The bill would revise the definition of compensation with respect to the Defined Benefit ~~Supplemental~~ *Supplement* Program to include remuneration earnable within a 5-year period, which includes the last year in which the member's final compensation is determined, when it is in excess of 125% of that member's compensation earnable in the year prior to that 5-year period, as specified. The bill would prohibit a member who retires on or after January 1, 2013, who elects to receive his or her retirement benefit under the Defined Benefit ~~Supplemental~~ *Supplement* Program as a lump-sum payment from receiving that sum until 180 days have elapsed following the effective date of the member's retirement.

(2) Existing law permits a retired member of STRS to perform specified activities as an employee of an employer in the system, as an employee of a 3rd party, or as an independent contractor within the California public school system, but prohibits the member from making contributions to the retirement fund or accruing service credit based on compensation earned from that service. Existing law conditions this authorization on a variety of factors including limitations on the rate of pay of the member and the total amount of compensation. Existing law prohibits compensation, in this regard, for a member who is below normal retirement age for the first 6 months after retirement for service.

This bill would apply the prohibition described above to employees retiring on or after January 1, 2013, for the first 180 days after retirement for service. The bill, beginning January 1, 2013, and until June 30, 2014, would exclude from that postretirement compensation limitation up to $2,500 of compensation earned by a member who retired for service and returned to work during the first 180 days after retirement as a substitute employee, as specified, if other conditions are met.

(3) Existing law establishes the Cash Balance Benefit Program, administered by the Teachers' Retirement Board, as a separate benefit program within the State Teachers' Retirement Plan in order to provide a retirement plan for persons employed to perform creditable service

for less than 50% of full-time service. Existing law provides that the normal form of benefit under the program is a lump-sum payment, after which further benefits are not payable.

This bill would permit the board to assess penalties for late and improper adjustments on contributions in connection with the Cash Balance Benefit Program. The bill would prohibit a member who retires on or after January 1, 2013, from receiving the lump-sum payment under the program until 180 days have elapsed following the effective date of the member's termination of employment.

(4) The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System, which is administered by its board of administration, and which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines compensation earnable and other related terms for purposes of calculating a member's retirement allowance. PERL requires employers and contracting agencies participating in the system to provide notice to the board of the change of status of a member.

This bill would require a participating employer and contracting agencies to immediately notify the board of a change that may affect a member's payrate for purposes of compensation earnable and would authorize the board to assess a reasonable fee upon an employer that fails to do so. The bill would authorize the board to assess a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that an employer knowingly failed to comply with requirements regarding the reporting of compensation. The bill would specify that payrate means, among other things, the member's monthly base pay, would connect payrate to publicly available pay schedules, and would establish requirements for computation of the payrate of a member for a leave without pay. The bill would prescribe a process for determining if specific compensation items are special compensation. The bill would prohibit a person who retires on or after January 1, 2013, from being employed in any capacity by the state, the University of California, a school employer, or a contracting agency until that person has been separated from service for a period of at least 180 days, subject to existing exceptions, *unless the employee is subject to a collectively bargained early retirement plan with the California State University in effect prior to January 1, 2013*.

The bill *also* would make ~~also~~ additional related changes and would make a statement of legislative findings.

This bill would provide that its provisions would become operative on July 1, 2012, except as specified.

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. (a) The Legislature finds and declares that:

(1) State public retirement boards have been authorized under the law to administer retirement systems that provide adequate, secure retirement benefits to participants who dedicate their life's work to public service, and their beneficiaries.

(2) Employees partner with their public agency employers to fund this benefit.

(3) Any manipulation of those benefits creates harm for the employees, beneficiaries, employers, and taxpayers and should not be permitted.

(b) The Legislature further finds and declares that:

(1) The efficacy of the retirement systems is threatened by the behavior of those who seek to unfairly and unjustifiably enhance or "spike" their pensions.

(2) Neither the Legislature nor the courts ever anticipated a circumstance where the application of the retirement law would result in a method that permits inequitable application of compensation rules in order to enhance an individual's retirement allowance.

