

AMENDED IN SENATE MARCH 17, 2011

**SENATE BILL**

**No. 321**

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**Introduced by Senator Negrete McLeod**

February 14, 2011

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~~An act to amend Section 21570 of the Government Code, relating to the Public Employees' Retirement System. An act to amend Sections 19829.97, 19829.98, 20677.5, 20682, 20683.1, and 22944.3 of, and to amend and renumber Section 18929.96 of, the Government Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 321, as amended, Negrete McLeod. ~~Public Employees' Retirement System.~~ *State employees: memorandum of understanding.*

*Under existing law, a provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees that requires the expenditure of funds does not become effective unless approved by the Legislature in the annual Budget Act.*

*This bill would approve provisions of a memorandum of understanding entered into between the state employer and State Bargaining Unit 2, the California Attorneys, Administrative Law Judges and Hearing Officers in State Government, that require the expenditure of funds, and would provide that these provisions will become effective even if these provisions are approved by the Legislature in legislation other than the annual Budget Act. The bill would provide that provisions of the memorandum of understanding approved by this bill that require the expenditure of funds will not take effect unless funds for those provisions are specifically appropriated by the Legislature, and would*

*require the state employer and the affected employee organization to meet and confer to renegotiate the affected provisions if funds for those provisions are not specifically appropriated by the Legislature.*

*The annual Budget Act appropriates specified amounts from the General Fund, unallocated special funds, and unallocated nongovernmental cost funds, for state employee compensation. In the event that the annual Budget Act is not enacted prior to July 1 of each year covered by the memoranda of understanding for State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21, existing law provides for a continuous appropriation for the amount necessary for the payment of compensation and benefits to members of those bargaining units.*

*This bill would expand that provision to also include members of State Bargaining Unit 2.*

*The Public Employees' Retirement Law (PERL) prescribes contribution rates for state employees who are state miscellaneous, state industrial, state safety members, patrol members, or state peace officer/firefighter members, among others, in amounts based on percentages of monthly compensation. PERL reduces those contributions by excepting from the definition of monthly compensation specified amounts ranging between \$238 and \$863, based on member classification, among other things. Member contributions are deposited into the Public Employees' Retirement Fund, which is a continuously appropriated trust fund.*

*This bill would increase the contribution rates by 3% for specified membership classifications that are represented by State Bargaining Unit 2, beginning on the first day of the pay period following the operative date of the amendments made by this bill. By increasing member contributions into a continuously appropriated fund, this bill would make an appropriation. The bill would reduce the contribution rates by 1% for excluded state miscellaneous or state industrial members related to State Bargaining Unit 2.*

*Existing law requires the state to pay sworn members of the California Highway Patrol who are rank-and-file members of State Bargaining Unit 5 the estimated average total compensation for each corresponding rank in specified local police departments. Existing law requires any increase in total compensation resulting from a survey of the average compensation for those departments to be implemented through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act. Existing law requires that any amount that would otherwise be used to permanently increase compensation for those members of*

*State Bargaining Unit 5 pursuant to those provisions, effective on July 1, 2009, and on July 1, 2010, to permanently prefund postemployment health care benefits for patrol members, as provided.*

*This bill would authorize the Director of the Department of Personnel Administration to apply the provision directing the use of those amounts to prefund postemployment health care benefits for patrol members to excluded patrol members and an officer or employee of the executive branch who is not a member of civil service.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law provides for the payment of preretirement survivor benefits to the beneficiary of a deceased member of the Public Employees' Retirement System, as specified. Existing law also provides that no person shall receive more than one allowance of the preretirement survivor benefits.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. 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 *purpose of this act is to approve an agreement pursuant to Section*  
3 *3517.5 of the Government Code entered into by the state employer*  
4 *and State Bargaining Unit 2.*

5     SEC. 2. *The provisions of the memorandum of understanding*  
6 *prepared pursuant to Section 3517.5 of the Government Code and*  
7 *entered into by the state employer and State Bargaining Unit 2,*  
8 *dated March 7, 2011, and that require the expenditure of funds,*  
9 *are hereby approved for the purposes of subdivision (b) of Section*  
10 *3517.6 of the Government Code.*

11     SEC. 3. *The provisions of the memorandum of understanding*  
12 *approved by Section 2 of this act that require the expenditure of*  
13 *funds shall not take effect unless funds for these provisions are*  
14 *specifically appropriated by the Legislature. If funds for these*  
15 *provisions are not specifically appropriated by the Legislature,*  
16 *the state employer and the affected employee organization shall*  
17 *meet and confer to renegotiate the affected provisions.*

