

1 John Jensen, Esq., State Bar No. 176813  
2 Law Offices of John Michael Jensen  
3 11500 West Olympic Blvd Suite 550  
4 Los Angeles CA 90064  
(310) 312-1100  
(310)477-7090 Facsimile  
johnjensen@johnmjensen.com

5 Attorneys for Respondent  
6 Bruce V. Malkenhorst, Sr.

7  
8 **BEFORE THE BOARD OF ADMINISTRATION**  
9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

10  
11 In Re the Matter of ) **CALPERS CASE NO.: 2012-0671**  
12 ) **OAH CASE NO.: 2013080917**  
13 BRUCE V. MALKENHORST, SR., and )  
14 CITY OF VERNON, ) **BRUCE V. MALKENHORST, SR.'S**  
15 Respondents. ) **REQUEST FOR OFFICIAL AND**  
16 ) **JUDICIAL NOTICE**  
17 )  
18 ) (Filed concurrently with Closing Brief)  
19 )  
20 )  
21 ) Hearing: August 25-27, 2014 and  
22 ) September 3-4, 2014, February 19, 2015  
23 ) Location: Los Angeles OAH

24 Notice is hereby given to the California Public Employees' Retirement System and its  
25 Board of Administration (collectively "CalPERS), to Respondent City of Vernon, and to the  
26 Office of Administrative hearings:

27 Respondent Bruce V. Malkenhorst, Sr., submits this *Request for Official and Judicial*  
28 *Notice* under *Evidence Code* sections 450, 451, 452, and 459 *et seq.* and *Government Code*  
Section 11515 concerning the following documents:

- (4) Register 2011, No. 28, which added Section 570.5 to Title 2 of the California Code of Regulations.
- (5) From the United States Government Bureau of Labor Statistics, the *Monthly Labor*

1 *Review*, August 1990, titled "Consumer prices in the 1980's: the cooling of inflation" by Patrick  
2 Jackman.

3 (6) *O'Connor v. State Teachers' Ret. Sys.* (1996) 43 Cal.App.4th 1610.

4 (7) West's Ann. Cal. *Educ. Code* §22115.

5 (8) West's Ann. Cal. *Educ. Code* §22151.

6 (9) 2006 Cal. Legis. Serv., Ch.118 (A.B. 2244) (WEST) Retirement and Pensions-Public  
7 Officers and Employees—Compensation.

8 (10) 1996 Cal. Legis. Serv., Ch. 634 (S.B. No. 2041) (WEST) Teachers-Retirement.

9 (11) 2010 CalPERS Procedures Manual, cover page, Table of Contents, and page 50,  
10 "Overtime Positions".

11 (12) CalPERS Circular Letter dated October 25, 2012 re Statutory and Regulatory  
12 Requirements for Publicly Available Pay Schedules.

13 (13) CalPERS Circular Letter dated October 27, 2014 re Common Misreported Items of  
14 Compensation.

15 (14) Business Entity Detail on Vernon Industrial Development Association.


16 (15) Agenda of the City of Vernon Regular Meeting of Industrial Development  
17 Authority, Tuesday, December 3, 2013 .

18 (16) Minutes of the Regular Meeting of the Vernon Historic Preservation Society of the  
19 City of Vernon Held December 4, 2012.

20 True and complete copies of the documents for which Respondent seeks Official and  
21 Judicial Notice are attached as **Exhibits 4-16**. They are also authenticated in the Declaration of  
22 John Michael Jensen. This *Request for Official and Judicial Notice* is based on this filing and the  
23 other filings in this matter.

24  
25 Dated: May 22, 2015

By: \_\_\_\_\_

  
John Michael Jensen,  
Attorney for Respondent  
Bruce V. Malkenhorst, Sr.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Respondent Bruce V. Malkenhorst, Sr. requests *Official and Judicial Notice* of the  
4 following documents:

5 (4) Register 2011, No. 28, which added Section 570.5 to Title 2 of the California  
6 Code of Regulations.

7 (5) From the United States Government Bureau of Labor Statistics, the *Monthly*  
8 *Labor Review*, August 1990, titled "Consumer prices in the 1980's: the cooling of inflation" by  
9 Patrick Jackman.

10 (6) *O'Connor v. State Teachers' Ret. Sys.* (1996) 43 Cal.App.4th 1610.

11 (7) West's Ann. Cal. *Educ. Code* §22115.

12 (8) West's Ann. Cal. *Educ. Code* § 22151.

13 (9) 2006 Cal. Legis. Serv., Ch.118 (A.B. 2244) (WEST) Retirement and Pensions-  
14 Public Officers and Employees—Compensation.

15 (10) 1996 Cal. Legis. Serv., Ch.634 (S.B. No. 2041) (WEST) Teachers-Retirement.

16 (11) 2010 CalPERS Procedures Manual, cover page, Table of Contents, and page 50,  
17 "Overtime Positions".

18 (12) CalPERS Circular Letter dated October 25, 2012 re Statutory and Regulatory  
19 Requirements for Publicly Available Pay Schedules.

20 (13) CalPERS Circular Letter dated October 27, 2014 re Common Misreported Items  
21 of Compensation.

22 (14) Business Entity Detail on Vernon Industrial Development Association.

23 (15) Agenda of the City of Vernon Regular Meeting of Industrial Development  
24 Authority, Tuesday, December 3, 2013.

25 (16) Minutes of the Regular Meeting of the Vernon Historic Preservation Society of  
26 the City of Vernon Held December 4, 2012.

27 **II. DOCUMENTS**

28 **Exhibit 4** is Register 2011, No. 28, which added Section 570.5 to Title 2 of the California

1 Code of Regulations.

2 This document is relevant to Malkenhorst's case and goes to the issue of a new  
3 Regulation which was not proposed for public comment until July 15, 2011, six years after  
4 Malkenhorst retired from the City of Vernon, and not become operative until August 10, 2011.

5 **Exhibit 5** is From the United States Government Bureau of Labor Statistics, the  
6 *Monthly Labor Review*, August 1990, an official publication of United States Government  
7 Bureau of Labor Statistics, titled "Consumer prices in the 1980's: the cooling of inflation" by  
8 Patrick Jackman found at <http://www.bls.gov/opub/mlr/1990/08/art3full.pdf>.

9 This document is relevant to Malkenhorst's case and goes to the issue of the Consumer  
10 Price Index during the early 1980's, one of the time periods during which Malkenhorst received  
11 merit pay increases that have been questioned by CalPERS.

12 **Exhibit 6** is a copy of *O'Connor v. State Teachers' Ret. Sys.* (1996) 43 Cal.App.4th  
13 1610.

14 This document is relevant to Malkenhorst's case and goes to the issue of a distinguishable  
15 case cited by CalPERS as alleged authority to deem a portion of Malkenhorst's compensation  
16 from the City of Vernon as "overtime".

17 **Exhibit 7** is West's Ann. Cal. *Educ. Code* §22115.

18 This document is relevant to Malkenhorst's case. The relevance goes to the issue that  
19 these benefits are statutory, the Teachers Retirement law is a different statutory scheme than the  
20 Public Employees Retirement Law, the Court in *Oconnor* is interpreting a different unrelated  
21 scheme that does not apply directly or by analogy to the present case, and that the terms,  
22 benefits, and case law are different and unrelated.

23 **Exhibit 8** is West's Ann. Cal. *Educ. Code* §22151.

24 This document is relevant to Malkenhorst's case and goes to the issue of what constitutes  
25 "overtime" under the California State Teachers' Retirement System, which differs from the  
26 determination of "overtime" under the CalPERS system. This is relevant in that the *O'Connor v.*  
27 *State Teachers' Ret. Sys.* case cited by CalPERS was determined under different statutory  
28 definitions of "overtime" than would apply to CalPERS members.

1           **Exhibit 9** is 2006 Cal. Legis. Serv., Ch.118 (A.B. 2244) (WEST) Retirement and  
2 Pensions-Public Officers and Employees—Compensation.

3           This document is relevant to Malkenhorst's case and goes to the issue of the term  
4 “publicly available pay schedule” was added in to Government code Section 20636 in the year  
5 2006, after Malkenhorst retired. See also *Prentice*.

6           **Exhibit 10** is 1996 Cal. Legis. Serv.,Ch.634 (S.B. No. 2041) (WEST) Teachers-  
7 Retirement.

8           This document is relevant to Malkenhorst's case and goes to the issue of the irrelevance  
9 of the 1996 version of Education code §22115 cited in Oconnor by CalPERS.

10           **Exhibit 11** is excerpts from the 2010 CalPERS Procedures Manual, including the cover  
11 page, the table of contents, and page 50 titled "Overtime Positions".

12           This document is relevant to Malkenhorst's case and goes to the issue of CalPERS' lack  
13 of authority to exclude certain compensation as "overtime" when the member works two or more  
14 part-time positions. (See scenario no. 3 on page 50.)

15           **Exhibit 12** is CalPERS Circular Letter dated October 25, 2012 re Statutory and  
16 Regulatory Requirements for Publicly Available Pay Schedules.

17           This document is relevant to Malkenhorst's case and goes to the issue that a "publicly  
18 available pay schedule" is relevant in determining "compensation earnable" pursuant to only  
19 *Government Code* sections 20630, 20636 and 20636.1. If a member performed duties for which  
20 he or she received no salary or base pay, this would put the issue outside the parameters of  
21 Sections 20630, 20636 and 20636.1 which deal with determination of the amount of  
22 compensation to be used for retirement calculations. As such, the Regulations about publicly  
23 available pay schedules cannot lawfully address “positions”, duties, responsibilities, assignments  
24 or designations that are not paid or compensated.

25           **Exhibit 13** is CalPERS Circular Letter dated October 27, 2014 re Common Misreported  
26 Items of Compensation.

27           This document is relevant to Malkenhorst's case and goes to the issue of how "longevity  
28 pay" and other items of compensation are to be reported to CalPERS. Malkenhorst's longevity

1 pay compensation was properly reported pursuant to the language in the Circular Letter.

2 **Exhibit 14** is a Business Entity Detail on the Vernon Industrial Development Association  
3 from the Secretary of State website.

4 This document is relevant to Malckenhorst's case and goes to the issue that the Vernon  
5 Industrial Development Association was a separate corporate entity from the City of Vernon and  
6 is now a dissolved corporation.

7 **Exhibit 15** is an Agenda of the City of Vernon Regular Meeting of Industrial  
8 Development Authority, Tuesday, December 3, 2013.

9 This document is relevant to Malckenhorst's case and goes to the issue that the Vernon  
10 Industrial Development Authority was a separate entity with a separate Board of Directors from  
11 the City of Vernon.

12 **Exhibit 16** is the Minutes of the Regular Meeting of the Vernon Historic Preservation  
13 Society of the City of Vernon Held December 4, 2012.

14 This document is relevant to Malckenhorst's case and goes to the issue that the Vernon  
15 Historic Preservation Society is a separate corporate entity from the City of Vernon, with  
16 separate Bylaw included those identified as "Second Amended and Restated Bylaws of the  
17 Vernon Historical Preservation Society"..

## 18 **LAW AND ARGUMENT**

19 The doctrine of judicial notice is applicable to administrative proceedings, in which it is  
20 properly characterized as "official notice." (*1 Witkin, Cal. Evid. 5th (2012) Intro--Evid, § 74, p.*  
21 *110.*)

22 Govt.C. 11515, supra, calls for official notice, including "of any fact which may be  
23 judicially noticed by the courts."

### 24 **A. Mandatory Judicial Notice**

25 Evidence Code § 451 requires that judicial notice be taken of:

26 (a) The decisional, constitutional, and public statutory law of this state and of the United  
27 States and the provisions of any [city, county or city and county] charter described in Section 3,  
28 4, or 5 of Article XI of the California Constitution.

1           **B. Discretionary Judicial Notice.**

2           Judicial notice may be taken of the following additional matters, and judicial notice shall  
3 be taken if a party requests it and gives adverse parties sufficient notice to enable them to  
4 respond and furnishes the court with sufficient information to enable it to take judicial notice of  
5 the matter:

6           (a) The decisional, constitutional, and statutory law of any state of the United States and  
7 the resolutions and private acts of the Congress of the United States and of the Legislature of this  
8 state.

9           (b) Regulations and legislative enactments issued by or under the authority of the United  
10 States or any public entity in the United States.

11           (c) Official acts of the legislative, executive, and judicial departments of the United States  
12 and of any state of the United States.

13           And Facts and propositions that are not reasonably subject to dispute and are capable of  
14 immediate and accurate determination by resort to sources of reasonably indisputable accuracy.  
15 “Official acts of the legislative, executive, and judicial departments of the United States and of  
16 any state of the United States” may be noticed. (Ev.C. 452(c). The “resolutions and private acts  
17 of the Congress of the United States and of the Legislature of this state” may be noticed. (Ev.C.  
18 452(a).)

19           **B. Official Notice**

20           In reaching a decision, official notice may be taken, either before or after submission of  
21 the case for decision, of any generally accepted technical or scientific matter within the agency's  
22 special field, and of any fact, which may be judicially noticed by the courts of this State. Gov.  
23 Code, § 11515.

24           **C. Official and Judicial Notice Requested of the Contents of Documents**

25           All of the documents in Exhibits 4 through 16 meet the terms of documents for which  
26 official and/or judicial notice may be taken. Accordingly, Malkenhorst requests that the Court  
27 take official and/or judicial notice of each of those documents as part of its adjudication of the  
28 matter herein.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Exhibits 4-16 are official acts of their respective governmental agencies  
Exhibits 6, 7, 8 are case law or statutory law.  
Exhibits 4, 9, 10 are legislative history  
Exhibits 5, 11, 12, 13, 14, 15, and 16 are official reports, records and acts of state, local,  
or federal agencies.

Exhibits 4-16 are official acts of their respective government agencies that qualify for  
official notice.

Exhibits 4-16 are official records of their respective government agencies that qualify for  
official notice.

Respectfully submitted,

DATED: May 22, 2015

BY:   
John Michael Jensen  
Attorneys for Plaintiff  
Bruce V. Malkenhorst, Sr.





1 computer system since that date.

2 12. On April 13, 2015, I retrieved a copy of the CalPERS Circular Letter dated  
3 October 25, 2012, from the CalPERS website at [www.calpers.ca.gov](http://www.calpers.ca.gov), which is attached as  
4 **Exhibit 12**.

5 13. On April 13, 2015, I retrieved a copy of the CalPERS Circular Letter dated  
6 October 27, 2014 from the CalPERS website at [www.calpers.ca.gov](http://www.calpers.ca.gov), which is attached as  
7 **Exhibit 13**.

8 14. On April 13, 2015, I retrieved a copy of the Business Entity Detail for the Vernon  
9 Industrial Development Association in **Exhibit 14** from the website of the Secretary of State at  
10 [kepler.sos.ca.gov](http://kepler.sos.ca.gov).

11 15. On April 13, 2015, I retrieved a copy of the Agenda for the City of Vernon  
12 Regular Meeting of the Industrial Development Authority for Tuesday, December 3, 2013 in  
13 **Exhibit 15** from the website of the City of Vernon at [www.cityofvernon.org](http://www.cityofvernon.org).

14 16. On April 13, 2015, I retrieved a copy of the Minutes of the Regular Meeting of  
15 the Vernon Historic Preservation Society for December 4, 2012, in **Exhibit 16** from the website  
16 of the City of Vernon at [www.cityofvernon.org](http://www.cityofvernon.org).

17 17. The copies of Exhibits 4-16 are true and complete copies.

18 Under penalty of perjury, I hereby declare that all statements made herein of my own  
19 knowledge are true and that all statements made on information and belief are believed to be  
20 true.

21 DATED: May 22, 2015

22   
23 John Michael Jensen  
24  
25  
26  
27  
28

# **Exhibit 4**

# BARCLAYS CALIFORNIA CODE OF REGULATIONS

Register 2011, No. 28

CALIFORNIA REGULATORY CODE SUPPLEMENT

July 15, 2011

## DIGEST OF NEW REGULATIONS

### CALIFORNIA REGULATORY CODE SUPPLEMENT DIGEST

Managing Editor: **Stefan Vasiliou**

Principal Editors: **Kathryn Ayres, Ruth Lafler**

Senior Editors: **Patricia Mullaly, Katherine Van Sant**

### OFFICIAL PUBLICATION

*Barclays California Code of Regulations* and *California Regulatory Code Supplement* are official publications of the State of California published under the direction of the California Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814, (916) 323-6225. © State of California and Barclays, a subsidiary of West, a Thomson Reuters Business.

