

Introduced by Senator Russell

January 30, 1995

An act to amend Sections 20023, 20615, and 20615.5 of the Government Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 159, as introduced, Russell. Public employees: retirement.

The Public Employees' Retirement Law prescribes the pay and allowances includable to compute compensation for benefit purposes.

This bill would authorize the retirement board to determine special compensation under specified circumstances and would make other related changes.

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 20023 of the Government Code
 2 is amended to read:
 3 20023. (a) "Compensation earnable" by a member
 4 means the payrate and special compensation of the
 5 member, as defined by subdivisions (b), (c), and (g).
 6 (b) (1) "Payrate" means the normal monthly rate of
 7 pay or base pay of the member paid in cash to similarly
 8 situated members of the same group or class of
 9 employment for services rendered on a full-time basis
 10 during normal working hours. "Payrate" for a member



1 who is not in a group or class means the monthly rate of
2 pay or base pay of the member, paid in cash and pursuant
3 to publicly available pay schedules, for services rendered
4 on a full-time basis during normal working hours.

5 (2) The computation for any leave without pay of a
6 member shall be based on the compensation earnable by
7 him or her at the beginning of the absence.

8 (3) The computation for time prior to entering state
9 service shall be based on the compensation earnable by
10 him or her in the position first held by him or her in state
11 service.

12 (c) (1) Special compensation of a member includes
13 any payment received for special skills, knowledge,
14 abilities, work assignment, workdays or hours, or other
15 work conditions.

16 (2) Special compensation shall be limited to that
17 which is received by a member pursuant to a labor policy
18 or agreement or as otherwise required by state or federal
19 law, to similarly situated members of a group or class of
20 employment that is in addition to payrate. *If an individual*
21 *is not part of a group or class, special compensation shall*
22 *be limited to that which the board determines is received*
23 *by similarly situated members in the closest related group*
24 *or class.*

25 (3) Special compensation shall be for services
26 rendered during normal working hours and, when
27 reported to the board, the employer shall identify the pay
28 period in which the special compensation was earned.

29 (4) Special compensation may include the *full*
30 monetary value of normal contributions paid to the board
31 by the employer, on behalf of the member and pursuant
32 to Section 20615, provided that the employer's labor
33 policy or agreement specifically provides for the
34 inclusion of the normal contribution payment in
35 compensation earnable.

36 (5) The monetary value of any service or noncash
37 advantage furnished by the employer to the member,
38 except as expressly and specifically provided in this part,
39 shall not be special compensation unless regulations



1 promulgated by the board specifically determine that
2 value to be “special compensation.”

3 (6) The board shall promulgate regulations that
4 delineate more specifically and exclusively what
5 constitutes “special compensation” as used in this section.
6 A uniform allowance, the monetary value of
7 employer-provided uniforms, holiday pay, and premium
8 pay for hours worked within the normally scheduled or
9 regular working hours that are in excess of the statutory
10 maximum workweek or work period applicable to the
11 employee under the Fair Labor Standards Act (29 U.S.C.
12 Secs. 201-219, inclusive) shall be included as special
13 compensation and appropriately defined in those
14 regulations.

15 (7) Special compensation does not include any of the
16 following:

17 (A) Final settlement pay.

18 (B) Payments made for additional services rendered
19 outside of normal working hours, whether paid in lump
20 sum or otherwise.

21 (C) Any other payments the board has not
22 affirmatively determined to be special compensation.

23 (d) Notwithstanding any other provision of law,
24 payrate and special compensation schedules, ordinances,
25 or similar documents shall be public records available for
26 public scrutiny.

27 (e) As used in this part, “group or class of
28 employment” means a number of employees considered
29 together because they share job similarities, *including job*
30 *duties*, work location, collective bargaining unit, or other
31 logical work related grouping. Under no circumstances
32 shall one employee be considered a group or class.
33 Increases in compensation earnable granted to any
34 employee who is not in a group or class shall be limited
35 during the final compensation period applicable to the
36 employees, as well as the two years immediately
37 preceding the final compensation period, to the average
38 increase in compensation earnable during the same
39 period reported by the employer for all employees who
40 are in the same membership classification, except as may



1 otherwise be determined pursuant to regulations
2 adopted by the board that establish reasonable standards
3 for granting exceptions.