1     *SEC. 4. Notwithstanding Section 3517.6 of the Government*  
2     *Code, the provisions of the memorandum of understanding included*  
3     *in Section 2 that require the expenditure of funds shall become*  
4     *effective even if the provisions of the memorandum of*  
5     *understanding are approved by the Legislature in legislation other*  
6     *than the annual Budget Act.*

7     *SEC. 5. Section 18929.96 of the Government Code is amended*  
8     *and renumbered to read:*

9     ~~18929.96.~~

10    19829.96. (a) Notwithstanding Section 13340, for the 2011–12  
11    fiscal year, if the 2011–12 Budget Act is not enacted by July 1,  
12    2011, for the memoranda of understanding entered into between  
13    the state employer and State Bargaining Unit 1, 3, 4, 11, 14, 15,  
14    17, 20, or 21 (each effective July 1, 2010, to July 1, 2013,  
15    inclusive), or *State Bargaining Unit 2 (effective April 1, 2011, to*  
16    *July 1, 2013, inclusive)*, there is hereby continuously appropriated  
17    to the Controller from the General Fund, unallocated special funds,  
18    including, but not limited to, federal funds and unallocated  
19    nongovernmental cost funds, and any other fund from which state  
20    employees are compensated, the amount necessary for the payment  
21    of compensation and employee benefits to state employees covered  
22    by the above memoranda of understanding until the 2011–12  
23    Budget Act is enacted. The Controller may expend an amount no  
24    greater than necessary to enable the Controller to compensate state  
25    employees covered by the above memoranda of understanding for  
26    work performed between July 1, 2011, of the 2011–12 fiscal year  
27    and the enactment of the 2011–12 Budget Act.

28    (b) If the memoranda of understanding entered into between  
29    the state employer and State Bargaining Unit 1, 3, 4, 11, 14, 15,  
30    17, 20, or 21 (each effective July 1, 2010, to July 1, 2013,  
31    inclusive), or *State Bargaining Unit 2 (effective April 1, 2011, to*  
32    *July 1, 2013, inclusive)*, are in effect and approved by the  
33    Legislature, the compensation and contribution for employee  
34    benefits for state employees represented by these bargaining units  
35    shall be at a rate consistent with the applicable memorandum of  
36    understanding referenced above.

37    (c) Expenditures related to any warrant drawn pursuant to  
38    subdivision (a) are not augmentations to the expenditure authority  
39    of a department. Upon the enactment of the 2011–12 Budget Act,

1 these expenditures shall be subsumed by the expenditure authority  
2 approved in the 2011–12 Budget Act for each affected department.

3 (d) This section shall only apply to an employee covered by the  
4 terms of the State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or  
5 21 memoranda of understanding (each effective July 1, 2010, to  
6 July 1, 2013, inclusive), *or State Bargaining Unit 2 (effective April*  
7 *1, 2011, to July 1, 2013, inclusive)*. Notwithstanding Section  
8 3517.8, this section shall not apply after the term of the  
9 memorandum of understanding has expired. For purposes of this  
10 section, the memorandum of understanding for each unit expires  
11 on July 1, 2013.

12 *SEC. 6. Section 19829.97 of the Government Code is amended*  
13 *to read:*

14 19829.97. (a) Notwithstanding Section 13340, for the 2012–13  
15 fiscal year, if the 2012–13 Budget Act is not enacted by July 1,  
16 2012, for the memoranda of understanding entered into between  
17 the state employer and State Bargaining Unit 1, 3, 4, 11, 14, 15,  
18 17, 20, or 21 (each effective July 1, 2010, to July 1, 2013,  
19 inclusive), *or State Bargaining Unit 2 (effective April 1, 2011, to*  
20 *July 1, 2013, inclusive)*, there is hereby continuously appropriated  
21 to the Controller from the General Fund, unallocated special funds,  
22 including, but not limited to, federal funds and unallocated  
23 nongovernmental cost funds, and any other fund from which state  
24 employees are compensated, the amount necessary for the payment  
25 of compensation and employee benefits to state employees covered  
26 by the above memoranda of understanding until the 2012–13  
27 Budget Act is enacted. The Controller may expend an amount no  
28 greater than necessary to enable the Controller to compensate state  
29 employees covered by the above memoranda of understanding for  
30 work performed between July 1, 2012, of the 2012–13 fiscal year  
31 and the enactment of the 2012–13 Budget Act.