### SUBSCRIPTION INFORMATION

Barclays complete 38-volume *Code* may be purchased in printed form or CD-ROM. Update services are available for all media. For user convenience, Barclays printed *Code* and update services are available for selected subjects to meet specific user needs. For a descriptive brochure and price list, please write: **Barclays Official California Code of Regulations**, P. O. Box 2006, San Francisco, CA 94126. **FOR FASTER SERVICE**, please call: 1-800-888-3600.

**Order now to receive the newly revised edition!**

### MASTER TABLE OF CONTENTS

- A *must* for fast, accurate references to the Official Code
- Complete list of titles, referenced by divisions, chapters, subchapters and articles
- Directory of State Regulatory Agencies
- Only \$70.00 (plus shipping and handling) for a single subscription, or \$130.00 for an annual subscription (4 issues yearly)

ORDER TODAY BY CALLING  
800-888-3600

### SUMMARIES OF NEW REGULATIONS

For subscribers to the amendment service for Complete Code. Includes all amendments to regulations approved by the Office of Administrative Law and filed with the Secretary of State for the period 7/11/2011 through 7/15/2011.

### Title 2

#### *Controller, State*

#### **Nonsubstantive amendments**

**Summary:** The State Controller's Office has made nonsubstantive amendments to regulations related to unclaimed property. This action updates terminology and statutory cross-references and makes additional amendments for clarity and to remove obsolete language, requirements and procedures.

**Regulatory Action:** Change without regulatory effect. Changes affect title 2, sections 1151, 1153, 1155.500, 1165, 1170 and 1172.20.

**Filed:** 7/15/2011. **Effective:** 7/15/2011. **OAL File No.:** 11-0606-01

**Agency Contact:** David Brownfield (916) 322-7535

#### *Public Employees' Retirement System*

#### **Clarification of requirements for publicly available pay schedule and written labor policies and agreements**

**Summary:** The California Public Employees' Retirement System (CalPERS) has adopted and amended regulations pertaining to payrates and items of special compensation. This action implements specific requirements for publicly available pay schedules and labor policies or agreements, as defined in the regulation. CalPERS has stated that this action will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that meets the criteria set forth in the regulations.

**Regulatory Action:** Changes affect title 2, sections 570.5 and 571.

**Filed:** 7/11/2011. **Effective:** 8/10/2011. **OAL File No.:** 11-0531-04

**Agency Contact:** Christina Nutley (916) 795-2397

#### *Secretary of State*

#### **Addition of requirements related to electronic copies of documents**

**Summary:** The Secretary of State has adopted and amended regulations related to fees charged for copying and special han-

ployee organization(s). A request made by an employee group must be accompanied by a signed statement of an officer of the employee organization who is authorized to contractually bind the organization, setting forth the rationale and factual basis.

(4) The request must contain actuarial evidence, prepared by a certified actuary independent of PERS, sufficient to demonstrate why a different rate may be justified to fund the contract amendment. All economic and non-economic assumptions relied upon by the independent actuary must be submitted to PERS along with the request.

PERS will acknowledge the request in writing within 15 calendar days of its receipt. PERS will issue a substantive determination to grant or deny the request for a different rate within 45 days from the date of acknowledgement. PERS will specify the reason(s) for its grant or denial, and will give the requestor a copy of all actuarial evidence and any other factual data relied upon in making its determination.

(c) An employer or recognized employee organization directly affected by the PERS determination may petition the Board of Administration to adopt a different rate for fully funding the conversion of EPMC during final compensation, based on the administrative record established during the review. The Board will not conduct an administrative hearing in accordance with the Administrative Procedure Act, but will respond to the petition in open session at one of its regularly scheduled meetings.

Both the petitioner and PERS may submit a written statement to the Board in support of its position in advance of the meeting. This statement must not be longer than three pages, single spaced. It must be received by the Executive Office, Public Employees' Retirement System, P.O. Box 942701, Sacramento, CA 94229-2701, at least 15 days prior to the scheduled meeting.

NOTE: Authority cited: Sections 20120, 20615, 20615.5(g) and 21760, Government Code; Reference: Sections 11500, 20010, 20011, 20011.1, 20023(c), 20615 and 20615.5, Government Code; Calif. Const. Art. XVI, Section 17(c).

RESEARCH NOTE: See Internal Revenue Code Sections 401 and 415; *Oden v. Public Employees' Retirement System* (1994) 23 Cal.App.4th 194 [28 Cal.Rptr. 388]; *City of Sacramento v. Public Employees' Retirement System* (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847].

HISTORY

1. New section filed 7-5-94 as an emergency, operative 7-5-94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-5-94 order transmitted to OAL 10-28-94; disapproved by OAL and order of repeal as to 7-5-94 order filed on 12-14-94 (Register 94, No. 50).
3. New section refiled 12-15-94 as an emergency, with amendments, operative 12-15-94 (Register 94, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-14-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-15-94 order including amendments transmitted to OAL 4-11-95 and filed 5-23-95 (Register 95, No. 21).

§ 569. Employer Paid Member Contributions.

A contracting agency or school employer that pays all or a portion of normal member contributions based on compensation earnable, as Employer Paid Member Contributions (EPMC), must conform to the "group or class" requirements in Section 20691 of the Government Code and these regulations.

- (a) Specifically, the payment of EPMC must be:
- (1) Authorized in a written labor agreement;
  - (2) Based on earnings for normally-required duties;
  - (3) Based on earnings for normal hours of employment;
  - (4) Paid periodically, along with the earnings on which it is based;
  - (5) Based on earnings that are historically consistent; and
  - (6) Not final settlement pay.

However, the employer may qualify its payment of EPMC by electing a cumulative "time-in-grade exception" which shall only apply to persons newly-hired into the pertinent group or class of employment.

(b) To be classified as "newly-hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(c) To elect the time-in-grade exception, the employer's governing body must adopt an enabling resolution or ordinance in which it agrees to abide by the standards in this Section 569. The exception cannot take effect until after the resolution or ordinance has been reviewed and approved by CalPERS.

(d) The time-in-grade exception may be incremental, but it cannot exceed a total of five (5) years. For example, the employer may set a three-year threshold for paying fifty percent (50%), which increases by paying twenty-five percent (25%) each year, for up to two additional years of time-in-grade.

(e) Once a newly-hired employee has satisfied the time-in-grade exception, he or she shall be entitled to payment of EPMC on the same terms that apply to all other employees in the pertinent group or class.

The exception from paying EPMC pursuant to this Section 569 is separate and apart from the exception from paying and reporting the value of EPMC as an item of special compensation pursuant to Section 571(a). Both of these exceptions are separate and apart from, or do they apply to, the process for converting EPMC to pay rate during the period of final compensation pursuant to Section 20692 of the Government Code. NOTE: Authority cited: Sections 20636(e) and 20121, Government Code; Reference: Section 20691, Government Code.

HISTORY

1. New section filed 9-22-99, operative 10-22-99 (Register 99, No. 39).

§ 570. Final Settlement Pay.

"Final settlement pay" means any pay or cash conversions of employee benefits in excess of compensation earnable that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to PERS, in either pay rate or compensation earnable.

For example, final settlement pay may consist of severance pay or so-called "golden parachutes." It may be based on accruals over a period of prior service. It is generally, but not always, paid during the period of final compensation. It may be paid in either lump-sum or periodic payments.

Final settlement pay may take the form of any item of special compensation not listed in Section 571. It may also take the form of a bonus, retroactive adjustment to pay rate, conversion of special compensation to pay rate, or any other method of payroll reported to PERS.

NOTE: Authority cited: Sections 20023, 20023(f) and 20120, Government Code; Calif. Const. Art. XVI, Section 17; Reference: Section 20023, Government Code.

RESEARCH NOTE: *Oden v. Public Employees' Retirement System* (1994) 23 Cal.App.4th 194 [28 Cal.Rptr. 388]; *City of Sacramento v. Public Employees' Retirement System* (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847]; *Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System* (1978) 69 Cal.App.3d 96 [137 Cal.Rptr. 771].

HISTORY

1. New section filed 7-5-94 as an emergency, operative 7-5-94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance, including amendment of section, as to 7-5-94 order transmitted to OAL 10-28-94 and filed 12-14-94 (Register 94, No. 50).

§ 570.5. Requirement for a Publicly Available Pay Schedule.

(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, pay rate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;

(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;

(5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(6) Indicates an effective date and date of any revisions;

(7) Is retained by the employer and available for public inspection for not less than five years; and

(8) Does not reference another document in lieu of disclosing the pay-rate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;

(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;

(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

NOTE: Authority cited: Sections 20120 and 20121, Government Code. Reference: Sections 20630, 20636 and 20636.1, Government Code.

#### HISTORY

1. New section filed 7-11-2011; operative 8-10-2011 (Register 2011, No. 28).

#### § 571. Definition of Special Compensation.

(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement:

##### (1) INCENTIVE PAY

**Bonus** – Compensation to employees for superior performance such as “annual performance bonus” and “merit pay”. If provided only during a member's final compensation period, it shall be excluded from final compensation as “final settlement” pay. A program or system must be in place to plan and identify performance goals and objectives.

**Dictation/Shorthand/Typing Premium** – Compensation to clerical employees for shorthand, dictation or typing at a specified speed.

**Longevity Pay** – Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years.

**Management Incentive Pay** – Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571.

**Marksmanship Pay** – Compensation to local police officers, county peace officers and school police or security officers who meet an established criterion such as “certification” as a marksperson.

**Master Police Officer** – Compensation to local police officers, county peace officers and school police or security officers who meet specified requirements, years of employment, performance standards, education, Peace Officer Standard Training (POST), and perform a specialty assignment.

**Physical Fitness Program** – Compensation to local safety members and school security officers who meet an established physical fitness criterion.

**Value of Employer-Paid Member Contributions (EPMC)** – The full monetary value of employer-paid member contributions (EPMC) paid

to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

The value of EPMC is calculated on all “compensation earnable” excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under Government Code section 20636(c)(4), thus eliminating a perpetual calculation.

(A) A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval.

(B) The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment — except that the employer's governing body may elect a “time-in-grade exception” which shall only apply to persons newly-hired into the pertinent group or class of employment.

(C) To be classified as “newly-hired,” a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(D) The time-in-grade exception must be elected in the same resolution or ordinance, or by amendment thereto, as adopted by the employer's governing body for the purpose of paying and reporting the value of EPMC, pursuant to this Section 571. The exception can only be used for the value of EPMC, and not for any other item of special compensation.

1. The time-in-grade exception must be applied consistently to all newly-hired employees in the pertinent group or class.

2. The time-in-grade requirement may be incremental, not to exceed a total of five (5) years. For example, the initial requirement may be three years for paying fifty percent (50%) with increases of twenty-five percent (25%) for each additional year of time-in-grade.

3. Once the initial time-in-grade requirement has been met by a newly-hired employee, the employer shall begin paying and reporting the value of EPMC for him or her to the same extent as for all others in the pertinent group or class.

(E) To implement the time-in-grade exception, the employer's governing body must acknowledge that it may experience an upward adjustment to its employer contribution rate. The acknowledgment must be included in the resolution or ordinance by which the employer's governing body elected to pay and report EPMC as an item of special compensation, by adoption or amendment thereto.

(F) The full terms of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation — along with any time-in-grade exception for newly-hired employees — must be incorporated into the written labor agreement that pertains to the affected group or class of employment.

The time-in-grade exception from paying and reporting the value of EPMC as an item of special compensation pursuant to this Section 571, is separate and apart from the time-in-grade exception from paying EPMC pursuant to Section 569 of these regulations. Both of these exceptions are separate and apart from, nor do they apply to, the process for converting EPMC to payrate during the period of final compensation, pursuant to Section 20692 of the Government Code.

**Off-Salary-Schedule Pay** – Compensation in addition to base salary paid in similar lump-sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on a similar percent of scheduled salary not to exceed six percent (6%) per fiscal year. The contracting agency or school employer may adopt similar action for non-represented groups or classes of employment as were negotiated through collective bargaining.

##### (2) EDUCATIONAL PAY

The items of special compensation outlined below do not include reimbursement to an employee for the cost of an application or test, books, tuition or travel.

# **Exhibit 5**

## Consumer prices in the 1980's: the cooling of inflation

*The deceleration in prices  
can be traced to the easing  
of monetary policy in late 1982;  
however, prices over the decade  
remained historically high*

Patrick Jackman

Reducing inflation was the major economic problem facing U.S. policymakers at the start of the 1980's. With consumer prices at the highest peacetime rate on record—up 13.3 percent in 1979—the focus of economic policymakers was on “reducing inflation, while achieving satisfactory growth in employment, output and productivity.”<sup>1</sup> Three years later, the rate of inflation had slowed considerably, with the Consumer Price Index for Urban Consumers (CPI-U) advancing only 3.8 percent during the year.

The success in reducing inflation was largely attributable to monetary policy resulting from actions of the Federal Reserve Board. In October 1979, the Federal Reserve modified its monetary policy by giving greater emphasis to holding the growth of the monetary stock within target ranges and allowing interest rates to vary widely. In essence, the Federal Reserve began to target the quantity of money rather than its price. With the supply of money curtailed, interest rates rose sharply.

The reduction in the rate of inflation from 1979 through 1983 was not costless. Two recessions (January 1980–July 1980 and July 1981–November 1982), the second a particularly severe one, resulted in double-digit unemployment rates, reduced incomes, and a decline in output. The loss of revenue resulted in a sharp increase in the Federal deficit before economic recovery began at the end of 1982.

The deceleration in consumer prices early in the decade was substantial and was largely sustained throughout the 1980's. However, when the decade is viewed in total, the 5.1-percent average annual rate of increase is second in magnitude only to the 7.4-percent rate in the 1970's, after excluding those decades encompassing World Wars I and II. In fact, the 3.7-percent average annual increase during the last 8 years of the decade, after the inflationary spiral had been broken, was substantially larger than the annual rates in the 1950's and 1960's, when the CPI rose 2.2 and 2.5 percent.

The movement in prices during the decade was neither uniform over time—it ranged from a 12.5-percent increase in 1980 to a 1.1-percent rise in 1986—nor uniform among items. Table 1 shows that, among the seven major CPI expenditure groups, medical care costs rose the most rapidly. The prices of other goods and services also advanced at a substantial rate due to increases in prices of tobacco products and tuition. Table 2 decomposes the CPI by systematically removing the volatile energy, food, and shelter components in order to identify the “underlying rate of inflation.” Viewed in this way, inflation declined gradually through 1986 and edged up a notch in the last 3 years. Table 3 gives the total percent change over the decade for all the series of individual CPI components that are continuous through the decade. The

Patrick Jackman is senior economist in the Division of Consumer Prices and Price Indexes, Office of Prices and Living Conditions, Bureau of Labor Statistics.



*Consumer Prices in the 1980's*

changes range from a 161.9-percent increase (10.1-percent annual rate) in charges for hospital rooms to a decline of 27.0 percent (-3.1-percent annual rate) in television prices.

**Historical setting**

The early 1960's were characterized by rapid economic expansion, with prices increasing at an annual rate of only 1.3 percent for the 5-year period which ended in December 1965. Price pressures developed in the late 1960's, however, as expenditures for the Vietnam war stimulated an economy already at nearly full employment. The annual rate of inflation in consumer prices rose to more than 6 percent in 1969.

A recession which began late in 1969 and lasted until November 1970 caused the rate of price increase to subside only partially, and much of that reduction was due to the impact of declining mortgage interest rates. In reaction to the failure of inflation to fully abate, a Presidential wage and price freeze was announced on August 15, 1971. The price freeze and subsequent economic controls were accompanied by a lower rate of inflation during the final months of 1971 and throughout 1972. However, prices started on an upward spiral in late 1973, coincident with the relaxation of price controls in August and an oil embargo in October. Inflation rose to double-digit rates during 1974 and registered what was then the largest annual change in the 77-year history of the CPI, except for the inflationary periods directly associated with the two World Wars. During the recovery from the steep recession of 1973-75, inflation moderated substantially so that, by the end of 1976, consumer prices were rising at an annual rate of less than 5 percent. With the economic expansion in 1977, prices accelerated moderately. Sharp increases in energy, food, and shelter costs followed, pushing consumer prices up 13.3 percent in 1979, an unprecedented peacetime rate.