(3) It is the responsibility of the Legislature to provide guidance to every retirement system so that each system can determine the proper elements that go into calculating a member's retirement benefit as recognized by the laws governing each retirement system.

(4) Retirement systems must employ sound principles that provide consistent treatment of compensation throughout a member's career and consistent treatment of compensation earnable among all classes of employees.

(5) In order to provide consistent treatment across the retirement systems, the reporting procedures used by each retirement system and its participating employers must be sufficiently precise so as to enable the retirement system to distinguish between items of

remuneration that are and are not properly included in a member's final compensation.

(c) The Legislature further finds and declares that consistent administration of state public retirement systems is a matter of statewide concern.

(d) The Legislature further finds and declares that the procedures contained in this act provide the appropriate method for resolving the inequitable application of compensation rules and, therefore, provide for the consistent administration of state retirement systems that is in the public's best interest.

SEC. 2. Section 22112.5 of the Education Code is amended to read:

22112.5. (a) "Class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed.

(b) One employee shall not be considered a class of employees.

(c) The board shall have the right to override the determination by an employer as to whether or not a group constitutes a "class of employees" within the meaning of this section.

SEC. 3. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means remuneration that is payable in cash by an employer to all persons in the same class of employees, if applicable, and is paid to an employee for performing creditable service.

(1) Creditable compensation shall be designated as either of the following:

(A) Salary or wages paid in accordance with a salary schedule or employment agreement for the performance of creditable service or the use of an employer-approved leave during a specified period of time, the right of which accrues in proportion to the service performed or the leave used, except as provided in subparagraph (B). Salary or wages shall be credited to the Defined Benefit Program or the Defined Benefit Supplement Program in accordance with subdivisions (b) and (f) and with Section 22905.

(B) Remuneration that is paid in addition to salary or wages, providing it is payable to all persons who are in the same class of employees, if applicable, in the same dollar amount, the same

percentage of salary or wages, or the same percentage of the amount being distributed. For purposes of this subparagraph, "remuneration that is paid in addition to salary or wages" shall be credited to the Defined Benefit Supplement Program in accordance with Section 22905 and shall include:

(i) Reimbursements or allowances for expenses, the payment of which is not substantiated pursuant to Section 274(d) of the Internal Revenue Code.

(ii) Cash payments made by the employer in exchange for a member's waiver of a right to receive any payment, amount, or benefit described in paragraphs (5) and (6) of subdivision (c).

(iii) Compensation that is payable for a specified number of times as limited by law, a collective bargaining agreement, or an employment agreement.

(iv) Compensation that is payable for meeting specified criteria, the right of which does not accrue in proportion to service performed or leave used.

(v) Compensation that is payable for attaining a specific age threshold.

(vi) Compensation that is payable for meeting performance-related criteria, provided that the compensation is not used as the basis for subsequent increases in salary or wages.

(vii) Compensation that is payable in exchange for an agreement to terminate employment, except as excluded from "creditable compensation" as defined in paragraph (9) of subdivision (c).

(viii) Any other payments the board may determine, pursuant to regulations, to be "remuneration that is paid in addition to salary or wages."

(2) Creditable compensation shall include the following:

(A) Member contributions that are picked up by an employer pursuant to Section 22903 or 22904.

(B) Amounts that are deducted from a member's compensation, including, but not limited to, salary deductions for participation in a deferred compensation plan; deductions to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(k), 403(b), or 457 of Title 26 of the United States Code.

(C) Any other amounts the board may determine, pursuant to regulations, to be "creditable compensation."

(b) Any salary or other remuneration determined by the board to have been paid to enhance a member's benefits shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the board that salary or other remuneration was paid to enhance the member's benefits may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the board that salary or other remuneration was paid to enhance the member's benefits may be reversed.

(c) "Creditable compensation" does not mean and shall not include:

(1) Remuneration that is not payable in cash or is not payable to all persons who are in the same class of employees.

(2) Remuneration that is paid for service that is not creditable service pursuant to Section 22119.5.