32 (b) If the memoranda of understanding entered into between  
33 the state employer and State Bargaining Unit 1, 3, 4, 11, 14, 15,  
34 17, 20, or 21 (each effective July 1, 2010, to July 1, 2013,  
35 inclusive), *or State Bargaining Unit 2 (effective April 1, 2011, to*  
36 *July 1, 2013, inclusive)*, are in effect and approved by the  
37 Legislature, the compensation and contribution for employee  
38 benefits for state employees represented by these bargaining units  
39 shall be at a rate consistent with the applicable memorandum of  
40 understanding referenced above.

1 (c) Expenditures related to any warrant drawn pursuant to  
2 subdivision (a) are not augmentations to the expenditure authority  
3 of a department. Upon the enactment of the 2012–13 Budget Act,  
4 these expenditures shall be subsumed by the expenditure authority  
5 approved in the 2012–13 Budget Act for each affected department.

6 (d) This section shall only apply to an employee covered by the  
7 terms of the State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or  
8 21 memoranda of understanding (each effective July 1, 2010, to  
9 July 1, 2013, inclusive), *or State Bargaining Unit 2 (effective April*  
10 *1, 2011, to July 1, 2013, inclusive)*. Notwithstanding Section  
11 3517.8, this section shall not apply after the term of the  
12 memorandum of understanding has expired. For purposes of this  
13 section, the memorandum of understanding for each unit expires  
14 on July 1, 2013.

15 *SEC. 7. Section 19829.98 of the Government Code is amended*  
16 *to read:*

17 19829.98. (a) Notwithstanding Section 13340, for the 2013–14  
18 fiscal year, if the 2013–14 Budget Act is not enacted by July 1,  
19 2013, for the memoranda of understanding entered into between  
20 the state employer and State Bargaining Unit 1, 3, 4, 11, 14, 15,  
21 17, 20, or 21 (each effective July 1, 2010, to July 1, 2013,  
22 inclusive), *or State Bargaining Unit 2 (effective April 1, 2011, to*  
23 *July 1, 2013, inclusive)*, there is hereby continuously appropriated  
24 to the Controller from the General Fund, unallocated special funds,  
25 including, but not limited to, federal funds and unallocated  
26 nongovernmental cost funds, and any other fund from which state  
27 employees are compensated, the amount necessary for the payment  
28 of compensation and employee benefits to state employees covered  
29 by the above memoranda of understanding until the 2013–14  
30 Budget Act is enacted. The Controller may expend an amount no  
31 greater than necessary to enable the Controller to compensate state  
32 employees covered by the above memoranda of understanding for  
33 work performed between July 1, 2013, of the 2013–14 fiscal year  
34 and the enactment of the 2013–14 Budget Act.

35 (b) If the memoranda of understanding entered into between  
36 the state employer and State Bargaining Unit 1, 3, 4, 11, 14, 15,  
37 17, 20, or 21 (each effective July 1, 2010, to July 1, 2013,  
38 inclusive), *or State Bargaining Unit 2 (effective April 1, 2011, to*  
39 *July 1, 2013, inclusive)*, are in effect and approved by the  
40 Legislature, the compensation and contribution for employee

1 benefits for state employees represented by these bargaining units  
2 shall be at a rate consistent with the applicable memorandum of  
3 understanding referenced above.

4 (c) Expenditures related to any warrant drawn pursuant to  
5 subdivision (a) are not augmentations to the expenditure authority  
6 of a department. Upon the enactment of the 2013–14 Budget Act,  
7 these expenditures shall be subsumed by the expenditure authority  
8 approved in the 2013–14 Budget Act for each affected department.

9 (d) This section shall only apply to an employee covered by the  
10 terms of the State Bargaining Unit 1, 3, 4, 11, 14, 15, 17, 20, or  
11 21 memoranda of understanding (each effective July 1, 2010, to  
12 July 1, 2013, inclusive), *or State Bargaining Unit 2 (effective April*  
13 *1, 2011, to July 1, 2013, inclusive)*. Notwithstanding Section  
14 3517.8, this section shall not apply after the term of the  
15 memorandum of understanding has expired. For purposes of this  
16 section, the memorandum of understanding for each unit expires  
17 on July 1, 2013.

18 *SEC. 8. Section 20677.5 of the Government Code is amended*  
19 *to read:*

20 20677.5. (a) Notwithstanding any provisions of Section  
21 20677.4 to the contrary, ~~effective with the beginning of the July~~  
22 ~~2006 on the first day of the pay period following the operative date~~  
23 ~~of the amendments to this section made by Senate Bill 321 of the~~  
24 ~~2011–12 Regular Session~~, the normal rate of contribution for state  
25 miscellaneous or state industrial members who are subject to  
26 Section 21354.1, and are represented by State Bargaining Unit 2,  
27 shall be:

28 (1) ~~Seven-Ten~~ percent of the compensation in excess of three  
29 hundred seventeen dollars (\$317) per month paid to a member  
30 whose service is not included in the federal system.