**1980**

The 12.5-percent increase in prices in 1980 was, like that in 1979, due primarily to increases in the food, shelter, and energy components, which accounted for more than two-thirds of the 1980 rise in the overall CPI. In 1979, these three groups, whose combined relative importance as of December 1979 was just under 60 percent, had accounted for more than 75 percent of the CPI advance. Despite the similarity in the annual increases in 1979 and 1980, there were some notable differences in the price movements during the years. The monthly increases in the CPI-U in 1979 showed little variance, ranging between 0.9 and 1.2 percent. In 1980, the largest monthly advance was 1.4 percent; the July rise of 0.1 percent followed nine consecutive monthly increases of 1.0 percent or more, and was the smallest since price controls were in effect in the early 1970's. This plunge in the monthly inflation rate was largely the result of a 5.4-percent drop in mortgage interest rates. The decline was brought about by the Federal Reserve Board's decision in the spring to ease the restrictive monetary policy it had instituted in October. The move was made to combat the recession that had begun in January 1980. While this easing of monetary policy was a temporary respite in the struggle against inflation, it brought an end to the recession in July. It would not be until the fourth quarter of 1981 that a sustained drop in the rate of inflation would be experienced.

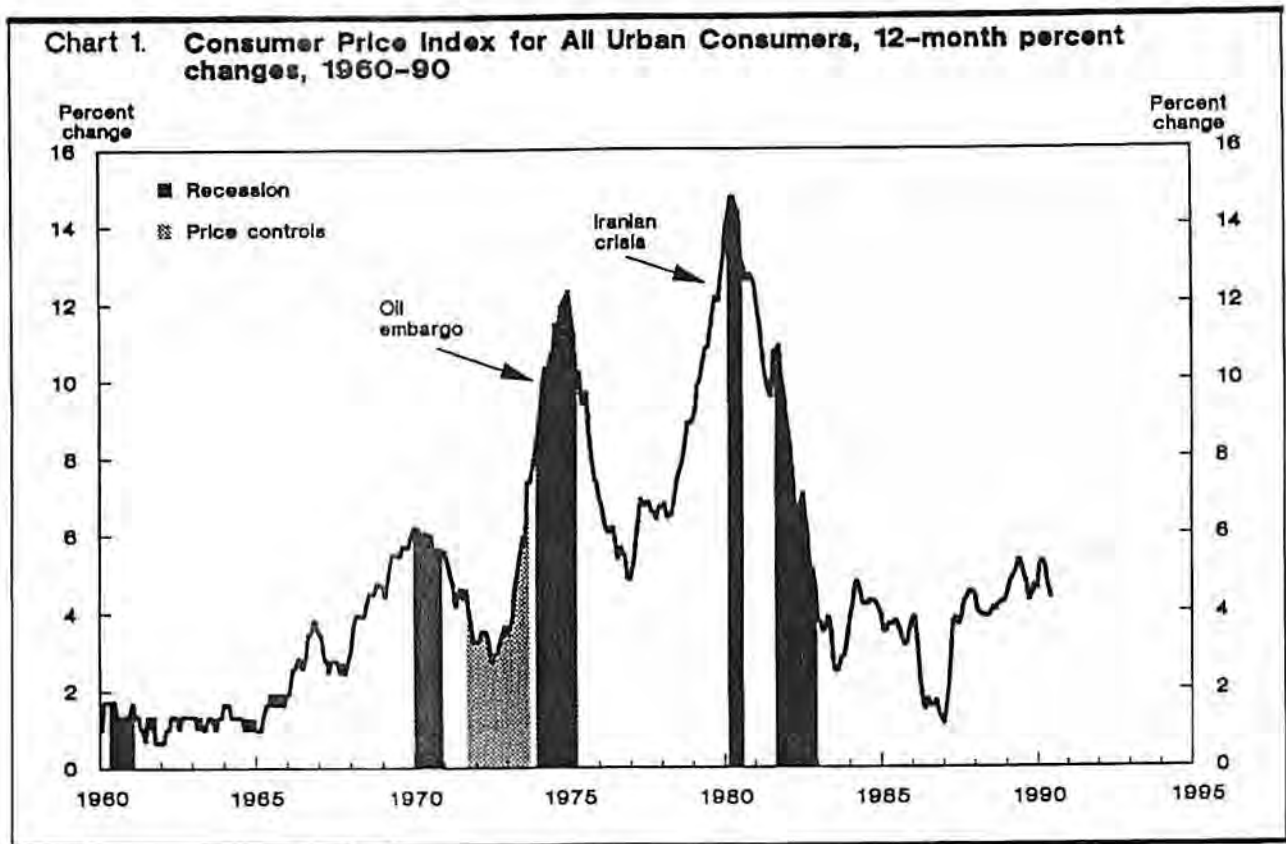
**1981**

The reinstatement of a tighter monetary policy by the Federal Reserve in the fall of 1980 had a dual effect on inflation. Indirectly, over time it would slow the recent economic expansion such that by July 1981 the economy would be in another recession. Directly and with little lag,

**Table 1. Percent change in Consumer Price Index for All Urban Consumers, by major group, 1979-89**

[12 months ended December]

Category	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Average annual change
All items .....	12.5	8.9	3.8	3.8	3.9	3.8	1.1	4.4	4.4	4.6	5.1
Food and beverages .....	10.1	4.3	3.2	2.7	3.8	2.8	3.7	3.5	5.1	5.5	4.4
Housing .....	13.7	10.2	3.6	3.5	4.3	4.3	1.7	3.7	4.0	3.9	5.2
Apparel and upkeep .....	6.8	3.5	1.6	2.9	2.0	2.8	.9	4.8	4.7	1.0	3.1
Transportation .....	14.6	10.9	1.8	3.9	3.1	2.6	-5.9	6.1	3.0	4.0	4.3
Medical care .....	9.9	12.5	11.0	6.4	6.1	6.8	7.7	5.8	6.9	6.5	6.1
Entertainment .....	9.7	7.2	5.6	4.0	4.2	3.1	3.4	4.0	4.8	5.1	5.1
Other goods and services ..	10.1	9.9	12.1	7.9	6.0	6.3	5.5	6.1	7.0	8.2	7.9



holding the money stock at the low end of the Board's target range raised interest rates, resulting in a higher price of borrowing for homes and automobiles which was reflected immediately in the CPI. With the exception of the 3-month period beginning July 1980, mortgage interest rates were monotonically increasing from December 1977 through January 1982, and during this 49-month period surged 74.6 percent, a 14.6-percent annual rate. Automobile finance charges, subject to dealer discounting to stimulate sales, did not show the steady progression that characterized mortgage interest rates and spurted at a 17.1-percent annual rate from December 1977 through January 1982.

The moderation in the CPI came 3 months after the July advent of the 1981 recession. In October, the housing component decelerated sharply, largely due to a decline in home purchase costs. The fourth-quarter increase was the smallest quarterly change since the first quarter in 1976, and brought the annual CPI increase below 10 percent. The moderation was most notable in the food, energy, and shelter components. Energy and shelter continued to increase at double-digit rates, but by substantially less than in the prior 3 years. Food prices slowed

more drastically. Together these three groups accounted for 56 percent of the 8.9-percent advance in the 1981 CPI. Excluding food, shelter, and energy, the CPI showed virtually no deceleration in 1981.

### 1982

Until November 1982, the economy was mired in a recession that had begun in mid-1981. The recovery did not begin until shortly after the Federal Reserve changed the target of its policy in early October from monetary aggregates back to interest rates, allowing interest rates to continue to drop at a time when the money supply was expanding sharply. The July meeting of the Federal Open Market Committee had resulted in lower interest rates, but monetary aggregates were increasing slowly. The severe recession had held consumer price increases below even the most optimistic forecasts issued at the end of 1981.

The 3.8-percent increase in the CPI for 1982 was the smallest annual increase since a 3.4-percent rise when price controls were in effect in 1972. While the price slowdown in 1982 was broadly based, it was most apparent in those components which had been largely responsible

### Consumer Prices in the 1980's

for the substantial increase in the previous 4 years. In particular, the decline in mortgage interest costs and the moderation in energy prices accounted for about three-fourths of the overall slowdown recorded between December 1981 and December 1982. Or viewed in another way, the food, shelter, and energy components, which had accounted for 10.2 percentage points of the 13.3-percent increase in 1979, were responsible for 1.4 points of the 3.8-percent rise in 1982.

A major change in CPI methodology occurred with the release of the January 1983 index. A flow-of-services approach to measuring the shelter costs of homeowners replaced the asset approach.<sup>2</sup> Because the remainder of the analysis will discuss the revamped CPI, figures from a forerunner, the CPI-U, X-1, are given for the purposes of consistency. The inherent volatility of the unrevised treatment of assets is evident from annual comparisons of the official CPI with the CPI-U, X-1 (12 months ended in December):

	CPI	CPI-U, X-1
1979 .....	13.3	10.7
1980 .....	12.5	10.7
1981 .....	8.9	8.5
1982 .....	3.8	5.1

While the overall picture of deceleration is not substantially altered, the peak of inflation is lower and the moderation not as sharp in the experimental (X-1) index.

#### 1983

The 3.8-percent increase in the CPI-U for 1983 was the same as in 1982. This moderate rate of inflation accompanied a vigorous economic resurgence after a period of virtually no net

growth from late 1979 through late 1982. The upturn was paced by expanded consumer spending, facilitated by increased personal income. Encouraged by this release of pent-up consumer demand, business firms stopped liquidating their inventories during 1983 and tried to rebuild them, further stimulating the economy. Residential housing construction registered its best year since 1978, even though interest rates remained at an unusually high level. Wage increases were moderate, because the severe recession had raised unemployment rates above double digits in late 1982 and through the first half of 1983. Employment security became the focus of bargaining rather than higher wages, particularly with the sustained moderation in prices.

For the year as a whole, the increases in the major components of the CPI were generally similar to those in 1982. The rate of food price increase slowed somewhat more, and energy prices actually declined, reflecting a deceleration in charges for gas and electricity, coupled with another drop in prices for petroleum-based energy items. Shelter costs showed an acceleration with the asset measure used in the official CPI in 1982. (However, a comparison using similar flow-of-services measures in both 1982 and 1983 would show further moderation in 1983.) The CPI excluding food, shelter, and energy continued to slow, but other price increases remained larger than in these three groups.

#### 1984

The 3.9-percent CPI-U increase in 1984 continued the moderate pattern of price movement evident since the slowdown in prices began in the fourth quarter of 1981. Food prices moved

Table 2. Percent change in Consumer Price Index for All Urban Consumers, by special index, 1979-89

Category	[12 months ended December]										
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Average annual change
All items .....	12.5	8.9	3.8	3.8	3.9	3.8	1.1	4.4	4.4	4.6	5.1
Energy .....	18.0	11.9	1.3	-5	.2	1.8	-19.7	8.2	.5	5.1	2.2
Energy commodities .....	19.2	10.6	-5.0	-3.2	-1.8	3.4	-30.5	17.8	-2.3	7.9	.6
Energy services .....	15.9	14.7	14.1	4.1	3.5	-6	-3.3	.2	3.2	2.8	5.3
All items less energy .....	11.7	8.5	4.2	4.5	4.4	4.0	3.8	4.1	4.7	4.6	5.4
Food .....	10.2	4.3	3.1	2.7	3.8	2.8	3.8	3.5	5.2	5.6	4.5
All items less food and energy .....	12.2	9.5	4.5	4.8	4.7	4.3	3.8	4.2	4.7	4.4	5.7
Shelter .....	15.0	9.9	2.4	4.7	5.2	6.0	4.6	4.8	4.5	4.9	6.2
All items less food, shelter, and energy .....	9.8	9.4	6.1	5.0	4.3	3.7	3.3	3.8	4.7	4.1	5.4
Other commodities .....	9.3	8.0	5.5	5.0	3.1	2.2	1.4	3.5	4.0	2.7	4.4
Other services .....	10.6	11.1	7.3	4.9	6.0	5.4	5.6	4.3	5.6	5.5	6.6

**Table 3. Rankings of percent changes for December indexes of consumer prices, 1979-89**

Item	December 1979	December 1989	Change (percent)
Hospital room	63.2	165.5	161.9
Elementary, high school tuition	69.7	177.4	154.5
Tobacco and smoking products	68.2	171.9	152.1
Prescription drugs	68.5	172.0	151.1
College tuition	67.9	169.1	149.0
School books and supplies	68.2	164.0	140.5
Other fresh fruits	75.5	179.7	138.0
Airline fares	58.6	134.8	130.0
Automobile insurance	78.0	171.5	119.9
Cereal	70.1	152.4	117.4
Potatoes	64.8	140.0	116.0
Physicians' services	71.7	153.7	114.4
Water/sewage maintenance	70.4	144.7	105.5
Telephone - main station service	71.4	146.0	104.5
Dental services	73.7	149.9	103.4
Used cars	59.4	119.7	101.5
Oranges including tangerines	68.8	138.5	101.3
Other intercity public transportation	69.3	139.2	100.9
Internal and respiratory over-the-counter items	70.9	141.5	99.6
Intracity public transportation	63.2	125.9	99.2
Other automobile-related fees	74.3	143.1	92.6
Fresh/frozen fish, seafood	81.2	156.3	92.5
Lodging while out of town	69.8	133.8	91.7
Magazines, periodicals, and books	71.2	133.3	87.2
Other laundry, dry cleaning apparel	73.1	134.1	83.4
Other fresh vegetables	74.0	135.6	83.2
Cookies, fresh cakes and cupcakes	75.9	139.0	83.1
Lettuce	74.3	135.8	82.8
Admissions	81.0	146.0	80.2
Automotive body work	74.5	133.9	79.7
Automobile registration, licenses and inspection fees	76.1	135.4	77.9
Alcoholic beverages - away from home	79.1	140.3	77.4
Nonprescription medical equipment supplies	75.8	134.4	77.3
Newspapers	74.5	131.6	76.6
Other bakery products	78.2	137.5	75.8
Rent of dwelling	77.3	135.5	75.3
Tenants' insurance	74.4	129.7	74.3
Auto drive train, front end repair	75.9	129.8	70.8
Frozen vegetables	73.4	124.8	69.8
Other meals and snacks	77.0	130.6	69.6
Electricity	67.2	113.4	68.8
Auto power plant repair	75.8	127.3	67.9
Other toilet goods and personal care appliances	74.9	125.4	67.4
Laundry and cleaning products including soap	76.2	127.3	67.1
Other apparel services	77.3	128.6	66.4
Snacks	76.3	126.2	65.4
Sugar and artificial sweeteners	69.9	114.8	64.2
Postage	76.2	125.1	64.2
Fresh other breads/biscuits/rolls/muffins	81.0	132.7	63.8
Lunch	79.5	130.2	63.8
Seasonings/condiments/sauces/gravies	76.5	124.9	63.3
Maintenance and repair services	74.9	122.2	63.2
Utility (piped) gas	60.0	97.8	63.0
White bread	81.9	133.2	62.6
Beauty parlor service - female	79.9	129.7	62.3
Apples	77.0	124.7	61.9
Fruit juices and frozen fruit	78.3	126.3	61.3
Miscellaneous prepared foods including baby food	79.3	127.9	61.3
Dinners	80.1	129.1	61.2
Canned, packaged soup	82.2	132.4	61.1
Haircuts, other barber service - male	80.2	129.2	61.1
Frozen prepared foods	81.6	131.3	60.9
Cosmetics, bath and nail preparation and manicure and eye	77.3	123.9	60.3
Sweets including candy	77.7	123.6	59.1
Tomatoes	88.5	140.3	58.5
Miscellaneous household products	76.6	120.9	57.8
Appliance and furniture repair	78.7	123.1	56.4
Pet expense	78.7	122.9	56.2