(3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(4) Remuneration that is paid for unused accumulated leave.

(5) Annuity contracts, tax-deferred retirement plans, or insurance programs and contributions to plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code when the cost is covered by an employer and is not deducted from the member's salary.

(6) Fringe benefits provided by an employer.

(7) Expenses paid by an employer.

(8) Expenses reimbursed by an employer, the payment of which is substantiated pursuant to Section 274(d) of the Internal Revenue Code.

(9) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.

(10) Any other payments the board determines not to be "creditable compensation."

(d) An employer or individual who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (c) may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system

may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it would be paid to any person who meets the qualifications or requirements specified in a collective bargaining agreement or an employment agreement as a condition of receiving the remuneration. *An employment agreement shall not affect the amount contributed to a member's Defined Benefit Supplement account pursuant to subdivision (b) of Section 22905.*

(f) This definition of "creditable compensation" reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, consistent levels or ranges of compensation paid by the employer for a specified ongoing position, preventing adverse selection, and excluding from compensation earnable remuneration that is paid to enhance a member's benefits. The board shall determine the appropriate crediting of contributions between the Defined Benefit Program and the Defined Benefit Supplement Program according to these principles, to the extent not otherwise specified pursuant to this part.

SEC. 4. Section 22461 of the Education Code is amended to read:

22461. A school district, community college district, county superintendent of schools, California State University, or other employing agency that retains the services of a retired member under Section 24116, 24214, or 24215 shall do both of the following regardless of whether the retired member performs the services as an employee of the employer, an employee of a third party, or an independent contractor:

(a) Prior to retention, advise the retired member of the earnings limitation set forth in Sections 24116, 24214, and 24215.

(b) Maintain accurate records of the retired member's earnings and report those earnings monthly to the system and the retired member regardless of the method of payment or the fund from which the payments were made.

SEC. 5. Section 22905 of the Education Code is amended to read:

22905. (a) Member contributions pursuant to Section 22901, employer contributions pursuant to Section 22903 or 22904, and member contributions made by an employer pursuant to Section 22909 shall be credited to the member's individual account under the Defined Benefit Program or the Defined Benefit Supplement Program, whichever is applicable pursuant to the provisions of this part.

(b) Member and employer contributions on a member's compensation under the following circumstances shall be credited to the member's Defined Benefit Supplement account:

(1) Compensation for creditable service that exceeds one year in a school year.

(2) Compensation that is consistent with subdivision (b) of Section 22119.2.

(3) Remuneration that is paid in addition to salary, in accordance with subparagraph (B) of paragraph (1) of subdivision (a) of Section 22119.2.

(4) (A) Remuneration increasing a member's compensation earnable during a five-year period, that includes the last year in which the member's final compensation is determined and the four years prior to that year, in which creditable compensation was earned, that exceeds 125 percent of the member's compensation earnable in the year prior to that five-year period, provided that both of the following conditions are satisfied:

(i) The remuneration is not subject to a written agreement with an exclusive representative entered into by an employer pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, or in the case of a member employed by a charter school, the remuneration is earned in a position that is precluded from being represented by an exclusive representative pursuant to Section 3543.4 of the Government Code.

(ii) The remuneration is not a result of the termination of employment with one employer and the beginning of employment with another employer.

(B) The board may, by plan amendment, increase the percentage specified in subparagraph (A), if the board determines that the average rate of increase in salary and wages paid during the previous five-year period to members employed by the 10 employers with the largest number of members exceeded 5 percent in any of those five years.

(c) A member may not make voluntary pretax or posttax contributions under the Defined Benefit Supplement Program, except as provided in subdivision (d), nor may a member redeposit amounts previously distributed based on the balance in the member's Defined Benefit Supplement account.