4 (f) As used in this part, “final settlement pay” means
5 any pay or cash conversions of employee benefits that are
6 in excess of compensation earnable, that are granted or
7 awarded to a member in connection with or in
8 anticipation of a separation from employment. The board
9 shall promulgate regulations that delineate more
10 specifically what constitutes final settlement pay.

11 (g) (1) Notwithstanding subdivision (a),
12 “compensation earnable” for state members means the
13 average monthly compensation, as determined by the
14 board, upon the basis of the average time put in by
15 members in the same group or class of employment and
16 at the same rate of pay, and is composed of the payrate
17 and special compensation of the member. The
18 computation for any absence of a member shall be based
19 on the compensation earnable by him or her at the
20 beginning of the absence and that for time prior to
21 entering state service shall be based on the compensation
22 earnable by him or her in the position first held by him
23 or her in that state service.

24 (2) Notwithstanding subdivision (b), “payrate” for
25 state members means the average monthly remuneration
26 paid in cash out of funds paid by the employer to similarly
27 situated members of the same group or class of
28 employment, in payment for the member’s services or for
29 time during which the member is excused from work
30 because of holidays, sick leave, vacation, compensating
31 time off, or leave of absence. “Payrate” for state members
32 shall include:

33 (A) Any amount deducted from a member’s salary for
34 any of the following:

35 (i) Participation in a deferred compensation plan
36 established pursuant to Chapter 4 (commencing with
37 Section 19993) of Part 2.6 of Division 5 of Title 2.

38 (ii) Payment for participation in a retirement plan
39 that meets the requirements of Section 401(k) of the
40 Internal Revenue Code.



1 (iii) Payment into a money purchase pension plan and
2 trust that meets the requirements of Section 401(a) of the
3 Internal Revenue Code.

4 (iv) Participation in a flexible benefits program.

5 (B) Any payment in cash by the member's employer
6 to one other than an employee for the purpose of
7 purchasing an annuity contract for a member under an
8 annuity plan that meets the requirements of Section
9 403(b) of the Internal Revenue Code.

10 (C) Employer "pick up" of member contributions
11 that meets the requirements of Section 414(h)(2) of the
12 Internal Revenue Code.

13 (D) Any disability or workers' compensation
14 payments to safety members in accordance with Section
15 4800 of the Labor Code.

16 (E) Temporary industrial disability payments
17 pursuant to Article 4 (commencing with Section 19869)
18 of Chapter 2.5 of Part 2.6 of ~~Division 5~~.

19 (F) Any other payments the board may determine to
20 be within "payrate."

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

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

28 (B) Any compensation for performing normally
29 required duties, such as holiday pay, bonuses (for duties
30 performed on regular work shift), educational incentive
31 pay, maintenance and noncash payments, out-of-class
32 pay, marksmanship pay, hazard pay, motorcycle pay,
33 paramedic pay, emergency medical technician pay,
34 POST certificate pay, and split shift differential.

35 (C) Compensation for uniforms, except as provided in
36 Section 20022.1.

37 (D) Any other payments the board may determine to
38 be within "special compensation."

39 (4) Neither "payrate" nor "special compensation" for
40 state members shall include any of the following:



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

8 (B) Any payment by the state employer of the
9 employee portion of taxes imposed by the Federal
10 Insurance Contribution Act.

11 (C) Amounts not available for payment of salaries and
12 that are applied by the employer for the purchase of
13 annuity contracts including those that meet the
14 requirements of Section 403(b) of the Internal Revenue
15 Code.

16 (D) Any benefits paid pursuant to Article 5
17 (commencing with Section 19878) of Chapter 2.5 of Part
18 2.6.

19 (E) Employer payments that are to be credited as
20 employee contributions for benefits provided by this
21 system, or employer payments that are to be credited to
22 employee accounts in deferred compensation plans;
23 provided, that the amounts deducted from a member's
24 wages for participation in a deferred compensation plan
25 shall not be considered to be "employer payments."