*Consumer Prices in the 1980's*

**Table 3. Continued—Rankings of percent changes for December indexes of consumer prices, 1979–89**

Item	December 1979	December 1989	Change (percent)
Fresh/frozen chicken parts	83.5	130.2	55.9
Automobile maintenance and servicing	78.8	122.5	55.5
Pork chops	79.6	123.7	55.4
Other processed vegetables	81.0	125.4	54.8
Floor and window coverings	77.4	119.8	54.8
Ice cream, related products	79.8	123.1	54.3
Fresh whole chicken	85.4	130.3	52.7
Photo supplies, equipment	83.5	127.2	52.3
Household paper products and stationery	80.6	122.1	51.5
Cheese	84.0	126.9	51.1
Bedroom furniture	78.9	118.8	50.6
Men's furnishings and specialty	78.2	117.4	50.1
Beer and ale at home	80.4	120.0	49.3
Other beef and veal	89.6	133.3	48.8
Bacon	71.2	105.0	47.5
Canned and dried fruits	81.3	119.6	47.1
Other noncarbonated drinks	81.8	120.2	46.9
Rice, pasta, commel	82.5	120.1	45.6
Textile housefurnishings	78.3	113.9	45.5
Other pork including sausage	79.9	115.9	45.1
New cars	84.8	121.8	44.0
Alcoholic beverages at home	83.4	119.5	43.3
Women's nightwear, underwear, hosiery, accessories	81.5	116.3	42.7
Motor oil, coolant, and others	77.1	109.8	42.4
Infants', toddlers' apparel	81.2	115.3	42.0
Bananas	86.6	122.6	41.6
Toys, hobbies, and music equipment	81.3	115.1	41.6
Fats and oils	86.2	121.6	41.1
Distilled spirits at home	87.0	122.2	40.3
Men's footwear	87.5	122.0	39.4
Canned fish, seafood	85.8	119.4	39.2
Eggs	97.0	134.9	39.1
Ham	88.0	121.9	38.5
Tableware, serving pieces, nonelectrical kitchenware	80.2	111.0	38.4
Men's shirts	88.8	122.9	38.4
Sport vehicles including bicycles	82.2	113.6	38.2
Carbonated drinks	79.7	109.8	37.8
Other dairy products including butter	82.7	113.4	37.1
Other maintenance and repair commodities	81.5	111.7	37.1
Other fresh milk and cream	89.2	122.0	36.8
Automobile finance charges	74.6	102.0	36.7
Fresh whole milk	90.2	123.0	36.4
Clocks, lamps, and decorator items	82.8	112.8	36.2
Sirloin steak	91.4	123.4	35.0
Men's suits, sport coats, coats and jackets	92.7	124.7	34.5
Boys' and girls' footwear	88.2	118.5	34.4
Laundry equipment	79.9	105.9	32.5
Other poultry	91.8	121.1	31.9
Wine at home	84.7	111.6	31.8
Other meats	91.1	119.5	31.2
Other furniture	82.6	107.9	30.8
Men's dungarees, jeans, trousers	89.6	116.7	30.2
Chuck roast	95.3	123.4	29.5
Living room chairs, tables	87.2	112.5	29.0
Boys' apparel	87.2	111.4	27.8
Sofas	90.0	116.1	27.7
Other sporting goods	86.6	110.4	27.5
Refrigerator, home freezer	81.5	103.3	26.7
Round steak	95.9	118.8	23.9
Women's dresses	99.6	122.5	23.0
Lawn equipment, power tools, and other hardware	82.1	100.7	22.7
Girls' apparel	95.4	116.1	21.7
Women's footwear	90.6	107.5	18.7
Women's separates and sportswear	100.7	118.7	17.9
Round roast	98.3	113.9	15.9
Other parts and equipment	92.7	107.3	15.7
Fuel oil	76.8	88.7	15.7
Telephone intrastate toll calls	86.6	86.6	11.5

**Table 3. Continued—Rankings of percent changes for December indexes of consumer prices, 1979–89**

Item	December 1979	December 1989	Change (percent)
Tires .....	89.7	99.1	10.5
Ground beef excluding canned .....	104.0	112.2	7.9
Women's coats and jackets .....	102.3	108.9	6.5
Motor fuel .....	82.9	85.8	3.5
Women's suits .....	114.5	117.4	2.5
Coffee .....	113.3	115.7	2.1
Sound equipment .....	96.7	94.3	-2.5
Telephone interstate toll calls .....	82.1	70.0	-14.7
Television .....	103.8	75.8	-27.0

up somewhat in 1984, largely as a result of increases in beef and pork prices. The drought in the summer of 1983 had a major impact on prices in both 1983 and 1984. Higher feed costs induced owners to market their livestock early, which resulted in meat price reductions in 1983. The effect of accelerated slaughtering in 1983, however, led to some liquidation of stocks, lower marketings, and higher prices in 1984.

Petroleum-based energy prices continued to decline, but by less than in the preceding 2 years, and coupled with a small increase in gas and electricity, the energy index was virtually unchanged. Shelter costs also registered a moderate acceleration in 1984. The slightly larger advances in food, shelter, and energy prices in 1984 were offset by the continued slowdown in the increases for the CPI excluding food, shelter, and energy.

A variety of factors helped to hold inflation in check. The strong and increasing value of the U.S. dollar helped to keep prices of traded goods lower than they would have been otherwise. Increases in interest rates in the spring helped slow the domestic expansion. Wage restraint continued and, coupled with productivity improvements, held down unit labor costs and minimized the onset of wage-push inflation.

### 1985

The 1985 3.8-percent rise of the CPI marked the fourth consecutive year in which the advance was just under 4 percent. Although the annual increases were virtually identical, the composition of each was somewhat different. The energy, shelter, and food components showed sharp deceleration beginning in late 1981. Throughout the 1982–85 period, however, the moderation became more broadly based, with price increases for all other items slowing steadily. In 1985, petroleum-based energy prices turned up for the first time since 1981, reflecting in part compliance with the Environ-

mental Protection Agency's tighter standard for lead content in leaded gasoline. Food prices moderated as beef and pork prices, which had risen substantially the year before, were virtually unchanged in 1985.

For the first time since inflation abated, the increase in the CPI excluding food, shelter, and energy slowed to the rate of the overall index. This was particularly evident in prices for "other" commodities—up only 2.2 percent for the year—and was due in part to competition from imported goods. This occurred even with the depreciation of the dollar vis-a-vis foreign currencies. The Federal Reserve, which had tightened money in mid-1984 as output grew sharply, eased money at the end of 1984 and continued to allow the money supply to expand substantially above the upper bound of its target range throughout 1985. The rate of growth in the economy remained relatively moderate throughout the year, and capacity utilization was no higher at the end of the year than at the beginning.

### 1986

For the 12-month period ended in December 1986, the CPI advanced 1.1 percent, the smallest annual change since a 0.7-percent rise in 1961. A sharp drop in energy prices was almost entirely responsible for the deceleration from the near constant rate of change during the prior 4 years. The Organization of Petroleum Exporting Countries' (OPEC) decision in late 1985 to formally abandon production quotas led to plunging crude oil prices and resulted in sharp declines in consumer prices for energy commodities. Retail gasoline prices plunged 30.7 percent, and fuel oil prices fell 33.3 percent. The decline in the total energy component limited the CPI increase to 1.1 percent, or by 2.2 percentage points. That is, if energy prices had been unchanged, the CPI would have risen 3.3 percent in 1986. Food prices accelerated in the

### *Consumer Prices in the 1980's*

*A turnaround in energy prices in 1987 was responsible for an acceleration in the overall index.*

second half of the year due to a severe drought in the Southeast during the late spring. This increase was largely concentrated in the indexes for meats, poultry, fish, and eggs and fruits and vegetables. The indexes for shelter and the CPI excluding food, shelter, and energy each rose less than in 1985. The latter group showed a marked deceleration only in the commodities component. This continued divergence in price behavior between commodity and service components occurred despite the depreciation of the dollar that began in March 1985.

By the end of 1986, the expansion had entered its fifth year with no signs of resurgence in inflation. With unemployment and capacity utilization well below full employment levels, these factors offered little in the way of cost pressure on prices.

#### **1987**

For the second successive year, a sharp swing in petroleum-based energy prices dominated the movement in the CPI, which rose 4.4 percent in 1987. The turnaround in energy prices—up 18 percent in 1987, following a 30.5-percent decline in 1986—was almost entirely responsible for the acceleration in the overall index. The surge in petroleum-based energy prices was the result of the steady drawing down of the tremendous glut of crude oil produced over a period beginning in late 1985, during which production quotas were formally abandoned by OPEC. Pricing discipline was generally reestablished towards the end of 1986. Thereafter, inventories dropped lower than expected, at times putting upward pressure on motor fuel and fuel oil prices.

Excluding energy, the CPI increased 4.1 percent after advancing 3.8 percent in 1986. Food and shelter costs in 1987 increased at about the same rates as in 1986. The CPI excluding food, shelter, and energy rose slightly more than in the preceding year. Within this group, however, price movements for commodities and services differed substantially between 1986 and 1987. The "other" commodities component, in part reflecting the declining value of the dollar in international markets, accelerated in 1987. Prices for apparel, wine, and entertainment commodities rose substantially more than in 1986. Charges for "other" services, however, slowed in 1987, particularly those for medical care and transportation. While measures of labor costs were not accelerating in 1987, the 0.9-percent reduction in unemployment in the 12 months ended in December was beginning to lead to upward pressure on wages that would be evident in 1988. The sharper rate of economic

growth which occurred in 1987 was also accompanied by increased capacity utilization.

#### **1988**

While the overall rates of change in the CPI were the same in 1987 and 1988, the composition was notably different. The 4.4-percent rise in 1987 was largely the result of the partial rebound in petroleum-based energy prices from the 1986 oil glut. In 1988, these prices declined slightly. A further acceleration in the growth rate during 1988 was accompanied by increased utilization of resources, both labor and plant and equipment. The Employment Cost Index, which had bottomed out in mid-1987, accelerated substantially in 1988, advancing nearly 50 percent faster in the fourth quarter of 1988 than in the corresponding period in 1987. Food prices registered their largest increase since 1980, reflecting in part the impact of the drought of 1988. The adverse weather significantly cut the yields in a number of crops. This not only affected retail food prices directly but also led to higher costs for livestock feed. The latter increased the slaughter rates for cattle and hogs, resulting in stable or declining beef and pork prices in the second half of the year. Shelter costs rose about the same as in 1987. The index for all items excluding food, shelter, and energy continued to advance from its recent low in 1986. Prices for other commodities and other services both increased more than in 1987. Within the other services group, each of the components contributed to the larger advance in 1988. Price increases for apparel and tobacco accounted for nearly 40 percent of the rise in the other commodities index.

#### **1989**

The 4.6-percent advance in the 1989 CPI was the largest since 1981. While increases in the food, energy, and shelter components were each larger than in the preceding year, the slight acceleration was principally due to sharp increases in petroleum-based energy product prices in the first half of the year. OPEC cohesion in the early part of the year, temporary supply disruptions due to the Valdez oil spill, and an interruption in North Sea oil supplies were responsible for the increases. By the end of 1989, OPEC's failure to maintain production quotas and an absence of supply shocks had eroded about half of the increase registered in the first 5 months of the year. Food prices, reflecting the residual effect of the drought in 1988 and bad weather early in 1989, also rose substantially more in the first 5 months than later in the year.

Shelter costs increased at about the same rate as in each of the 3 preceding years. The rate of increase in the CPI excluding food, shelter, and energy slowed somewhat from its 1988 rate, in part a consequence of the rising value of the dollar. Economic growth slowed from the rates in 1987 and 1988. Capacity utilization figures reflected this moderation, although unemployment rates for civilian workers remained unchanged between December 1988 and 1989. Employment costs increased at a faster rate—4.8 percent—than the CPI for the second consecutive year, principally due to rising employer costs for health care.

### 1990

During the first 3 months of 1990, the CPI rose at an 8.5-percent seasonally adjusted annual rate. This was the largest first-quarter advance since a 10.6-percent annual rate in 1981. The unusually cold weather in December boosted heating oil demand and disrupted refinery production, causing petroleum-based energy prices to soar in January. The December freeze also sharply reduced supplies of fresh produce, with a resulting jump in prices. Earlier introduction of higher priced spring and summer apparel in February more than offset the moderation in food and energy prices which resulted from the mild weather in early 1990.

### Postscript

What are the prospects for consumer prices as

we enter the 1990's, given the present economic setting? On the cost side, unemployment has been fairly stable even with a slowdown in economic activity, but the Employment Cost Index has continued to accelerate from a 3.0-percent annual rate in mid-1987 to more than 5 percent in the first quarter of 1990. As reflected by the finished goods component of the Producer Price Index, material costs registered their largest increase in 1989 since 1981. The acceleration between 1988 and 1989, however, was largely due to rising food and energy prices.

Excluding these three components, the finished consumer goods index rose 4.5 percent in 1989, following a 4.8-percent rise in 1988. The acceleration in the first quarter of 1990—at a 6.7-percent annual rate—was also due to sharp increases in food and energy prices, as prices of finished consumer goods less food and energy increased at a 3.3-percent annual rate. The slow growth in output in the early 1990's should help to keep inflation in check, but the large deficit in the Federal budget will continue to curtail aggregate demand. The Federal Reserve, of course, bears a substantial part of the responsibility for managing aggregate demand. While it is on record as targeting zero inflation within 5 years, given the slow growth in the economy, it is unlikely to tighten monetary policy in the near term and thus stimulate demand. Barring supply shocks like an energy crisis, the overall CPI increases at the start of the 1990's are unlikely to deviate much from those at the end of the past decade. □

### Footnotes

<sup>1</sup> *Economic Report of President*, January 1981, p. 31.

<sup>2</sup> "Changing the Homeownership Component of the Consumer Price Index to Rental Equivalence," *CPI Detailed*

*Report*, January 1983, pp. 7-11. An experimental index, the CPI-U, X-1, was the predecessor to the revamped CPI and is available for the period from 1967 through 1982.



# **Exhibit 6**

## O'Connor v. State Teachers' Retirement System

Court of Appeal, Second District, Division 3, California. | March 28, 1996 | 43 Cal.App.4th 1610 | 51 Cal.Rptr.2d 540

### Document Details

Standard Citation: O'Connor v. State Teachers' Ret. Sys., 43 Cal. App. 4th 1610, 51 Cal. Rptr. 2d 540 (1996)

Parallel Citations: 51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193, 96 Daily Journal D.A.R. 3592

### Outline

West Headnotes

Attorneys and Law Firms

Opinion

Parallel Citations

### Search Details

Search Query: O'Connor v. State teachers

Jurisdiction: California

### Delivery Details

Date: April 13, 2015 at 7:08 PM

Delivered By: John Jensen

Client ID: MALKENHORST

Status Icons: 

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

43 Cal.App.4th 1610  
Court of Appeal, Second District, Division 3,  
California.

Robert J. O'CONNOR, Plaintiff and Appellant,

v.

STATE TEACHERS' RETIREMENT SYSTEM,  
Defendant and Respondent.

L. Edmund KELLOGG, Plaintiff and Respondent,

v.

STATE TEACHERS' RETIREMENT SYSTEM,  
Defendant and Appellant.

Nos. B082583, B083642. | March 28, 1996. |  
Rehearing Denied April 23, 1996. | Review Denied  
June 26, 1996.

Teacher filed petition for writ of mandate challenging decision of Teachers' Retirement Board Benefits and Services Committee upholding decision of State Teachers' Retirement System (STRS) that his retirement benefits should be based on one of his two full-time teaching positions only and that the other position should be considered overtime which could not be used to calculate retirement benefits. The Superior Court, Los Angeles County, No. BS025808, Diane Wayne, J., found for teacher. STRS appealed. Second teacher sought writ of mandate under similar circumstances. The Superior Court, Los Angeles County, No. BS026387, Robert O'Brien, J., found for STRS. Second teacher appealed. Appeals were consolidated. The Court of Appeal, Aldrich, J., held that state teachers' retirement law required that teachers' retirement allowances be calculated based on aggregate of each teacher's salaries up to equivalent of single, full-time position.

Judgment against second teacher affirmed; judgment for first teacher reversed.

West Headnotes (22)

[1] **Officers and Public Employees**  
↔Pensions and Benefits

283Officers and Public Employees  
283IIIRights, Powers, Duties, and Liabilities  
283k93Compensation and Fees  
283k101.5Pensions and Benefits  
283k101.5(1)In general

Public employee's pension constitutes element of compensation, and vested contractual right to pension benefits accrues upon acceptance of employment.

| Cases that cite this headnote

[2] **Administrative Law and Procedure**  
↔Determination supported by evidence in general

15AAdministrative Law and Procedure  
15AVJudicial Review of Administrative Decisions  
15AV(E)Particular Questions, Review of  
15Ak784Fact Questions  
15Ak788Determination supported by evidence in general

In all cases concerning fundamental vested right, trial court must exercise its independent review of evidence admitted at administrative hearing, and it shall find abuse of discretion if findings are not supported by the evidence. West's Ann.Cal.C.C.P. § 1094.5.

