

ASSEMBLY BILL

No. 3221

Introduced by Assembly Member Gallegos

February 23, 1996

An act to amend Section 22135 of, and to repeal and add Sections 22508 and 22509 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 3221, as introduced, Gallegos. School employees: retirement.

The State Teachers' Retirement Law authorizes members after entry into other school employment covered by a different retirement system, to elect within 90 days to continue in the State Teachers' Retirement System.

The bill would exclude those members from membership in the State Teachers' Retirement System unless the members elect within 60 days to continue in that system.

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

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

1 SECTION 1. Section 22135 of the Education Code is
2 amended to read:
3 22135. (a) Notwithstanding subdivisions (a) and (b)
4 of Section 22134, "final compensation" means the highest
5 annual compensation earnable by ~~a~~ *an active* member
6 who is a classroom teacher who retires, becomes disabled,

1 or dies, after June 30, 1990, during any period of 12
2 consecutive months during his or her membership in the
3 ~~system~~ *plan*. The last 12 consecutive months of
4 employment shall be used by the system in determining
5 final compensation unless designated to the contrary in
6 writing by the member.

7 (b) Section 22134, except subdivision (a) of that
8 section, shall apply to classroom teachers who retire after
9 June 30, 1990, and any statutory reference to Section
10 22134 or “final compensation” with respect to a classroom
11 teacher who retires, becomes disabled, or dies, after June
12 30, 1990, shall be deemed to be a reference to this section.

13 (c) As used in this section, “classroom teacher” means
14 any of the following:

15 (1) All teachers and substitute teachers in positions
16 requiring certification qualifications who spend, during
17 the last 10 years of their employment with the same
18 employer which immediately precedes their retirement,
19 60 percent or more of their contract time each year
20 providing direct instruction. For the purpose of
21 determining continuity of employment within the
22 meaning of this subdivision, an authorized leave of
23 absence for sabbatical or illness, or other *collectively*
24 bargained or employer-approved leaves shall not
25 constitute a break in employment.

26 (2) Other certificated personnel who spend, during
27 the last 10 years of their employment with the same
28 employer that immediately precedes their retirement, 60
29 percent or more of their contract time each year
30 providing direct services to pupils, including, but not
31 limited to, librarians, counselors, nurses, speech
32 therapists, resource specialists, audiologists,
33 audiometrists, hygienists, optometrists, psychologists,
34 driver safety instructors, and personnel on special
35 assignment to perform school attendance and adjustment
36 services.

37 (d) As used in this section, “classroom teacher” does
38 not include any of the following:

39 (1) Certificated employees whose job descriptions
40 require an administrative credential.



1 (2) Certificated employees whose job descriptions
2 include responsibility for supervision of certificated staff.

3 (3) Certificated employees who serve as advisers,
4 coordinators, consultants, or developers or planners of
5 curricula, instructional materials, or programs, who
6 spend, during the last 10 years of their employment with
7 the same employer that immediately precedes their
8 retirement, less than 60 percent of their contract time in
9 direct instruction.

10 (4) Certificated employees whose job descriptions
11 require provision of direct instruction or services, but
12 who are functioning in nonteaching assignments.

13 (5) Classified employees.

14 (e) This section shall apply only to teachers employed
15 by an employer that has, pursuant to Chapter 10.7
16 (commencing with Section 3540) of Division 4 of Title 1
17 of the Government Code, entered into a written
18 agreement with an exclusive representative, that makes
19 this section applicable to all of its classroom teachers, as
20 defined in subdivision (c).

21 (f) The written agreement shall include a mechanism
22 to pay for all increases in ~~benefits~~ and allowances
23 provided for by this section through employer
24 contributions or employee contributions or both, which
25 shall be collected and retained by the employer in a trust
26 fund to be used solely and exclusively to pay the system
27 for all increases in ~~benefits~~ and ~~allowance~~ allowances
28 provided by this section and related administrative costs,
29 a mechanism for disposition of the employee's
30 contributions if employment is terminated before
31 retirement, and for the establishment of a trust fund
32 board. The trust fund board shall administer the trust
33 fund and shall be composed of an equal number of
34 members representing classroom teachers chosen by the
35 bargaining agent and the employer. If the employer
36 agrees to pay the total cost of the benefit improvement,
37 the establishment of a trust fund and a trust fund board
38 shall be optional to the employer. The employer, within
39 30 days of receiving an invoice from the system, shall
40 reimburse the ~~system~~ *retirement fund* the amount



1 determined by the Teachers' Retirement Board to be
2 equal to the actuarial equivalent of the difference
3 between the allowance the member or beneficiary
4 receives pursuant to this section and the allowance the
5 member or beneficiary would have received if the
6 member's final compensation had been computed under
7 Section 22134 and the proportionate share of the cost to
8 the ~~system~~ plan, as determined by the Teachers'
9 Retirement Board, of administering this section. The
10 payment shall include the cost of all increases in ~~benefits~~
11 ~~and~~ allowances provided for by this section for all years
12 of service credited to the member as of the benefit
13 effective date. Interest shall be charged at the regular
14 interest rate for any payment not received within 30 days
15 of ~~the~~ receipt of the invoice. Payments not received
16 within 30 days after receipt of the invoice may be
17 collected pursuant to Section 23007.