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

29 (G) Final settlement pay.

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

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

36 (J) Amounts not available for payment of salaries and
37 which are applied by the employer for any of the
38 following:



1 (i) The purchase of a retirement plan which meets the
2 requirements of Section 401(k) of the Internal Revenue
3 Code.

4 (ii) Payment into a money purchase pension plan and
5 trust which meets the requirements of Section 401(a) of
6 the Internal Revenue Code.

7 (K) Payments made by the employer to or on behalf
8 of its employees who have elected to be covered by a
9 flexible benefits program, where those payments reflect
10 amounts that exceed the employee's salary.

11 (L) Any other payments the board may determine are
12 not "payrate" or "special compensation."

13 (5) If the provisions of this subdivision, including the
14 board's determinations pursuant to subparagraph (F) of
15 paragraph (2) and subparagraph (D) of paragraph (3),
16 are in conflict with the provisions of a memorandum of
17 understanding reached pursuant to Section 3517.5 or
18 3560, the memorandum of understanding shall be
19 controlling without further legislative action, except that
20 if the provisions of a memorandum of understanding
21 require the expenditure of funds, those provisions shall
22 not become effective unless approved by the Legislature
23 in the annual Budget Act. No memorandum of
24 understanding reached pursuant to Section 3517.5 or 3560
25 may exclude from the definition of either "payrate" or
26 "special compensation" a member's base salary payments
27 or payments for time during which the member is
28 excused from work because of holidays, sick leave,
29 vacation, compensating time off, or leave of absence. If
30 any items of compensation earnable are included by
31 memorandum of understanding as "payrate" or "special
32 compensation" for retirement purposes for represented
33 and higher education employees pursuant to this
34 paragraph, the Department of Personnel Administration
35 or the Trustees of the California State University shall
36 obtain approval from the board for that inclusion.

37 (6) (A) Subparagraph (B) of paragraph (3) of this
38 subdivision prescribes that compensation earnable
39 includes any compensation for performing normally
40 required duties, such as holiday pay, bonuses (for duties



1 performed on regular work shift), educational incentive
2 pay, maintenance and noncash payments, out-of-class
3 pay, marksmanship pay, hazard pay, motorcycle pay,
4 paramedic pay, emergency medical technician pay,
5 POST certificate pay, and split shift differential; and
6 includes compensation for uniforms, except as provided
7 in Section 20022.1; and subparagraph (I) of paragraph (4)
8 excludes from compensation earnable compensation for
9 additional services outside regular duties, such as standby
10 pay, callback pay, court duty, allowance for automobile,
11 and bonuses for duties performed after regular work shift.

12 (B) Notwithstanding subparagraph (A) of this
13 paragraph, the Department of Personnel Administration
14 shall determine which payments and allowances that are
15 paid by the state employer shall be considered
16 compensation for retirement purposes for any employee
17 who either is excluded from the definition of state
18 employee in subdivision (c) of Section 3513, or is a
19 nonelected officer or employee of the executive branch
20 of government who is not a member of the civil service.

21 (C) Notwithstanding subparagraph (A) of this
22 paragraph, the Trustees of the California State University
23 shall determine which payments and allowances that are
24 paid by the trustees shall be considered compensation for
25 retirement purposes for any managerial employee, as
26 defined in subdivision (l) of Section 3562, or supervisory
27 employee as defined in Section 3580.3.

28 SEC. 2. Section 20615 of the Government Code is
29 amended to read:

30 20615. Notwithstanding any other provision of law, a
31 contracting agency or school employer may pay all or a
32 portion of the normal contributions required to be paid
33 by a member. Where the member is included in a group
34 or class of employment, the payment shall be for all
35 members in the group or class of employment. *If an*
36 *individual is not part of a group or class, the payment shall*
37 *be limited to the amount that the board determines is*
38 *payable to similarly situated members in the closest*
39 *related group or class.* The payments shall be reported



1 simply as normal contributions and shall be credited to
2 member accounts.