6 Cases that cite this headnote

[3] **Mandamus**  
↔Scope and extent in general

250Mandamus  
250IIJurisdiction, Proceedings, and Relief  
250k187Appeal and Error  
250k187.9Review  
250k187.9(1)Scope and extent in general

On appeal from grant or denial of petition for administrative mandate, appellate court reviews record to determine whether substantial evidence supports trial court's findings.

Cases that cite this headnote

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

- <sup>[4]</sup> **Appeal and Error**  
↔ Findings of fact and conclusions of law
- 30 Appeal and Error  
30 XVI Review  
30 XVI(A) Scope, Standards, and Extent, in General  
30k838 Questions Considered  
30k842 Review Dependent on Whether Questions Are of Law or of Fact  
30k842(2) Findings of fact and conclusions of law
- Court of Appeal is not bound by the trial court's findings to extent they constitute conclusions of law.
- Cases that cite this headnote
- Agencies, Officers and Agents  
15AIV(C) Rules, Regulations, and Other Policymaking  
15Ak428 Administrative Construction of Statutes  
15Ak433 Permissible or reasonable construction (Formerly 361k219(1))
- In court's determination of proper interpretation of statute and validity of administrative regulation, administrative agency's construction is entitled to great weight, and if there appears to be reasonable basis for it, court will not substitute its judgment for that of administrative body.
- 3 Cases that cite this headnote
- <sup>[5]</sup> **Appeal and Error**  
↔ Review Dependent on Whether Questions Are of Law or of Fact
- 30 Appeal and Error  
30 XVI Review  
30 XVI(A) Scope, Standards, and Extent, in General  
30k838 Questions Considered  
30k842 Review Dependent on Whether Questions Are of Law or of Fact  
30k842(1) In general
- Interpretation of statute is question of law, and Court of Appeal thus is not bound by trial court's interpretation of statute.
- 2 Cases that cite this headnote
- <sup>[7]</sup> **Administrative Law and Procedure**  
↔ Presumptions  
**Administrative Law and Procedure**  
↔ Burden of showing error
- 15A Administrative Law and Procedure  
15AV Judicial Review of Administrative Decisions  
15AV(D) Scope of Review in General  
15Ak749 Presumptions  
15A Administrative Law and Procedure  
15AV Judicial Review of Administrative Decisions  
15AV(D) Scope of Review in General  
15Ak750 Burden of showing error
- Administrative ruling comes before court with presumption of correctness and regularity, which places burden of demonstrating invalidity upon assailant.
- 1 Cases that cite this headnote
- <sup>[6]</sup> **Administrative Law and Procedure**  
↔ Deference to agency in general  
**Administrative Law and Procedure**  
↔ Permissible or reasonable construction
- 15A Administrative Law and Procedure  
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents  
15AIV(C) Rules, Regulations, and Other Policymaking  
15Ak428 Administrative Construction of Statutes  
15Ak431 Deference to agency in general (Formerly 361k219(1))  
15A Administrative Law and Procedure  
15AIV Powers and Proceedings of Administrative
- <sup>[8]</sup> **Statutes**  
↔ Purpose and intent; unambiguously expressed intent
- 361 Statutes  
361 III Construction  
361 III(C) Clarity and Ambiguity; Multiple Meanings  
361k1107 Absence of Ambiguity; Application of Clear or Unambiguous Statute or Language  
361k1109 Purpose and intent; unambiguously expressed intent  
(Formerly 361k235)

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

Rule of liberal construction should not blindly be followed so as to eradicate clear language and purpose of statute.

Cases that cite this headnote

<sup>191</sup> **Administrative Law and Procedure**  
↻Erroneous construction; conflict with statute

15AAdministrative Law and Procedure  
15AIVPowers and Proceedings of Administrative Agencies, Officers and Agents  
15AIV(C)Rules, Regulations, and Other Policymaking  
15Ak428Administrative Construction of Statutes  
15Ak435Erroneous construction; conflict with statute (Formerly 361k219(4), 361k176)

Ultimate interpretation of statute is exercise of judicial power, and it is responsibility of courts to declare its true meaning even if it requires rejection of earlier erroneous administrative interpretation.

Cases that cite this headnote

<sup>110</sup> **Statutes**  
↻Purpose and intent

361Statutes  
361IIIConstruction  
361III(A)In General  
361k1074Purpose  
361k1076Purpose and intent (Formerly 361k184, 361k181(1))

In construing statute, Court of Appeal must ascertain intent of lawmakers so as to effectuate purpose of law.

Cases that cite this headnote

<sup>111</sup> **Statutes**  
↻Language and intent, will, purpose, or policy

361Statutes  
361IIIConstruction  
361III(A)In General  
361k1078Language  
361k1080Language and intent, will, purpose, or policy (Formerly 361k188)

To determine lawmakers' intent in enacting statute, Court of Appeal must examine language of statute.

Cases that cite this headnote

<sup>112</sup> **Education**  
↻Service credit

141EEducation  
141EIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek547Service credit (Formerly 345k146(6) Schools)

State teachers' retirement law required that retirement allowance of employees who held two full-time teaching positions during four-year periods prior to their retirements be based on aggregate of each teacher's salaries up to equivalent of single, full-time position; law limited total amount of service credit a member could earn, doing so by utilizing one full-time position as yardstick, and member could earn no more than one year of credited service in any academic year, regardless of amount of work actually performed and number of jobs actually held. West's Ann.Cal.Educ.Code §§ 22114(a)(1), 22115(a), 22135(a), 22701(b), 22703(a), 24202(a)(1); § 22133(a) (Repealed).

Cases that cite this headnote

<sup>113</sup> **Education**  
↻Amount and computation in general

141EEducation  
141EIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

141EII(D)4Pensions and Benefits  
141Ek546Amount and computation in general  
(Formerly 345k146(5) Schools)

Legislature's purpose in amending state teachers' retirement law's definition of "salary" as remuneration "for actual work performed or time served, up to the full-time equivalent for the position," was to clarify that compensation would include remuneration up to but no more than full-time equivalent for position. West's Ann.Cal.Educ.Code § 22114(a)(1).

Cases that cite this headnote

**114] Education**  
↻Service credit

141EEducation  
141EIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek547Service credit  
(Formerly 345k146(6) Schools)

Section of state teachers' retirement law governing computation of service to be credited is not aimed at part-time employees; separate provision exists for crediting part-time employees. West's Ann.Cal.Educ.Code §§ 22701, 22702.

Cases that cite this headnote

**115] Education**  
↻Service credit

141EEducation  
141EIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek547Service credit  
(Formerly 345k146(6) Schools)

State teachers' retirement law provides an employee credit up to a single, fulltime position, and all remaining pay is considered noncreditable overtime. West's Ann.Cal.Educ.Code § 22000 et seq.

Cases that cite this headnote

**116] Education**  
↻Amount and computation in general

141EEducation  
141EIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek546Amount and computation in general  
(Formerly 345k146(5) Schools)

"Overtime," for purposes of state teachers' retirement law, is defined as excess of all work performed in all jobs which contribute to system, not just excess pay from one single job. West's Ann.Cal.Educ.Code § 22151.

Cases that cite this headnote

**117] Estoppel**  
↻Particular state officers, agencies or proceedings

156Estoppel  
156IIIEquitable Estoppel  
156III(A)Nature and Essentials in General  
156k62Estoppel Against Public, Government, or Public Officers  
156k62.2States and United States  
156k62.2(2)Particular state officers, agencies or proceedings

State Teachers' Retirement System (STRS) was not estopped from designating teacher's second full-time teaching position as overtime for purposes of calculating his retirement benefits because of its delay in informing teacher of its position concerning his excess pension fund contributions, and its failure to return excess contributions to him; state teachers' retirement law provided that STRS was not required to refund excess contributions until teacher's retirement. West's Ann.Cal.Educ.Code § 22906.

Cases that cite this headnote

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

[18]

**Education**

↔ Amount and computation in general

141EEducation  
141EIIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek546Amount and computation in general  
(Formerly 345k146(5) Schools)

Overtime, for purposes of state teachers' retirement law, is not defined as that which employer considers overtime; it is province of State Teachers' Retirement Board to determine what pay is creditable to retirement. West's Ann.Cal.Educ.Code § 22215.

Cases that cite this headnote

[19]

**Constitutional Law**

↔ Compensation and benefits

**Constitutional Law**

↔ Conduct and control; deprivations and adverse employment actions

**Education**

↔ Service credit

92Constitutional Law  
92XXVIEqual Protection  
92XXVI(E)Particular Issues and Applications  
92XXVI(E)8Education  
92k361 IElementary and Secondary Education  
92k3618Employees  
92k3618(4)Compensation and benefits  
(Formerly 92k242.2(4))  
92Constitutional Law  
92XXVIIIDue Process  
92XXVII(G)Particular Issues and Applications  
92XXVII(G)8Education  
92k4196Employment Relationships  
92k4199Conduct and control; deprivations and adverse employment actions  
(Formerly 92k278.5(2.1))  
141EEducation  
141EIIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek547Service credit  
(Formerly 345k146(6) Schools)

Teacher who held two full-time teaching positions prior to retirement was not denied due

process or equal protection by ruling of State Teachers' Retirement Board that his retirement allowance would be based on single, full-time position; same calculation was employed for all teachers falling under same category. U.S.C.A. Const.Amends. 5, 14; West's Ann.Cal.Educ.Code § 22000 et seq.

Cases that cite this headnote

[20]

**Labor and Employment**

↔ Constitutional and Statutory Provisions

231HLabor and Employment  
231HVIIIPension and Benefit Plans  
231HVII(A)In General  
231Hk401Constitutional and Statutory Provisions  
231Hk402In general  
(Formerly 296k23)

Laws relating to pension and retirement benefits are to be liberally construed to the end that beneficent aims of such legislation may be achieved.

Cases that cite this headnote

[21]

**Officers and Public Employees**

↔ Pensions and Benefits

283Officers and Public Employees  
283IIIRights, Powers, Duties, and Liabilities  
283k93Compensation and Fees  
283k101.5Pensions and Benefits  
283k101.5(1)In general

Pension plans for public employees serve objectives of inducing persons to enter and continue in public service, and to provide subsistence for disabled or retired employees and their dependents.

Cases that cite this headnote

[22]

**Education**

↔ Pensions and Benefits

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

141EEducation  
141EIIIPublic Primary and Secondary Schools  
141EII(D)Teachers and Education Professionals  
141EII(D)4Pensions and Benefits  
141Ek540In general  
(Formerly 345k146(1) Schools)

State teachers' retirement law was aimed at ends of providing substantial or reasonable pension for retirees, while assuring adequate funding of entire system. West's Ann.Cal.Educ.Code § 22000 et seq.

Cases that cite this headnote

**\*\*542** APPEALS from judgments of the Superior Court of Los Angeles County. Diane Wayne and Robert O'Brien, Judges.

**Attorneys and Law Firms**

**\*1613** Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Senior Assistant Attorney General, Linda A. Cabatic, Supervising Deputy Attorney General, and Keith Yamanaka, Deputy Attorney General, for Respondent and Appellant State Teachers' Retirement System.

Robert O'Connor, in pro. per.

L. Edmund Kellogg and Harvey L. Goldhammer, Glendale, for Plaintiff and Respondent L. Edmund Kellogg.

ALDRICH, Associate Justice.

**INTRODUCTION**

These two consolidated appeals involve the calculation of retirement allowance for a member of the State Teachers' Retirement System (STRS) who holds two full-time teaching positions simultaneously. Both actions arose after the member-teachers filed petitions for writ of administrative mandate pursuant to Code of Civil Procedure section 1094.5.

In the first lawsuit, L. Edmund Kellogg requested an administrative hearing after the STRS Board informed

him it had calculated his retirement benefits based on one of his two full-time positions only and considered the other full-time position to be overtime. After the administrative law judge ruled in favor of STRS and the Teachers' Retirement Board Benefits, and **\*1614** Services Committee adopted the decision, Kellogg filed a petition for writ of mandate. The trial court granted the writ finding in favor of Kellogg, that the calculation of his retirement allowance should be based on both full-time teaching positions. STRS has appealed.

In the second action, under the same circumstances, the administrative law judge ruled, as had the administrative court in Kellogg's case, in favor of STRS, rejecting Robert J. O'Connor's challenge to STRS's method of calculation. However, unlike Kellogg's case, the trial court denied O'Connor's petition for writ of mandate. O'Connor filed this appeal.

**\*\*543** Pursuant to the State Teachers' Retirement Law, Education Code section 22000, et seq.,<sup>1</sup> we hold the trial court in *O'Connor v. STRS* correctly concluded as a matter of law, that STRS should calculate a teacher's retirement allowance based on the aggregate of the teacher's salaries up to the equivalent of a single, full-time job carrying the highest compensation. We therefore further hold the conclusion of law of the trial court in *Kellogg v. STRS* that the STRS Board must calculate the member's retirement allowance based on both full-time positions was error. Accordingly, the judgment in *Kellogg v. STRS* is reversed and the judgment in *O'Connor v. STRS* is affirmed.

**FACTUAL AND PROCEDURAL SYNOPSIS**

**A. STRS.**

STRS is the state agency responsible for managing contributions made by employees and member school districts to the State Teachers' Retirement Fund (the Fund). There are 1,190 such districts, including the Los Angeles Unified School District (LAUSD), the Los Angeles Community College District (LACCD) and the Pasadena City College District (PCCD). The large school districts report directly to STRS while the smaller ones funnel their reports through their respective counties.

STRS is managed by the Teachers' Retirement Board (the Board) (§ 22200). The Board's duties include receiving and investing contributions **\*1615** from members and employers, and calculating and paying retirement allowances.



**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

**B. L. Edmund Kellogg.**

Kellogg initially became a member of STRS in the early 1970's and had been employed by PCCD as a full-time professor since 1975. In 1986, while still employed full time at PCCD, Kellogg accepted a separate teaching position at Los Angeles Mission College, in the LACCD. In 1988, the latter position expanded to full-time status. Both employers are member districts in the retirement benefits plan administered by STRS. Mandatory contributions were made from Kellogg's salaries at both PCCD and LACCD to invest in the Fund. Upon his employment, Kellogg notified the people who hired him at Los Angeles Mission College of the fact he was also employed at PCCD. Kellogg's new contract contained the clause, " 'I am not under contract to provide services for any other school district during the period of this agreement [.]' " Kellogg crossed out this sentence and initialed his deletion. In such form, Kellogg's employers at Los Angeles Mission College signed the contract.

On February 24, 1992, Kellogg requested STRS calculate his retirement benefits based on the combined salaries from both employers of \$90,000. STRS informed Kellogg that pursuant to the Education Code he would only be credited for the salary from the equivalent of one full-time teaching position and that the remainder of his salary was considered "overtime" which is not creditable to his retirement allowance. Kellogg requested an administrative hearing.

**C. Robert J. O'Connor.**

O'Connor was employed in four separate school districts during his 24-year teaching career. O'Connor was a teacher in the LAUSD for 17 years, and in LACCD for 24 years. Since the 1988-1989 academic year, O'Connor has been employed full time by both districts concurrently. Mandatory contributions were made to O'Connor's STRS account during all of the years he was employed in each position.

On May 14, 1992, O'Connor requested STRS calculate his retirement benefits. In response, STRS informed O'Connor he would \*\*544 be credited only the benefits from his position at LACCD.

Insisting STRS should compute his service retirement allowance based on the sum of his two salaries for the years immediately antedating his retirement, O'Connor requested an administrative hearing. O'Connor's hearing was held one day after Kellogg's.

**\*1616 D. The Hearings.**

The same witnesses testified at both hearings.

Alfred L. Ray, III, manager of the Service Retirement Section responsible for calculating estimated retirement allowances for employees who apply to STRS, explained the method for computing retirement benefits is determined by statute. The benefit is based on "final compensation," which is the average salary earnable for the highest three consecutive years of credited service. STRS calculates the benefit as two percent of "final compensation" multiplied by the number of years of the employee's service. Service is based on work in a position requiring membership in STRS. There is no restriction on the number of years of service that can be credited to an employee.<sup>7</sup> A member, i.e. employee, will earn service credit and receive a retirement allowance so long as the required contributions are paid to STRS.