(d) Member and employer contributions pursuant to paragraph (1) of subdivision (b) under the Defined Benefit Supplement Program shall be credited to the accounts of members as of July 1 each year following a determination by the system under the provisions of this part that those contributions should be credited to the Defined Benefit Supplement Program. Any other contributions under the Defined Benefit Supplement Program, pursuant to paragraph (2), (3), or (4) of subdivision (b), shall be credited to the individual account of the member upon receipt by the system. Contributions to a member's Defined Benefit Supplement account shall be identified separately from the member's contributions credited under the Defined Benefit Program.

SEC. 6. Section 24214.5 of the Education Code is amended to read:

24214.5. (a) Notwithstanding Section 24214, for employees retiring before January 1, 2013, the postretirement compensation limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 or subdivision (a) or (b) of Section 26113, either as an employee of an employer, an employee of a third party, or as an independent contractor, within the California public school system, shall be zero dollars ($0) during the first six calendar months after the most recent retirement of a member retired for service under this part, if the member is below normal retirement age at the time the compensation is earned.

(b) If a member retired for service under this part earns compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in excess of the limitation specified in subdivision (a), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but may not exceed the amount of the

annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(c) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 24214.6 is added to the Education Code, to read:

24214.6. (a) Notwithstanding Section 24214, for employees retiring on or after January 1, 2013, the postretirement compensation limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 or subdivision (a) or (b) of Section 26113, either as an employee of an employer, an employee of a third party, or as an independent contractor within the California public school system, shall be zero dollars ($0) during the first 180 days after the most recent retirement of a member retired for service under this part.

(b) If a member retired for service under this part earns compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in excess of the limitation specified in subdivision (a), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but may not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(c) (1) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned, up to ~~$2,500~~ *two thousand five hundred dollars ($2,500)*, by a member retired for service under this part who has returned to work during the first 180 days after the date of the most recent retirement as a substitute employee as defined by Section 44917, if all of the following conditions are met:

(A) The employing school district has an average daily attendance of 1,000 or fewer and is in a county of the fifth, sixth, seventh, or eighth class as defined in Section 1205, as identified and provided to the system by the *State* Department of Education.

(B) The member is above normal retirement age at the time the compensation is earned.

(C) The employing school district certifies that the member will not perform service other than in grades 9 through 12, inclusive.

(D) The employing school district certifies that no other person is qualified and available to be a substitute employee in grades 9 through 12, inclusive, in the particular position in which the service is to be performed.

(E) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision. The documentation shall be received by the system no later than 60 days from the date the retired member first performs creditable service after his or her most recent retirement date.

(2) The board shall adjust annually the amount specified in paragraph (1) by the percentage change in the average compensation earnable of active members of the Defined Benefit Program, as determined by the system, from the 2011–12 fiscal year to the fiscal year ending in the calendar year previous to the year the adjustment is made.

(3) This subdivision shall remain operative only until June 30, 2014.

(d) This section shall become operative on January 1, 2013.

SEC. 8. Section 25009 of the Education Code is amended to read:

25009. (a) A member's retirement benefit under the Defined Benefit Supplement Program shall be an amount equal to the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable.

(b) A retirement benefit shall be a lump-sum payment, or an annuity payable in monthly installments, or a combination of both a lump-sum payment and an annuity, as elected by the member on the application for a retirement benefit. Any retirement benefit paid as an annuity under this chapter shall be subject to Section 25011 or 25011.1.

(c) If a member who retires on or after January 1, 2013, elects to have the retirement benefit paid as a lump-sum payment, that payment shall be payable after 180 days have elapsed following the effective date of the member's retirement.

(d) Upon distribution of the entire retirement benefit in a lump-sum payment, no other benefit shall be payable to the member or the member's beneficiary under the Defined Benefit Supplement Program.

(e) A member may not apply a lump-sum payment made to the member pursuant to this section for any of the following purposes:

(1) Purchasing service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), or Chapter 14.5 (commencing with Section 22850).

(2) Redepositing previously refunded retirement contributions pursuant to Chapter 19 (commencing with Section 23200).