31 (2) ~~Six-Nine~~ percent of compensation in excess of five hundred  
32 thirteen dollars (\$513) per month paid to that member whose  
33 service has been included in the federal system.

34 (b) If the provisions of this section are in conflict with the  
35 provisions of a memorandum of understanding reached pursuant  
36 to Section 3517.5, the memorandum of understanding shall be  
37 controlling without further legislative action, except that if the  
38 provisions of a memorandum of understanding require the  
39 expenditure of funds, the provisions shall not become effective

1 unless and until approved by the Legislature in the annual Budget  
2 Act.

3 (c) The Director of the Department of Personnel Administration  
4 may establish the normal rate of contribution for a state employee  
5 who is excepted from the definition of “state employee” in  
6 subdivision (c) of Section 3513, and an officer or employee of the  
7 executive branch of state government who is not a member of the  
8 civil service. The normal rate of contribution shall be the same for  
9 all members identified in this subdivision. The contribution rate  
10 shall be effective the beginning of the pay period indicated by the  
11 Director of the Department of Personnel Administration but shall  
12 be no earlier than the beginning of the pay period following the  
13 date the board receives notification.

14 *SEC. 9. Section 20682 of the Government Code is amended to*  
15 *read:*

16 20682. Notwithstanding Sections 20677.4, 20677.5, 20677.6,  
17 20677.9, 20683, 20683.1, 20686, and 20687, effective with the  
18 beginning of the pay period following enactment of this section,  
19 the normal rate of contribution for a state employee who is  
20 excepted from the definition of “state employee” in subdivision  
21 (c) of Section 3513, and an officer or employee of the executive  
22 branch of state government who is not a member of the civil service  
23 shall be the following:

24 (a) For state miscellaneous or state industrial members:

25 (1) Nine percent of the compensation in excess of three hundred  
26 seventeen dollars (\$317) per month paid to a member whose service  
27 is not included in the federal system.

28 (2) Eight percent of compensation in excess of five hundred  
29 thirteen dollars (\$513) per month paid to that member whose  
30 service has been included in the federal system.

31 (b) For state miscellaneous or state industrial members who are  
32 excepted from the definition of “state employee” in subdivision  
33 (c) of Section 3513 and related to State Bargaining Unit 2:

34 (1) ~~Ten-Nine~~ percent of the compensation in excess of three  
35 hundred seventeen dollars (\$317) per month paid to a member  
36 whose service is not included in the federal system.

37 (2) ~~Nine-Eight~~ percent of compensation in excess of five hundred  
38 thirteen dollars (\$513) per month paid to that member whose  
39 service has been included in the federal system.

1 (c) State safety members shall be 9 percent of compensation in  
2 excess of three hundred seventeen dollars (\$317) per month paid  
3 to a member whose service is not included in the federal system  
4 or in excess of five hundred thirteen dollars (\$513) for one whose  
5 service is included in the federal system.

6 (d) Peace officer/firefighter members shall be 11 percent of  
7 compensation in excess of eight hundred sixty-three dollars (\$863)  
8 for state employees who are excepted from the definition of “state  
9 employee” in subdivision (c) of Section 3513 and related to State  
10 Bargaining Unit 6.

11 (e) Peace officer/firefighter members shall be 11 percent of  
12 compensation in excess of five hundred thirteen dollars (\$513) for  
13 state employees who are excepted from the definition of “state  
14 employee” in subdivision (c) of Section 3513 and related to State  
15 Bargaining Unit 7.

16 *SEC. 10. Section 20683.1 of the Government Code is amended*  
17 *to read:*

18 20683.1. (a) For each state safety member subject to Section  
19 21369 or 21369.1 who are represented by State Bargaining Unit  
20 2, the normal rate of contribution shall be ~~7~~ 10 percent of  
21 compensation in excess of three hundred seventeen dollars (\$317)  
22 per month paid to a member whose service is not included in the  
23 federal system ~~beginning with the July 2006~~ *on the first day of the*  
24 *pay period following the operative date of the amendments to this*  
25 *section made by Senate Bill 321 of the 2011–12 Regular Session.*  
26 If the provisions of this section are in conflict with the provisions  
27 of a memorandum of understanding reached pursuant to Section  
28 3517.5, the memorandum of understanding shall be controlling  
29 without further legislative action, except that if those provisions  
30 of the memorandum of understanding require the expenditure of  
31 funds, those provisions shall not become effective unless approved  
32 by the Legislature in the annual Budget Act.