Other factors however limit the size of an employee's retirement allowance. For example, Ray explained, STRS cannot calculate retirement allowance based on *actual earnings* because the statute's definition of "final compensation" utilizes the word "earnable" salary not actual "earning."

When an employee's annualized earnings are greater than the maximum salary earnable in one full-time position, STRS will generally credit to the member's retirement allowance the service from the position with the higher pay-rate so as to give the member the advantage. To the extent the earnings are in excess of the annualized rate of one fulltime position, the "excess" is credited as "overtime." Overtime may not be used to calculate the employee's retirement allowance.

Each member has one STRS account regardless of the number of jobs the member holds and regardless of the number of employers for which that member works. STRS receives salary and wage reports from each district for each employee. When an employee holds jobs with two separate school districts or counties which contribute to the system, STRS receives two reports. Pete Hough, chief of STRS's Membership Division, audits the reports of employees' earnings to identify those salaries which are greater than the maximum earnable amount, and to ascertain those employees who work for more than one employer.

According to Hough, STRS has known since 1972, there are teachers in the system who work for more than one employer. *However, that situation \*1617 has never before*

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

*caused STRS a problem.* First, Hough's division audits the reports of employees' earnings. Second, for several years, the reports have been funneled through the large employers, such as the counties, to STRS. STRS relies on the counties to notify the employer school-district when one of the salaries is considered noncreditable "overtime." Finally, a standard item covered in all brochures and training documents STRS sends to employers is a notification about members holding two jobs. Hence, STRS has not proposed legislation to clarify the definition of compensation for a full-time employee.

Mark Oliver Johnson, an actuary with the firm of Milliman and Robertson which consults for STRS, explained his firm conducts valuations to determine whether contributions are sufficient to meet demand. The actuaries predict the amount of benefits which will eventually be paid out and evaluate the adequacy of the contributions to fund those benefits. The actuaries' forecast of future benefits are based on certain assumptions, such as the ages at which members will retire, how long they will live after retirement, the probability members will become disabled or leave the system, salary growth, \*\*545 cost of living and interest earnings on the Fund. *The actuarial assumptions are also based on STRS's definition and interpretation of full time, overtime and "compensation earnable."*

According to Johnson, contributions to the system are set by statute. The effect of an employee's receiving two full-time salaries is to "spike" the variables and render prediction more difficult. The earlier a spike occurs, the sooner it will be identified. Theoretically then, contributions to the system could be increased in time to pay for the higher benefits. But identification does not alleviate the problem. Johnson explained insufficiency of funds occurs because final average compensation is leveraged against all the years of service. Where a member has two full-time positions for only a portion of the member's career, the school district and member could contribute more but never come close to funding that additional benefit level. "If the average earnable salary is increased by one or two percent on average, the funding of the system will be in jeopardy." Hence, it would take only 3,000 incidents of employees holding two full-time positions with two employers at the end of their careers to threaten the system.

**E. The Rulings.**

**1. Kellogg.**

The administrative law court held, based on sections 22115 and 22133, STRS properly calculated Kellogg's

retirement allowance by crediting earnings for the equivalent of one full-time position per year. That court rejected \*1618 Kellogg's argument that the law places no limits on the compensation which may be earned by a full-time employee or on the number of employers for which said employee may work. Rather, the administrative court concluded there is no provision in the statutory scheme for Kellogg to claim entitlement to two separate retirement allowances for two separate full-time positions. The fact that excess contributions had been made to the Fund was not fatal to STRS's position. The administrative law court noted, "[t]he legislature anticipated a situation just like applicant's in its enactment of section [22906]. Said section allows the System to return contributions made for which the member will not receive a benefit, which excess contributions may even be returned as late as the retirement date."

The Teachers' Retirement Board Benefits and Services Committee adopted the decision of the administrative law court. Kellogg filed his petition for alternative writ of mandate in the superior court (Code Civ. Proc., § 1094.5).

Kellogg's petition was granted by the trial court. Focusing on the provisions for computing service credit, the court stated in its notice of ruling, "In exercising its independent judgment, the Court finds that the weight of the evidence does not support the decision of [STRS] under Education Code [22702] and [22701].... [Kellogg] is entitled to credited service for his total compensation from both jobs." The court explained, "Education Code [22133 and 22115] ... defines [*sic*] 'final compensation' as the highest average annual compensation earnable by a member during any period of three consecutive years if the member were engaged in their duties on a full-time basis. Respondent in denying compensation relies on [22115] which defines full time service.... [¶] Respondent[']s argument that [Kellogg] was not required to work the second job is irrelevant. *Each employment should be considered separately.* They were in fact separate jobs.... While it might not have been 'normal' for employees to hold two positions [STRS] presented no evidence which suggests that [Kellogg] did not act as similarly situated employees in both positions." (Italics added.) Continuing, the court reasoned, Kellogg was not engaged in overtime work, but in separate full-time employment: "There is nothing in the record to suggest that it was 'overtime' employment. He received two separate paychecks and in fact monies for this fund were taken from both. \*\*546 He actually engaged in 'overtime' on a single job."

\*1619 Finally, the court concluded, "Respondent[']s

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

**51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...**

interpretation would restrict [Kellogg] to an artificial limitation which is not in the statute," and ruled STRS "... should take into account both paychecks in calculating the three highest years for retirement and make calculation's [sic] for benefits in accordance with this judgment."

Judgment was entered and STRS filed its timely appeal.

**2. O'Connor.**

A different administrative law judge reached the same conclusion as the administrative law court had in Kellogg's case, namely, STRS had properly calculated O'Connor's retirement allowance by giving credit to earnings for the equivalent of one full-time position per year. That court rejected O'Connor's argument that the law places no limits on compensation which may be earned by a full-time employee or on the number of employers for which such employee may work. The court explained, by its plain language section 22115 defines full-time service and compensation earnable in terms of the member's earnings "... with one particular employer under terms and conditions of employment which are similar to those of similarly-situated employees." (Italics added.) Hence, earnings in excess of compensation earnable are more properly deemed "overtime" under section 22151. Also as in Kellogg's case, the administrative law judge concluded it was of no moment that contributions have been made from all of O'Connor's earnings because section 22906 provides for reimbursement to the member for non-credited overpayments as late as the employee's retirement date.

The Teachers' Retirement Board Benefits and Services Committee adopted the above decision and O'Connor filed his petition for alternative writ of mandate.

O'Connor's petition was denied by the trial court which ruled STRS's statutory interpretation was correct. Further, O'Connor's equal protection argument failed because all members of the system are treated equally. "The fact that some members choose to take themselves outside the scope of the statutory coverage by increasing their income, in whatever way they can, does not call into play 'equal-protection' violations." The remainder of O'Connor's positions were deemed meritless. O'Connor filed his timely appeal.

We have consolidated the two appeals.

**1. Standard of Review.**

<sup>111</sup> There is no dispute Kellogg and O'Connor have a fundamental vested right in the retirement Fund to the amount to which they are entitled by law. (*Purdy v. Teachers' Retirement Board* (1980) 113 Cal.App.3d 942, 949, 170 Cal.Rptr. 360; *Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, 1023, 127 Cal.Rptr. 11.) "A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment." (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863, 148 Cal.Rptr. 158, 582 P.2d 614; *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 506, 202 Cal.Rptr. 611.)

<sup>121</sup> Under section 1094.5 of the Code of Civil Procedure, in all cases concerning a fundamental vested right, the trial court must exercise its independent review of the evidence admitted at the administrative hearing, and it shall find an abuse of discretion if the findings are not supported by the evidence. (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 44-45, 112 Cal.Rptr. 805, 520 P.2d 29.)

<sup>131</sup> <sup>141</sup> <sup>151</sup> On appeal from the grant or denial of a petition for administrative mandate, the appellate court reviews the record to determine whether substantial evidence supports the trial court's findings. (*Quintana v. Board of Administration, supra*, 54 Cal.App.3d at p. 1024, 127 Cal.Rptr. 11.) "However, this court is not bound by the trial court's findings to the extent they constitute conclusions of law." (*Purdy v. Teachers' Retirement Board, supra*, 113 Cal.App.3d at p. 949, 170 Cal.Rptr. 360.) Interpretation of a statute is a question of law.

**\*\*547** <sup>161</sup> <sup>171</sup> "... '[I]n determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body.' [Citations.] In addition, an administrative ruling 'comes before the court with a presumption of correctness and regularity, which places the burden of demonstrating invalidity upon the assailant [fn. omitted]." [Citations.]' " (*Campbell Industries v. Board of Equalization* (1985) 167 Cal.App.3d 863, 868, 213 Cal.Rptr. 533.)

<sup>181</sup> <sup>191</sup> Nonetheless, "... the foregoing 'rule of liberal construction ... should not blindly be followed so as to eradicate the clear language and purpose of the statute.... [Citations.]' [Citation.] ... 'The ultimate interpretation of \*1621 a statute is of course an exercise of judicial power and it is the responsibility of the courts to declare its true

**\*1620 DISCUSSION**

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

meaning even if it requires rejection of an earlier erroneous administrative interpretation. [Citations.]' [Citations.]" (*Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605, 159 Cal.Rptr. 336, 601 P.2d 568.)

With these rules in mind we turn to the State Teachers' Retirement Law.

**2. Calculation of Retirement Benefits.**

STRS and teachers' retirement benefits are statutorily driven by a comprehensive legislative scheme known as The Teachers' Retirement Law (hereafter sometimes the statute). (Cf. *California Teachers Assn. v. Cory, supra*, 155 Cal.App.3d at pp. 500–503, 202 Cal.Rptr. 611.)

<sup>1101</sup> <sup>111</sup> In construing a statute, we must "... ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] ... [T]o determine this intent, we [must examine] the language of the statute. [Citations.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898, 276 Cal.Rptr. 918, 802 P.2d 420.)

<sup>112</sup> Turning to the entire scheme of the State Teachers' Retirement Law, with an eye toward harmonizing all of its parts (*id.* at p. 899, 276 Cal.Rptr. 918, 802 P.2d 420), we hold the statute provides an employee's retirement allowance be based on a single, full-time position.

To compute the retirement allowance of an employee, the Board starts with Chapter 27, entitled "Service Retirement." Section 24202, subdivision (a)(1) provides the allowance is "2 percent of the *final compensation* for each year of *credited service*." (Italics added.) Allowance is based on two variables, "final compensation" and "credited service," both of which factors operate to limit the amount of allowance an employee may receive to no more than a full time position.

<sup>113</sup> The first variable, "final compensation," is defined as "the highest average annual *compensation earnable* by a member during any period of three consecutive years during his or her membership in the system ...." (§§ 22133, subd. (a), 22135, subd. (a), italics added.) "Compensation earnable" by a full-time member is "the compensation as determined by the \*1622 board that *would have been earned* by the member if he or she were engaged in his or her duties on a full-time basis." (§ 22115, subd. (a), italics added.) Ray's testimony supports the conclusion, by utilizing the word "earnable," the statute limits the compensation on which retirement allowance may be based to that which the teacher may earn, not what the teacher actually earned, "on a full-time basis." (Italics added.) Therefore, the pay used to

calculate earnable compensation is limited to the amount paid in a single, full-time position.<sup>3</sup>

**\*\*548** <sup>114</sup> The second variable, "service credit" is also capped at the equivalent of one year of service in a single full-time position. Service for a full-time employee is "... credited in the proportion the compensation paid bears to the compensation the member *would have received if he or she had been employed on a full-time day basis in the particular position in which he or she is employed throughout the school term, school year, or for a period of service at least the equivalent to a school term.*" (§ 22701, subd. (b), italics added.)<sup>6</sup> Most important, the statute places an overall limit on the amount of service that may be credited toward retirement. "Service shall be computed by school years and not by calendar years, portions of years served being accumulated and counted as service. *All of the service performed during any one school year in a position requiring membership in this system shall not count for more than one year.*" (§ 22703, subd. (a), italics added.)

Hence, O'Connor's and Kellogg's contention there is no statutory limit on the number of employers a member may have is correct but does not change the result. While there is no limit to the number of member employers an employee may work for; there *is* a limit on the amount of service and compensation which is creditable to the employee's retirement allowance. To summarize, the Teachers' Retirement Law specifically limits the total amount of service credit a member may earn, doing so by utilizing one \*1623 full-time position as the yardstick. A member may earn no more than one year of credited service in any one academic year, regardless of the amount of work that member actually performed and regardless of the number of jobs that member actually held.

Remuneration paid in excess of the full-time equivalent for the position is therefore not creditable to retirement allowance. The statute considers such excess earnings to be "overtime." (§ 22151.) Money paid to an employee for overtime service is not included in the definition of compensation. (§ 22114, subd. (b)(2).) "Overtime" is defined as "the aggregate service performed as a member of the system in excess of the hours of work considered normal for employees on a full-time basis." (§ 22151, italics added.)

<sup>115</sup> We construe the entire statute to provide an employee credit up to a single, fulltime position, and all remaining pay is considered non-creditable overtime. Our reading of the law comports with (1) the evidence, (2) the interpretations of both administrative judges and (3) the

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

trial court's conclusions in *O'Connor v. STRS*. Finally, this result corresponds to the interpretation of the complex statutory scheme by the STRS Board charged with implementing the statute, to which we give great weight. (See *Wheeler v. Board of Administration, supra*, 25 Cal.3d at p. 605, 159 Cal.Rptr. 336, 601 P.2d 568.) The uncontradicted testimony of the STRS employees shows for over 30 years STRS has consistently interpreted the statute in this fashion.

<sup>116</sup> Both the trial court in *Kellogg v. STRS* and *Kellogg* are therefore incorrect in concluding *Kellogg* held two full-time positions for which no work could be allocated to overtime with the result that each position should be considered *separately* for purposes of calculating his retirement allowance. Each member holds *one* account in STRS, regardless of the number of jobs and employers that member has. The reason is public school teachers earn "credited service" regardless of which or for how many member districts the employees work. Service is based on the work in a position for which membership in the system is required, not the number of employers, or work performed \*\*549 for a particular employer. (§ 22120.)<sup>7</sup> Moreover, overtime, which is not credited to an employee's retirement allowance, is specifically defined as the "aggregate service performed *as a member of the system. ...*" (§ 22151, italics added.) Stated otherwise, overtime is defined as the excess of all of the work performed in all jobs which contribute to the system, not just the excess pay from one single job. Likewise, all positions for which \*1624 contributions to the system are required must be considered in the formula which establishes what is creditable.

<sup>117</sup> The logic behind our statutory construction is further underscored by the fact, as noted by both administrative law judges and one trial court, money contributed to the system in excess of that which is creditable to retirement allowance must be reimbursed at the time of retirement. (§ 22906.) O'Connor's and Kellogg's arguments they were never informed they were contributing excess, noncreditable money to the system, is, in light of section 22906, unpersuasive.<sup>8</sup>

O'Connor contends his second full-time position cannot be considered overtime without redefining "overtime" in violation of the statute, because both of his positions are considered full-time. O'Connor and Kellogg argue essentially only the employing school district, not STRS, can determine what is considered overtime.

<sup>118</sup> Overtime, for purposes of the State Teachers' Retirement Law, is not defined as that which the *employer* considers overtime: it is the province of the Retirement

Board to determine what pay is creditable to retirement. Section 22215 provides "[t]he *board* shall determine the service performed by members to be credited toward qualification for retirement, and shall fix retirement allowances, ..." (Italics added.) Furthermore, "compensation earnable" is defined as that compensation "*as determined by the board* that would have been earned by the member if he or she were engaged ... on a full-time \*1625 basis." (§ 22115, subd. (a), italics added.) STRS is actually precluded by statute from crediting O'Connor for work performed in *excess of that which is earnable as determined by the board.* (*Ibid.*)

Nor does *Purdy v. Teachers' Retirement Board, supra*, 113 Cal.App.3d 942, 170 Cal.Rptr. 360 preclude this result. O'Connor argues STRS has made the same transgression ruled improper in *Purdy*. *Purdy* does not concern the calculation of final compensation in two full-time positions. Purdy's employer had designated her as a " 'full-time salaried employee in one full-time position' " while STRS decided Purdy was holding a multiple-position assignment on an as-needed basis, paid on an hourly and daily basis. (*Id.* at p. 950, 170 Cal.Rptr. 360.) Based on this label, STRS calculated Purdy's retirement by reference to the statutory provisions for \*\*550 part-time employees. The reviewing court ruled STRS had improperly applied the part-time statute for a full-time employee. (*Id.* at p. 953, 170 Cal.Rptr. 360.)