SEC. 9. Section 26302 of the Education Code is amended to read:

26302. (a) If more or less than the contributions required by this part are paid to the plan based on salary paid to a participant, proper adjustment shall be made by the employer within 60 days of discovery or of notification by the system, and any contributions deducted in error from the participant's salary shall be returned to the participant by the employer within the same time period.

(b) The board, in accordance with regulations, shall assess penalties for late or improper adjustments pursuant to Section 26301. These penalties shall be assessed at a rate equal to the penalties imposed under subdivision (b) of Section 23008 and shall be deemed to be interest earned in the year in which the penalty is received.

SEC. 10. Section 26307 is added to the Education Code, to read:

26307. A school district, community college district, county superintendent of schools, the California State University, or other employing agency that retains the services of a retired participant to perform the activities described in subdivision (a) or (b) of Section 26113 shall do both of the following, regardless of whether the retired participant performs the services as an employee of the employer, an employee of a third party, or as an independent contractor:

(a) Prior to retention, advise the retired participant of the limitations on employment set forth in Sections 26505, 26806, 26810, 26911, and 27204.

(b) Maintain accurate records of the retired participant's earnings and report those earnings monthly to the system and the retired participant, regardless of the method of payment or the fund from which the payments are made.

SEC. 11. Section 26505 of the Education Code is amended to read:

26505. If a participant who has retired and is receiving an annuity under the Cash Balance Benefit Program becomes reemployed prior to 60 years of age or becomes reemployed on or after 60 years of age but within one year of his or her retirement date, to perform creditable service as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, the annuity shall be terminated, the employee account and the employer account of the participant shall be credited with respective balances that reflect the actuarial equivalent of the participant's retirement benefit as of the date of the reemployment and the Annuitant Reserve shall be reduced by the amount of the credits. If a participant who has retired and is receiving an annuity under the Cash Balance Benefit Program becomes reemployed on or after age 60 and more than one year after retirement to perform creditable service under the plan, the annuity shall continue and employee contributions and employer contributions for the creditable service shall be made to the plan and shall be credited to new employee and employer accounts established on behalf of the participant.

SEC. 12. Section 26806 of the Education Code is amended to read:

26806. (a) The normal form of retirement benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the participant, no further benefits shall be payable from the plan with respect to the Cash Balance Benefit Program.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 13. Section 26806 is added to the Education Code, to read:

26806. (a) The normal form of retirement benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the participant, no further benefits shall be payable from the plan with respect to the Cash Balance Benefit Program.

Effective January 1, 2013, the lump-sum payment shall not be payable before 180 days have elapsed following the date of termination of employment.

(b) The application to receive the normal form of a retirement benefit shall be automatically canceled if the participant performs creditable service as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system within 180 days following the date of termination of employment.

(c) This section shall become operative on January 1, 2013.

SEC. 14. Section 20221 of the Government Code is amended to read:

20221. Each state employer, 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 hiring, transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death.

(b) Immediate notice to the board, in the manner prescribed by the system, of any change that may impact a member's payrate or special compensation, as defined in Section 20636 or 20636.1, resulting from the adoption, termination, or amendment of any labor policy or agreement.

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

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

The board may assess a reasonable fee on any employer who fails to provide information as required by this section within the applicable time limits.

SEC. 15. Section 20630 of the Government Code is amended to read:

20630. (a) As used in this part, "compensation" means the remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work because of any of the following:

(1) Holidays.
(2) Sick leave.
(3) Industrial disability leave, during which, benefits are payable pursuant to Sections 4800 and 4850 of the Labor Code, Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6, or Section 44043 or 87042 of the Education Code.
(4) Vacation.
(5) Compensatory time off.
(6) Leave of absence.

(b) When compensation is reported to the board, the employer shall identify the pay period in which the compensation was earned regardless of when reported or paid. Compensation shall be reported in accordance with Section 20636 or 20636.1 and shall not exceed compensation earnable, as defined in Section 20636 or 20636.1.

(c) The board may assess a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that an employer knowingly failed to comply with subdivision (b). An employer will be found to have knowingly failed to comply with subdivision (b) if the board determines that the employer either:

(1) Knew or should have known that the compensation reported was not compensation earnable, as defined in Section 20636 or 20636.1.