33 (b) The Director of the Department of Personnel Administration  
34 may establish the normal rate of contribution for a state employee  
35 who is excepted from the definition of “state employee” in  
36 subdivision (c) of Section 3513, and an officer or employee of the  
37 executive branch of state government who is not a member of the  
38 civil service. The normal rate of contribution shall be the same for  
39 all members identified in this subdivision. The contribution rate  
40 shall be effective the beginning of the pay period indicated by the

1 Director of the Department of Personnel Administration but shall  
2 be no earlier than the beginning of the pay period following the  
3 date the board receives notification.

4 *SEC. 11. Section 22944.3 of the Government Code is amended*  
5 *to read:*

6 22944.3. (a) Any amount that would otherwise be used to  
7 permanently increase compensation pursuant to Section 19827,  
8 effective on July 1, 2009, and on July 1, 2010, shall instead be  
9 used to permanently prefund postemployment health care benefits  
10 for patrol members. The amount used to prefund benefits relative  
11 to any increases under the survey methodology effective July 1,  
12 2010, shall not exceed 2 percent. The state shall take credit for  
13 these prefunding contributions in the survey methodology  
14 established in Section 19827 in the same manner as it would for  
15 an increase to the base salary for patrol members.

16 (b) Patrol members shall contribute an additional 0.5 percent  
17 of base pay toward prefunding retiree health benefit obligations  
18 effective on the first day of the pay period following the effective  
19 date of the act adding this section and the ratification of the  
20 addendum by the members of State Bargaining Unit 5. This  
21 contribution shall not reduce the base salary of patrol members  
22 under the survey methodology established by Section 19827.

23 (c) Effective July 1, 2012, the state shall contribute toward  
24 prefunding retiree health benefits, on a prospective basis, an  
25 amount at least equal to the combined contribution rate established  
26 pursuant to subdivisions (a) and (b). These contributions may be  
27 used in the survey methodology established by Section 19827 if  
28 mutually agreed in a memorandum of understanding.

29 (d) Contributions paid pursuant to this section shall be used  
30 exclusively for the cost of providing postemployment health care  
31 to eligible enrolled patrol member annuitants and their eligible  
32 enrolled dependents, beneficiaries, and survivors.

33 (e) Contributions paid pursuant to this section shall not be  
34 refundable under any circumstances to a patrol member or his or  
35 her beneficiary or survivor.

36 (f) Any amount used to prefund postemployment health care  
37 for patrol members pursuant to subdivision (a) shall not be included  
38 in any calculation for benefits using final compensation.

39 (g) If the provisions of this section are in conflict with the  
40 provisions of a memorandum of understanding reached pursuant

1 to Section 3517.5, the memorandum of understanding shall be  
2 controlling without further legislative action, except that if those  
3 provisions of a memorandum of understanding require the  
4 expenditure of funds, the provisions shall not become effective  
5 unless approved by the Legislature in the annual Budget Act.

6 (h) For purposes of this section, “patrol member” has the same  
7 meaning as in Section 20390. This section shall not apply to an  
8 employee of a county.

9 (i) *The Director of the Department of Personnel Administration*  
10 *may exercise his or her discretion to apply the provisions of this*  
11 *section to patrol members who are excepted from the definition of*  
12 *“state employee” in subdivision (c) of Section 3513, and an officer*  
13 *or employee of the executive branch of state government who is*  
14 *not a member of the civil service, provided that the application of*  
15 *these provisions is the same for all patrol members identified in*  
16 *this subdivision.*

17 *SEC. 12. This act is an urgency statute necessary for the*  
18 *immediate preservation of the public peace, health, or safety within*  
19 *the meaning of Article IV of the Constitution and shall go into*  
20 *immediate effect. The facts constituting the necessity are:*

21 *In order for the provisions of this act to be applicable as soon*  
22 *as possible in the 2010–11 fiscal year and thereby facilitate the*  
23 *orderly administration of state government at the earliest possible*  
24 *time, it is necessary that this act take effect immediately.*

25 ~~SECTION 1. Section 21570 of the Government Code is~~  
26 ~~amended to read:~~

27 ~~21570. A person shall not receive more than one allowance~~  
28 ~~under this article and that allowance shall be the largest of the~~  
29 ~~monthly allowances to which he or she would otherwise be entitled.~~