Here, STRS has not redefined O'Connor or Kellogg as part-time employees. Nor did STRS apply the separate statutory provisions for part-time employees or redefine what is overtime. (See e.g., § 22116, compensation earnable, part-time employees.) Rather, STRS has applied the definition of compensation earnable and final compensation for full-time employees, and designated O'Connor's and Kellogg's aggregated time in excess of such work as noncreditable "overtime" in full compliance with sections 22151.

<sup>119</sup> O'Connor next contends STRS's interpretation denies him due process and equal protection because he works for a school district which limits the number of credited hours in a week and year to fewer than other districts. We disagree.

The same calculation is employed for all teachers falling under the same category. Actually, were we to hold, as O'Connor would have us, that he should be given credit for both full-time positions, then other employees working the same number of hours and making the same amount of money would be treated differently than O'Connor and Kellogg because they worked in multiple *part-time* positions as opposed to two full-time positions.

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

The system was clearly designed to effectuate the fairest disposition for all teachers similarly situated.

<sup>[20]</sup> <sup>[21]</sup> It is well settled “[l]aws relating to pension and retirement benefits are to be liberally construed to the end that the beneficent aims of such legislation may be achieved. [Citations.]” (*Wheeler v. Board of Administration, supra*, 25 Cal.3d at p. 604, 159 Cal.Rptr. 336, 601 P.2d 568.) Section 22001 proclaims the purpose of the State Teachers’ Retirement System is “to provide a financially sound plan for the retirement, with \*1626 adequate retirement allowances, of teachers in the public schools of this state, teachers in schools supported by this state, and other persons employed in connection with the schools, the State Teachers’ Retirement System is established.” (Italics added.) Two objectives are also served by pension plans for public employees: “... ‘... to induce persons to enter and continue in public service, and to provide subsistence for disabled or retired employees and their dependents. [Citation.]’ [Citation.]” (*Wheeler, supra*, at p. 605, 159 Cal.Rptr. 336, 601 P.2d 568.)

STRS’s actuaries calculated STRS had an unfunded obligation of \$11 billion because the current members’ contributions are less than that needed to meet the normal cost payment. In response, the actuary explained, the Legislature addressed this shortfall by enacting former sections 23402 and 23403, which, among other things, is designed to provide stable and full funding over the long term. Both former section 23402 and the actuaries’ calculations are based on the assumption, among others, that final compensation was being calculated based on one full-time position or the equivalent thereof.

As of 1993, the system was “in a funded position,” that is, members were contributing the exact percent of earned salary and the Fund is earning just the right interest rate so there will be sufficient amount of money to pay for the anticipated benefits. However, despite the efforts of the Legislature, “... if the earnable salary were to increase but just a matter of a few percentages on average, the system would no longer fund. [That is,] ... the \$11 billion liability would increase to some level to which it would not be able to amortize, and the shortfall would continue to increase every year.” Therefore, to allow the calculation of benefits based on two full-time positions would contradict and frustrate the intent of the Legislature, in enacting former section 23402 to make the retirement Fund solvent.

Indeed, to conclude otherwise would be to grant Kellogg and O’Connor a windfall. The statute provides for a calculation based on the highest average annual

compensation earnable during three consecutive years of credited service. (§ 22133, subd. (a).) In both cases before us, the employee worked for many years at one salary and only in the last few years took a second full-time position. Kellogg had 17 years of service and maintained two full-time jobs in only the last \*\*551 four years. O’Connor had 24 years of service and only in the last four years did he work on a full-time basis in two jobs. For the overwhelming majority of their years of service these employees contributed only from one position. To grant them a benefit based on the highest three years from two positions would be to give them a \*1627 retirement allowance wholly out of proportion to the amounts they had contributed for the overwhelming majority of years of service, to the detriment of the Fund and of the other contributors. In the words of the actuary, “... a person who worked an entire career in one position and then at the last 3 years, took a second position ... would double the entire pension that would have been earned over the 30 years just by having three years at twice the salary.” Not only is this unsupported by the statutory scheme we construe the Legislature to have designed, but would result in speedily bankrupting the Teacher’s Retirement System.

<sup>[22]</sup> We therefore hold the statute requires STRS to calculate Kellogg’s and O’Connor’s retirement allowance based on the aggregate of the teacher’s salaries up to the equivalent of a single, full-time position. Our holding not only comports with the clear language of the State Teachers’ Retirement Law, the application of that law by STRS, and former section 23402, but achieves the ends to which the statute was aimed, namely to provide a “ ‘substantial or reasonable pension’ ” (*Betts v. Board of Administration, supra*, 21 Cal.3d at p. 863, 148 Cal.Rptr. 158, 582 P.2d 614), for retirees, while assuring adequate funding of the entire system.

## DISPOSITION

The judgment in *Kellogg v. STRS* (Case No. BS025808) is reversed and the trial court is directed to recall the writ of mandate issuing over date of February 16, 1994. The judgment in *O’Connor v. STRS* (Case No. BS026387) is affirmed. Each party to bear his own costs.

KLEIN, P.J., and KITCHING, J., concur.

## Parallel Citations

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...

43 Cal.App.4th 1610, 109 Ed. Law Rep. 844, 96 Cal.  
Daily Op. Serv. 2193, 96 Daily Journal D.A.R. 3592

Footnotes

- 1 While these cases were pending, the Legislature significantly reorganized the Education Code with the specific intent to "... clarify the State Teachers' Retirement Law and thus facilitate its administration. It is not the intent of the Legislature to make any substantive change in the law." (Historical and Statutory Notes, 26 B West's Ann. Ed. Code (1994 ed.) § 22000, p. 220; Stats.1993, c. 893, § 3. (A.B.1796).) Since 1993, the Legislature has further revised the law in ways which do not affect the outcome of this appeal.  
Hereinafter, all statutory references shall be to the reorganized and renumbered version of the Education Code passed in 1993, unless otherwise noted.
- 2 Therefore, under the benefit formula, a teacher who is more than 80 years old can receive more in retirement than during service.
- 3 Section 22906 provides "If at the time of retirement, disability, or death, there are contributions remaining to the credit of the member that were made with respect to time on the basis of which the member will not be entitled to receive a benefit, the Board shall refund to the member accumulated contributions as it may allocate to the time."
- 4 Section 22135 defines final compensation for classroom teachers as, "the highest annual compensation earnable by a member who is a classroom teacher ... during any period of 12 consecutive months during his or her membership in the system."
- 5 In 1993, the Legislature amended section 22114, subdivision (a)(1) to add the italicized phrase: " 'Compensation' and 'salary,' for the purposes of determining benefits and contributions, mean: ... [¶] (1) Remuneration in cash payable by the employer to the member *for actual work performed or time served, up to the full-time equivalent for the position.* " In adding the italicized phrase limiting remuneration "up to the full-time equivalent," the Legislature stated "This bill would ... prohibit the making of ad hoc adjustments to compensation when the purpose is to enhance retirement benefits." (Stats.1993, c. 468, § 1 (A.B.631).) Accordingly, we construe the Legislature's purpose in amending section 22114, subdivision (a)(1) was to clarify that compensation would include remuneration up to *but no more than* the full-time equivalent for the position.
- 6 Section 22701 is not aimed at part-time employees. There is a separate provision for crediting part-time employees: Section 22702 states, "Persons employed on a part-time basis, ... shall receive credit for time served in the proportion that the salary earned bears to the salary that would have been earned if employed full-time...." Therefore section 22701 applies to full-time employees.
- 7 Section 22120, now renumbered 22121, provides, " 'Credited service' means service for which the required contributions have been paid and shall be used in determining a member's eligibility for any allowance provided by this part."
- 8 Equally unpersuasive is Kellogg's argument that STRS is estopped from designating his second full-time position as "overtime" for purposes of calculating his retirement allowance because of "... STRS's intentional delay in informing Kellogg of its position concerning Kellogg's alleged excess pension fund contributions, and its failure to return any of the alleged excess pension fund contributions to Kellogg." *STRS is not required to refund the money until such time as the employee retires.* The statute provides "If at the time of retirement, ... there are contributions remaining to the credit of the member that were made with respect to time on the basis of which the member will not be entitled to receive a benefit, the board shall refund to the member accumulated contributions as it may allocate to the time." (§ 22906, italics added.) Otherwise, the uncontradicted evidence demonstrates STRS audits employers' reports to identify excess contributions, and notifies the county employers in such a situation so the employer may make the necessary adjustments and cease contributing excess, noncreditable salary to STRS. Hough testified STRS had informed LACCD Kellogg's service for that school district was considered noncreditable "overtime." It was up to the district employers, not STRS to make adjustments. Furthermore, counsel for STRS represented, and we accept, that interest will be paid on the amounts improperly withheld under section 22906. Section 22102 provides, " 'Accumulated retirement contributions' means the sum of all member contributions and all member contributions paid by the employer pursuant to Sections 22903 and 22904 with credited interest and does not include accumulated annuity deposit contributions and accumulated tax-sheltered annuity contributions."

**O'Connor v. State Teachers' Retirement System, 43 Cal.App.4th 1610 (1996)**

**51 Cal.Rptr.2d 540, 109 Ed. Law Rep. 844, 96 Cal. Daily Op. Serv. 2193...**

---



# **Exhibit 7**

**§ 22115. Compensation earnable; determination; part-time employees; service credit amount; multiple pay rates; community college employees; provisions not applicable to members subject to the California Public Employees' Pension Reform Act of 2013**

West's Annotated California Codes | Education Code | Effective: January 1, 2015

**Search Details**

---

Jurisdiction: California

**Delivery Details**

---

Date: April 13, 2015 at 7:07 PM

Delivered By: John Jensen

Client ID: MALKENHORST

Status Icons: 

**§ 22115. Compensation earnable; determination; part-time..., CA EDUC § 22115**

---

West's Annotated California Codes
Education Code (Refs & Annos)
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions (Refs & Annos)
Part 13. State Teachers' Retirement System (Refs & Annos)
Chapter 2. Definitions (Refs & Annos)

**West's Ann.Cal.Educ.Code § 22115**

**§ 22115. Compensation earnable; determination; part-time employees; service credit amount; multiple pay rates; community college employees; provisions not applicable to members subject to the California Public Employees' Pension Reform Act of 2013**

**Effective: January 1, 2015**

Currentness

- (a) "Compensation earnable" means the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program.
- (b) The board may determine compensation earnable for persons employed on a part-time basis.
- (c) If service credit for a school year is less than 1.000, compensation earnable shall be the quotient obtained when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).
- (d) If a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least 0.900 of a year, compensation earnable shall be determined as if all service credit for that year had been earned at the highest pay rate. This subdivision shall be applicable only for purposes of determining final compensation. If a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than 0.900 of a year, compensation earnable shall be determined pursuant to subdivision (c).
- (e) If creditable service is not performed on a full-time basis because a member is performing those activities pursuant to paragraph (6) of subdivision (a) of Section 22119.5, compensation earnable for those activities shall be determined as if the creditable compensation had been earned at the lowest pay rate for other creditable service activities performed by the member for the same employer during the same school year.
- (f)(1) Except as provided in subdivision (g), for purposes of determining compensation earnable for a member employed by a community college prior to July 1, 1996, full time shall be defined pursuant to Section 22138.5 and pursuant to Section

**§ 22115. Compensation earnable; determination; part-time..., CA EDUC § 22115**

---

20521 of Title 5 of the California Code of Regulations, as those provisions read on June 30, 1996, if application of that definition will increase the compensation earnable or otherwise enhance the benefits of the member.

(2) For purposes of administering this subdivision, the board shall have the authority to do both of the following:

(A) Establish and implement factors and assumptions necessary to calculate and compare the benefits payable under the definition of compensation earnable described in this subdivision. Those factors and assumptions may be based on information reported by the employer, including, but not limited to, all of the following:

(i) Base hours.

(ii) Actual earnings.

(iii) Compensation earnable.

(B) Review member benefit calculations that were performed using the factors and assumptions described in subparagraph (A). If the board determines that an employer failed to identify part-time service performed, the board shall consider that part-time service to be performed in a part-time lecture assignment as defined by the employer. If the board determines by the review of the member benefit calculations that the required information reported by the employer is inaccurate, incomplete, or the factors and assumptions were applied incorrectly, the board may recalculate member benefits using additional factors and assumptions that may include, but are not limited to, all of the following:

(i) Base hours.

(ii) Actual earnings.

(iii) Compensation earnable.

(3) This subdivision shall apply to a member employed by a community college prior to July 1, 1996, if the community college subsequently acts to reduce the minimum standard for full time as described in subdivision (c) of Section 22138.5 for the class of employees, and that community college provides written notice to the system of the act of the community college to reduce that minimum standard.

(4) This subdivision shall not apply to a member employed by a community college that has not reduced the minimum

**§ 22115. Compensation earnable; determination; part-time..., CA EDUC § 22115**

---

standard as described in subdivision (c) of Section 22138.5.

(g) Subdivision (f) shall not apply to a member subject to the California Public Employees' Pension Reform Act of 2013.

**Credits**

(Added by Stats.1994, c. 933 (A.B.3171), § 5, eff. Sept. 28, 1994; Stats.1994, c. 933 (A.B.3171) § 5.5, eff. Sept. 28, 1994, operative Jan. 1, 1995. Amended by Stats.1995, c. 390 (A.B.1122), § 3, operative July 1, 1996; Stats.1996, c. 634 (S.B.2041), § 8; Stats.1997, c. 482 (S.B.471), § 2; Stats.2000, c. 1021 (A.B.2700), § 3; Stats.2004, c. 442 (A.B.1586), § 1; Stats.2005, c. 22 (S.B.1108), § 32; Stats.2006, c. 654 (S.B.1465), § 1; Stats.2009, c. 304 (S.B.634), § 1; Stats.2013, c. 559 (A.B.1381), § 3; Stats.2014, c. 755 (S.B.1220), § 5, eff. Jan. 1, 2015.)

**Notes of Decisions (2)**

West's Ann. Cal. Educ. Code § 22115, CA EDUC § 22115  
Current with urgency legislation through Ch. 2 of 2015 Reg.Sess.

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

# **Exhibit 8**

## § 22151. Overtime

West's Annotated California Codes | Education Code | Effective: January 1, 2002

### Search Details

---

Jurisdiction: California


### Delivery Details

---

Date: April 13, 2015 at 7:08 PM

Delivered By: John Jensen

Client ID: MALKENHORST

Status Icons: 

**§ 22151. Overtime, CA EDUC § 22151**

---

<b>West's Annotated California Codes</b>
<b>Education Code (Refs &amp; Annos)</b>
<b>Title 1. General Education Code Provisions</b>
<b>Division 1. General Education Code Provisions (Refs &amp; Annos)</b>
<b>Part 13. State Teachers' Retirement System (Refs &amp; Annos)</b>
<b>Chapter 2. Definitions (Refs &amp; Annos)</b>

**West's Ann. Cal. Educ. Code § 22151**

**§ 22151. Overtime**

**Effective: January 1, 2002**

Currentness

"Overtime" means the aggregate creditable service in excess of one year (1.000) of creditable service that is performed by a member in a school year.

**Credits**

(Added by Stats.1994, c. 933 (A.B.3171), § 3, eff. Sept. 28, 1994. Amended by Stats.1998, c. 965 (A.B.2765), § 10; Stats.2000, c. 1025 (A.B.816), § 9; Stats.2001, c. 803 (S.B.501), § 4.)

Notes of Decisions (2)

West's Ann. Cal. Educ. Code § 22151, CA EDUC § 22151

Current with urgency legislation through Ch. 2 of 2015 Reg.Sess.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.