(2) Failed to identify the pay period in which compensation earnable was earned as required.

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

SEC. 16. Section 20636 of the Government Code is amended to read:

20636. (a) "Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) "Payrate" means the normal monthly rate of pay or monthly 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, pursuant to publicly available pay schedules. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or monthly 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).

(2) "Payrate" shall include an amount deducted from a member's salary for any of the following:

(A) Participation in a deferred compensation plan.

(B) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(C) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(D) Participation in a flexible benefits program.

(3) The computation for a leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence and shall report special compensation separately from payrate.

(4) 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 member includes a 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, if 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 a service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, is not 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 written petition to request an addition to the exclusive list that identifies and defines "special compensation" items contained in board regulations may be made pursuant to Section 11340.7. 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) Other payments the board has not affirmatively determined to be special compensation.

(8) A written request may be submitted for the board's determination as to whether specific compensation items meet the definition of special compensation. Determinations shall be made on these requests within 90 calendar days of receipt of all information required to be submitted by the board.

(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. One employee may not be considered a group or class.

(2) Increases in compensation earnable granted to an 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 similarly situated members in the closest related group or class, or 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 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.

(g) (1) Notwithstanding subdivision (a), "compensation earnable" for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for an absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and 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 that state service.

(2) Notwithstanding subdivision (b), "payrate" for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, pursuant to publicly available pay schedules, in payment for the member's services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. "Payrate" for state members shall include:

(A) An amount deducted from a member's salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(iv) Participation in a flexible benefits program.

(B) A payment in cash by the member's employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of Title 26 of the United States Code.

(C) Employer "pick up" of member contributions that meets the requirements of Section 414(h)(2) of Title 26 of the United States Code.

(D) Disability or workers' compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Other payments the board may determine to be within "payrate."

(3) Notwithstanding subdivision (c), "special compensation" for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished to a member by his or her employer in payment for the member's services.

(B) Compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, Peace Officer Standards and Training (POST) certificate pay, and split shift differential.

(C) Compensation for uniforms, except as provided in Section 20632.

(D) Other payments the board may determine to be within "special compensation."

(4) "Payrate" and "special compensation" for state members do not include any of the following:

(A) The provision by the state employer of a medical or hospital service or care plan or insurance plan for its employees (other than the purchase of annuity contracts as described below in this subdivision), a contribution by the employer to meet the premium or charge for that plan, or a payment into a private fund to provide health and welfare benefits for employees.

(B) A payment by the state employer of the employee portion of taxes imposed by the Federal Insurance Contribution Act.

(C) Amounts not available for payment of salaries and that are applied by the employer for the purchase of annuity contracts including those that meet the requirements of Section 403(b) of Title 26 of the United States Code.

(D) Benefits paid pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6.

(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred compensation plans. The amounts deducted from a member's wages for participation in a deferred compensation plan may not be considered to be "employer payments."

(F) Payments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise.

(G) Final settlement pay.

(H) Payments for overtime, including pay in lieu of vacation or holiday.

(I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

(J) Amounts not available for payment of salaries and that are applied by the employer for any of the following:

(i) The purchase of a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(ii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(K) Payments made by the employer to or on behalf of its employees who have elected to be covered by a flexible benefits

program, where those payments reflect amounts that exceed the employee's salary.

(L) Other payments the board may determine are not "payrate" or "special compensation."

(5) If the provisions of this subdivision, including the board's determinations pursuant to subparagraph (F) of paragraph (2) and subparagraph (D) of paragraph (3), are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or 3560, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, those provisions may not become effective unless approved by the Legislature in the annual Budget Act. No memorandum of understanding reached pursuant to Section 3517.5 or 3560 may exclude from the definition of either "payrate" or "special compensation" a member's base salary payments or payments for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. If items of compensation earnable are included by memorandum of understanding as "payrate" or "special compensation" for retirement purposes for represented and higher education employees pursuant to this paragraph, the Department of Personnel Administration or the Trustees of the California State University shall obtain approval from the board for that inclusion.