3 Nothing in this section shall be construed to limit the
4 authority of a contracting agency or school employer to
5 periodically increase, reduce, or eliminate the payment
6 by the contracting agency or school employer of all or a
7 portion of the normal contributions required to be paid
8 by members, as authorized by this section.

9 SEC. 3. Section 20615.5 of the Government Code is
10 amended to read:

11 20615.5. (a) Where a contracting agency employer
12 or a school employer has elected to pay all or a portion of
13 the normal contributions of members of a group or class
14 of employment pursuant to Section 20615, the employer
15 may, pursuant to a labor policy or agreement, stop paying
16 those contributions during the final compensation period
17 applicable to the members and, instead, increase the
18 payrate of the members by ~~an amount equal to the~~
19 ~~normal contributions paid~~ *the percentage that was*
20 *payable* by the employer on behalf of the employees *in*
21 *the pay period immediately prior to the final*
22 *compensation period* or increase the payrate of the
23 members by an amount established by a labor policy or
24 agreement in existence and in effect on June 30, 1993.
25 That amount shall not exceed the amount of the normal
26 member contributions that are required to be paid by the
27 members.

28 (b) This section shall not apply to any contracting
29 agency or to any school employer unless and until the
30 contracting agency or the school employer elects to be
31 subject to this section by amendment to its contract made
32 in the manner prescribed for approval of contracts,
33 except an election among the employees is not required.
34 In the case of contracts made after the date this section
35 is operative, the section shall not apply unless
36 incorporated by express provision in the contract.
37 However, no school employer may act pursuant to this
38 section unless and until the board approves a request for
39 the amendment of the contract of a school employer to
40 authorize termination of the payment. A school employer



1 shall not submit a request for a contract amendment
2 unless there is on file a request to terminate that payment
3 from the county superintendent of schools office and each
4 school district, community college district, and other
5 school entity within the jurisdiction of that school
6 employer.

7 (c) Before adopting this provision, the governing body
8 of a contracting agency or school employer shall, with
9 timely public notice, place the consideration of this
10 section on the agendas of two consecutive public
11 meetings of the governing body, at which time, full
12 disclosure shall be made of the nature of the benefit, the
13 additional employer contributions, and the funding
14 therefor. Only after the second of these public meetings
15 may the governing body adopt this section. The employer
16 shall notify the board of the employer's compliance with
17 this subdivision at the time of the governing body's
18 application to adopt this section.

19 (d) Persons hired after the effective date of an
20 employer's contract amendment to include this section
21 shall be informed by the employer of how this benefit
22 relates to their total compensation and benefit package.

23 (e) The additional employer contributions required
24 under this section shall be computed as a level percentage
25 of member compensation. The additional contribution
26 rate required at the time this section is added to a contract
27 shall not be less than the sum of (1) the actuarial normal
28 cost, plus (2) in the case of a contract amendment, the
29 additional contribution required to amortize the increase
30 in accrued liability attributable to the benefit elected
31 under this section over the unfunded actuarial liability
32 period currently in the agency's contract, commencing
33 from the date this section becomes effective in the
34 agency's contract.

35 (f) For the purposes of this section, all contributions,
36 liabilities, actuarial interest rates, and other valuation
37 factors necessary to calculate the employer's contribution
38 shall be determined on the basis of actuarial assumptions
39 and methods which, in combination, provide the board's
40 best estimate of anticipated experience under the system.



1 The board has the exclusive power and duty to make
2 these determinations.

3 (g) Within 30 days of notification from the board to the
4 contracting agency or school employer of the additional
5 employer contributions required pursuant to this section,
6 the contracting agency or school employer, or a
7 recognized employee organization, or both, may file with
8 the board a request for a review of the determination of
9 the calculation of the additional employer contributions.
10 The board shall promulgate regulations governing the
11 conduct of the review, that shall include the means by
12 which an employer or recognized employee organization
13 may submit independent actuarial evidence regarding
14 the additional contribution required by this section. The
15 board shall make the final determination on the
16 additional employer contributions needed to fund this
17 contract amendment.

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