18 (g) Upon the execution of the agreement, the
19 employer shall notify all certificated employees of the
20 agreement and any certificated employee of the
21 employer, who is ~~in a member~~ the Public Employees'
22 Retirement System pursuant to Section ~~22509~~ 22508, that
23 he or she may, within ~~90~~ 60 days following the date of
24 notification, elect to terminate his or her membership in
25 the Public Employees' Retirement System and become a
26 member of this ~~system~~ plan. However, only service
27 credited under this ~~system~~ plan subsequent to the date of
28 that election shall be subject to this section.

29 (h) An employer that agrees to become subject to this
30 section, shall, on a form and within the timeframes
31 prescribed by the system, certify the ~~eligibility of an~~
32 ~~employee, upon applicability of this section to a member~~
33 ~~pursuant to the criteria set forth in this section when a~~
34 ~~retirement or eligibility for a, disability, or family~~
35 ~~allowance, pursuant to the criteria set forth in this section~~
36 ~~becomes payable.~~

37 (i) For a nonmember spouse, final compensation shall
38 be determined pursuant to paragraph (2) of subdivision
39 (c) of Section 22664. The employer, within 30 days of
40 receiving an invoice from the system, shall reimburse the



1 ~~system retirement fund~~ pursuant to subdivision (f).
2 Interest shall be charged at the regular interest rate for
3 payment not received within the prescribed timeframe.
4 Payments not received within 30 days of invoicing may be
5 collected pursuant to Section 23007.

6 SEC. 2. Section 22508 of the Education Code is
7 repealed.

8 ~~22508. Any person who is a member who~~
9 ~~subsequently is employed by the same or a different~~
10 ~~school district or community college district or by a~~
11 ~~county superintendent, to perform duties that require~~
12 ~~membership in a different public retirement system in~~
13 ~~this state, shall continue to be a member, unless he or she~~
14 ~~elects, in writing and files in the office of this system,~~
15 ~~within 90 days after the entry, not to continue as a~~
16 ~~member in his or her new position. This section shall also~~
17 ~~apply to changes in employment effected on or after~~
18 ~~January 1, 1976, if an election is made on or before April~~
19 ~~1, 1977.~~

20 SEC. 3. Section 22508 is added to the Education Code,
21 to read:

22 22508. (a) A member who becomes employed by a
23 school district, community college district, or a county
24 superintendent to perform duties that require
25 membership in a different public retirement system, shall
26 be excluded from membership in this plan, unless the
27 member elects in writing within 60 days from the date of
28 hire in the position requiring membership in a different
29 public retirement system to continue as a member of this
30 plan. If an election is made, the subsequent service
31 performed up to the full-time equivalent for the position
32 shall be considered creditable service for purposes of this
33 part.

34 (b) A person who is a member of the Public
35 Employees' Retirement System who becomes employed
36 by a school district, community college district, or a
37 county superintendent to perform creditable service
38 subject to coverage by this plan shall become a member
39 of this plan unless the person elects within 60 days from



1 the date of hire to continue as a member of the Public
2 Employees' Retirement System.

3 SEC. 4. Section 22509 of the Education Code is
4 repealed.

5 ~~22509. Any person who is a member of the Public
6 Employees' Retirement System and employed by a
7 school district or by a county superintendent, and who
8 subsequently is employed in a position requiring
9 membership in this system is excluded from membership
10 in this system if he or she elects, by a writing filed in the
11 office of the Board of Administration of the Public
12 Employees' Retirement System, within 90 days after the
13 entry, to continue as a member of the Public Employees'
14 Retirement System in his or her new position. This section
15 shall also apply to changes in employment effected on or
16 after January 1, 1976, if an election is made on or before
17 April 1, 1977.~~

18 SEC. 5. Section 22509 is added to the Education Code,
19 to read:

20 22509. (a) Within 10 working days of the date of hire,
21 the employer shall inform the employee of the right to
22 make an election pursuant to Section 22508 and shall
23 make available to the employee written information
24 provided by the retirement systems to assist the
25 employee in making an election.

26 (b) The election shall be made on a form prescribed by
27 the retirement systems.

28 (c) Any election made pursuant to Section 22508 shall
29 be filed with the office of the State Teachers' Retirement
30 System and the other public retirement system. Once
31 received and accepted by the system, the election shall
32 become effective as of the first day of employment in the
33 position that qualified the member to make an election.