(6) (A) Subparagraph (B) of paragraph (3) prescribes that compensation earnable includes compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential; and includes compensation for uniforms, except as provided in Section 20632; and subparagraph (I) of paragraph (4) excludes from compensation earnable compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobile, and bonuses for duties performed after regular work shift.

(B) Notwithstanding subparagraph (A), the Department of Personnel Administration shall determine which payments and allowances that are paid by the state employer shall be considered

compensation for retirement purposes for an employee who either is excluded from the definition of state employee in Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(C) Notwithstanding subparagraph (A), the Trustees of the California State University shall determine which payments and allowances that are paid by the trustees shall be considered compensation for retirement purposes for a managerial employee, as defined in Section 3562, or supervisory employee as defined in Section 3580.3.

SEC. 17. 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 monthly 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, pursuant to publicly available pay schedules. 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 monthly 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, and shall report special compensation separately from payrate.

(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 written petition to request an addition to the exclusive list that identifies and defines "special

compensation" items contained in board regulations may be made pursuant to Section 11340.7. 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.

(8) A written request may be submitted for the board's determination as to whether specific compensation items meet the definition of special compensation. Determinations shall be made on these requests within 90 calendar days of receipt of all information required to be submitted by the board.

(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 similarly situated members in the closest related group or class or 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. 18. Section 21220 of the Government Code is amended to read:

21220. (a) A person who has been retired under this system, for service or for disability, may not be employed in any capacity thereafter by the state, the university, a school employer, or a contracting agency, unless any of the following conditions are satisfied:

(1) The employment qualifies for service credit in the University of California Retirement Plan or the State Teachers' Retirement Plan.

(2) He or she has first been reinstated from retirement pursuant to this chapter.

(3) ~~For~~ *(A) Except as provided in subparagraph (B), for* a person retiring on or after January 1, 2013, the employment, without reinstatement, is authorized by this article and at least 180 days have elapsed since that person's retirement date.

(B) The requirement that at least 180 days have elapsed since retiremement prior to reinstatement shall not apply to an employee covered by an early retirement plan that is part of a collectively bargained agreement with the California State University that is effective prior to January 1, 2013.

(4) For a person retiring before January 1, 2013, the employment, without reinstatement is authorized by this article.

(b) A retired person whose employment without reinstatement is authorized by this article shall acquire no service credit or retirement rights under this part with respect to the employment.

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

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

(2) Pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.

(3) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

(d) Any public employer that employs a retired member in violation of this article shall:

(1) Pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.

(2) Contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

SEC. 19. Section 21220.3 is added to the Government Code, to read:

21220.3. (a) A person who has retired under this system, for service or for disability, may not render services for compensation in any capacity for the state, the university, a school employer, or a contracting agency, through a third party or as an independent contractor, for a period of 180 days following the date of his or her retirement.

(b) Any retired member who provides services in violation of this section shall:

(1) Cease performing services for compensation and shall not be eligible to again perform services for a period of 180 days following the last date he or she performed services.

(2) Contribute toward reimbursement for administrative expenses incurred by the system because of the violation, to the extent that the retired member is determined by the executive officer of this system to be at fault. For purposes of this subdivision, a retired member shall be determined to be at fault if the retired member knew or should have known that he or she was performing services in violation of this section.

(c) Any public employer that utilizes the services of a retired member in violation of this section shall contribute toward reimbursement of this system for administrative expenses incurred by this system because of the violation, to the extent that the employer is determined, by the executive officer of this system, to be at fault. For purposes of this subdivision, a public employer

shall be determined to be at fault if the public employer knew or should have known that the retired member was performing services in violation of this section.

(d) This section shall apply to all persons who retire on and after January 1, 2013.

SEC. 20. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

~~SEC. 20.~~

SEC. 21. Except as otherwise specifically provided, the provisions of this act shall become operative on July 1, 2012.

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