# **Exhibit 9**

## **RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND EMPLOYEES—COMPENSATION**

2006 Cal. Legis. Serv. Ch. 118 (A.B. 2244) (WEST)

### **Search Details**

---

**Jurisdiction:** California


### **Delivery Details**

---

**Date:** May 18, 2015 at 12:36 PM

**Delivered By:** John Jensen

**Client ID:** MALKENHORST

**Status Icons:** 

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

**2006 Cal. Legis. Serv. Ch. 118 (A.B. 2244) (WEST)**

**CALIFORNIA 2006 LEGISLATIVE SERVICE  
2006 Portion of 2005-2006 Regular Session**

**Additions are indicated by Text; deletions by  
\*\*\*. Changes in tables are made but not highlighted.**

**CHAPTER 118  
A.B. No. 2244  
RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND EMPLOYEES—COMPENSATION**

**AN ACT to amend Sections 20475, 20479, 20502, 20636, 20890.1, 20938, 21117, 21118, 21150, 21156, 21225, 21226, 21227, 21229, 21354.3, 21354.4, 21354.5, and 75606 of the Government Code, relating to public employees' retirement.**

**[Filed with Secretary of State July 24, 2006.]**

**LEGISLATIVE COUNSEL'S DIGEST**

**AB 2244, Committee on Public Employees, Retirement and Social Security Public Employees' Retirement System: retirement benefits.**

**(1) Existing law permits a local agency that contracts with the Public Employees' Retirement System for retirement services to classify certain local safety members as "local sheriff" members. Under existing law, that local agency may not establish different retirement benefits for some, but not all, members in specified local safety positions.**

**This bill would revise these provisions to include a local sheriff member as a specified local safety position.**

**(2) Under existing law, the retirement benefits of a member are based, in part, on the compensation earnable received by that member. Existing law provides that "compensation earnable" includes the payrate of a member in a group or class that is the same as the amount paid to similarly situated members of the same group or class.**

**This bill would clarify that the payrate of members in a group or class shall correspond to publicly available pay schedules.**

**(3) Under existing law, a member employed by a local agency may receive credit for prior service with that local agency on the effective date of the contract for retirement services between that local agency and the Public Employees' Retirement System.**

**This bill would additionally provide that a member may receive credit for prior service on the effective date of an amendment to that contract.**

**(4) Existing law prescribes a normal retirement age for members, and if an existing benefit formula is modified or a new benefit formula is enacted, the Public Employees' Retirement System may determine a normal retirement age by regulation. Existing law permits certain state and local miscellaneous members to permanently retire at 55 years of age.**

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

Under existing law, that member may retire under the partial service retirement program at 50 years of age, as specified.

This bill would revise and recast the provisions for the partial service retirement program to be consistent with the normal retirement age for permanent retirement.

(5) Existing law permits, if a member is permanently incapacitated from performing his or her duties in the state service, to retire for disability. Under existing law, "state service," for purposes of compensation, includes service with a local agency.

This bill would revise that provision to permit, instead, a member in the state service, if he or she is permanently incapacitated from performing his or her duties, to retire for disability.

(6) Existing law authorizes a retired member to work for a state agency or other employer under the system without reinstatement from retirement or loss or interruption of retirement benefits, as specified. Under existing law, that authorization is inapplicable to a retired member who is employed by an employer under the system and who, within 12 months prior to that employment, received unemployment insurance compensation following the termination of an appointment with the same employer.

This bill would additionally provide that the authorization is inapplicable to a retired member who receives unemployment insurance compensation and is employed with the California Schools for the Deaf and Blind, a California community college, the California State University, or the University of California.

(7) This bill would make other technical changes to provisions of the Public Employees' Retirement Law and the Judges' Retirement Law.

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

SECTION 1. Section 20475 of the Government Code is amended to read:

<< CA GOVT § 20475 >>

20475. Notwithstanding Section 20474, a contracting agency may amend its contract or previous amendments to its contract, without election among its employees, to reduce benefits, to terminate provisions that are available only by election of the agency to become subject thereto, to provide different benefits or provisions or to provide a combination of those changes with respect to service performed after the effective date of the contract amendment made pursuant to this section, if the contracting agency has fully discharged all of the obligations imposed by Chapter 10 (commencing with Section 3500) of Division 4 of Title I with respect to the contract amendments, and if the amendment provides that:

(a) The contract amendments apply uniformly with respect to all members within each of the following classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, local sheriffs, or all local safety members other than local police officers, local firefighters, \*\*\*county peace officers, or local sheriffs.

(b) A member shall be subject to the contract as amended only if, after the effective date of the contract amendment, the member either (1) receives service credit for the first time within a classification, or (2) the member returns to service within a classification following termination of membership as provided for in subdivision (b) of Section 20340 unless the member has redeposited or elects prior to 90 days after returning to service to redeposit contributions pursuant to Section 20750, in which case the member shall not be subject to the contract amendment.

Amendments to the contract and amendments of previous amendments to the contract may be effected pursuant to this section only once during any three-year period with respect to each of the classifications.

SEC. 2. Section 20479 of the Government Code is amended to read:

<< CA GOVT § 20479 >>

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

20479. Notwithstanding any other provision of law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, no contract or contract amendment shall be made to provide ~~\*\*\*~~retirement benefits for some, but not all members of the following membership classifications: local miscellaneous members, local police officers, local firefighters, county peace officer, local sheriff, or local safety officers.

No contract or contract amendments shall provide different retirement benefits for a subgroup, including, but not limited to, bargaining units or unrepresented groups, within those membership classifications.

This section does not preclude changing membership classification from one membership classification to another membership classification or exclusion of groups of members by contract.

For purposes of this section, the term "benefit" shall not be limited to the benefits set forth in Section 20020.

SEC. 3. Section 20502 of the Government Code is amended to read:

<< CA GOVT § 20502 >>

20502. The contract shall include in this system all firefighters, police officers, county peace officers, local sheriffs, and other employees of the contracting agency, except as exclusions in addition to the exclusions applicable to state employees may be agreed to by the agency and the board. The contract shall not provide for the exclusion of some, but not all, firefighters, police officers, ~~\*\*\*~~county peace officers, or local sheriffs. The exclusions of employees, other than firefighters, police officers, ~~\*\*\*~~county peace officers, or local sheriffs, shall be based on groups of employees such as departments or duties, and not on individual employees. The exclusions of groups may be made by amendments to contracts, with respect to future entrants into the group. The board may disapprove the exclusion of a group, if in its opinion the exclusion adversely affects the interest of this system. Membership in this system is compulsory for all employees included under a contract. This section shall not be construed to supersede Sections 20303 and 20305.

SEC. 4. Section 20636 of the Government Code is amended to read:

<< CA GOVT § 20636 >>

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 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 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.

(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

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

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 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.

(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 employees 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, 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.

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

- (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, 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) Neither "payrate" nor "special compensation" for state members includes 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 which are applied by the employer for any of the following:
- (i) The purchase of a retirement plan which 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 which 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) of this subdivision 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

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

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. 5. Section 20890.1 of the Government Code is amended to read:

<< CA GOVT § 20890.1 >>

20890.1. Past county peace officer service shall be converted to local sheriff service if all of the following apply to the past service:

(a) It was rendered in a position that has subsequently been reclassified as a local sheriff position according to the provisions of Section 20432, 20432.5 or 20432.6.

(b) It was rendered by a current employee of the same agency for which the county peace officer service was performed.

(c) It is credited to an employee who has other local sheriff service credit for service performed with the agency.

SEC. 6. Section 20938 of the Government Code is amended to read:

<< CA GOVT § 20938 >>

20938. Notwithstanding any other provision of this part, credit for prior service shall be granted only to each person who was employed by a contracting agency on the effective date of the agency's contract or amendment to the contract under which that prior service is granted.

This section shall not apply to a contracting agency nor to the employees of a contracting agency, unless the agency elects to be subject to this section by express provision in the contract making the contracting agency subject to this section.

SEC. 7. Section 21117 of the Government Code is amended to read:

<< CA GOVT § 21117 >>

21117. A state miscellaneous member or industrial member, other than a university member, shall be partially retired for service upon his or her written application to the board if he or she has elected to participate in partial service retirement pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6, provided he or she is credited with ~~at least~~ ~~at least~~ 20 years of state service and ~~has~~ attained the applicable normal retirement age as prescribed by regulations of the board.

SEC. 8. Section 21118 of the Government Code is amended to read:

<< CA GOVT § 21118 >>

21118. (a) A local member shall be partially retired for service upon his or her written application to the board if he or she has elected to participate in partial service retirement pursuant to Sections 21110 through 21115, provided, he or she is credited with ~~at least~~ 20 years of state service ~~and~~ and has attained the applicable normal retirement age as prescribed by regulations of the board.

(b) This section shall not apply to a contracting agency or its employees until the contracting agency elects to be subject to it by amendment to its contract made in a manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 9. Section 21150 of the Government Code is amended to read:

<< CA GOVT § 21150 >>

21150. ~~(a)~~ (a) A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076 or Section 21077.

~~(b)~~ (b) A member subject to Section 21076 or Section 21077 who becomes incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with 10 years of state service, regardless of age, except that a member may retire for disability if he or she had five years of state service prior to January 1, 1985.

~~(c)~~ (c) For purposes of this section, "state service" includes service to the state that the member, pursuant to Section 20281.5, did



RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....

---

not receive credit.

SEC. 10. Section 21156 of the Government Code is amended to read:

<< CA GOVT § 21156 >>

21156. If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties ~~\*\*\*~~and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service. The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated. The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

SEC. 11. Section 21225 of the Government Code is amended to read:

<< CA GOVT § 21225 >>

21225. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system as a substitute in a position requiring certification qualifications, pursuant to Section 59007 or 59113 of the Education Code, at the California School for the Deaf or the California School for the Blind, if that service does not exceed a total for all employers of 960 hours in a fiscal year.

(b)(1) This section shall not apply to a retired person otherwise eligible to serve without reinstatement from retirement, if during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

SEC. 12. Section 21226 of the Government Code is amended to read:

<< CA GOVT § 21226 >>

21226. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system as a member of the academic staff of a California community college or of the University of California, if that service does not exceed a total for all employers of 960 hours in a fiscal year.

(b)(1) This section shall not apply to a retired person otherwise eligible to serve without reinstatement from retirement, if during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

SEC. 13. Section 21227 of the Government Code is amended to read:

<< CA GOVT § 21227 >>

21227. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system as a member of the academic staff of a California State University, if that service does not exceed, a total for all employers of 960 hours in a fiscal year or 50 percent of the hours the member was employed during the last fiscal year of service prior to retirement, whichever is less.

(b)(1) This section shall not apply to a retired person otherwise eligible to serve without reinstatement from retirement, if during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

SEC. 14. Section 21229 of the Government Code is amended to read:

<< CA GOVT § 21229 >>

21229. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by a school employer or by the Trustees of the California State University either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing specialized work of limited duration, if that service does not exceed, in a fiscal year, a total of 960 hours for all employers. The retired person's rate of pay for this employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(b)(1) This section shall not apply to a retired person otherwise eligible to serve without reinstatement from retirement, if during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

SEC. 15. Section 21354.3 of the Government Code is amended to read:

<< CA GOVT § 21354.3 >>

21354.3. (a) The combined current and prior service pensions for a local miscellaneous member is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service except service in a category of membership other than that of local miscellaneous member with which the member is entitled to be credited at retirement:

Age at

Retirement	Fraction
50.....	1.000 0
50¼.....	1.012 5
50½.....	1.025 0
50¾.....	1.037 5

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

51.....	1.050 0
51¼.....	1.062 5
51½.....	1.075 0
51¾.....	1.087 5
52.....	1.100 0
52¼.....	1.112 5
52½.....	1.125 0
52¾.....	1.137 5
53.....	1.150 0
53¼.....	1.162 5
53½.....	1.175 0
53¾.....	1.187 5
54.....	1.200 0
54¼.....	1.212

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

	5
54½.....	1.225 0
54¾.....	1.237 5
55.....	1.250 0
55¼.....	1.262 5
55½.....	1.275 0
55¾.....	1.287 5
56.....	1.300 0
56¼.....	1.312 5
56½.....	1.325 0
56¾.....	1.337 5
57.....	1.350 0
57¼.....	1.362 5
57½.....	1.375 0

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

57¾.....	1.387 5
58.....	1.400 0
58¼.....	1.412 5
58½.....	1.425 0
58¾.....	1.437 5
59.....	1.450 0
59¼.....	1.462 5
59½.....	1.475 0
59¾.....	1.487 5
60 and over.....	1.500 0

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars (\$400) per month for all services of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency that enters into a contract after July 1, 1971, and who elects not to be subject to this subdivision or with respect to service rendered after the termination of coverage under the federal system with respect to the coverage group to which the member belongs.

(c) This section shall supersede Sections 21353, 21354, 21354.1, 21354.4, and 21354.5 with respect to a local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

this section.

SEC. 16. Section 21354.4 of the Government Code is amended to read:

<< CA GOVT § 21354.4 >>

21354.4. (a) The combined current and prior service pensions for a local miscellaneous member is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service except service in a category of membership other than that of local miscellaneous member with which the member is entitled to be credited at retirement:

Age at Retirement	Fraction
50.....	1.000 0
50¼.....	1.012 5
50½.....	1.025 0
50¾.....	1.037 5
51.....	1.050 0
51¼.....	1.062 5
51½.....	1.075 0
51¾.....	1.087 5
52.....	1.100 0

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

52¼.....	1.112 5
52½.....	1.125 0
52¾.....	1.137 5
53.....	1.150 0
53¼.....	1.162 5
53½.....	1.175 0
53¾.....	1.187 5
54.....	1.200 0
54¼.....	1.212 5
54½.....	1.225 0
54¾.....	1.237 5
55 and over.....	1.250 0

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars (\$400) per month for all service of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency that enters into a contract after July 1, 1971, and who elects not to be subject to this subdivision or with respect to service rendered after the termination

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

of coverage under the federal system with respect to the coverage group to which the member belongs.

(c) This section shall supersede Sections 21353, 21354, and 21354.1, with respect to a local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 17. Section 21354.5 of the Government Code is amended to read:

<< CA GOVT § 21354.5 >>

21354.5. (a) The combined current and prior service pensions for a local miscellaneous member is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service, except service in a category of membership other than that of a local miscellaneous member, with which the member is entitled to be credited at retirement:

Age at

Retirement	Fraction
50.....	1.000 0
50¼.....	1.017 5
50½.....	1.035 0
50¾.....	1.052 5
51.....	1.070 0
51¼.....	1.087 5
51½.....	1.105 0



**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

51¾.....	1.122 5
52.....	1.140 0
52¼.....	1.157 5
52½.....	1.175 0
52¾.....	1.192 5
53.....	1.210 0
53¼.....	1.227 5
53½.....	1.245 0
53¾.....	1.262 5
54.....	1.280 0
54¼.....	1.297 5
54½.....	1.315 0
54¾.....	1.332 5
55 and over.....	1.350 0

**RETIREMENT AND PENSIONS—PUBLIC OFFICERS AND..., 2006 Cal. Legis. Serv....**

---

(b) The fractions specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars (\$400) per month for all service of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency that enters into a contract after July 1, 1971, and elects not to be subject to this subdivision or with respect to service rendered after the termination of coverage under the federal system with respect to the coverage group to which the member belongs.

(c) This section shall supersede Sections 21353, 21354, 21354.1, and 21354.4 with respect to ~~\*\*~~a local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 18. Section 75606 of the Government Code is amended to read:

<< CA GOVT § 75606 >>

75606. (a) A judge who has filed a declaration of candidacy for election or reelection to a judicial office may not withdraw his or her contributions under Section 75520 until after the election. If a judge is elected or reelected to a judicial office, he or she may not withdraw the contributions until that time as the judge has declined to accept the office or has ceased to hold the office to which he or she has been elected.

(b) A judge who has been appointed, commissioned, or nominated to a judicial office of this state may not withdraw his or her contributions under Section 75520 until the judge has declined to serve or terminated his or her service in the latter office.

CA LEGIS 118 (2006)

# **Exhibit 10**

## **TEACHERS—RETIREMENT**

1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)

### **Search Details**

---

**Jurisdiction:** California

### **Delivery Details**

---

**Date:** April 13, 2015 at 7:06 PM

**Delivered By:** John Jensen

**Client ID:** MALKENHORST

**Status Icons:** 

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)

**CALIFORNIA 1996 LEGISLATIVE SERVICE  
1996 Portion of 1995-96 Regular Session**

Additions are indicated by <<+ Text +>>; deletions by  
<<- \* \* \* ->>. Changes in tables are made but not highlighted.

**CHAPTER 634  
S.B. No. 2041  
TEACHERS—RETIREMENT**

AN ACT to amend Sections 22002, 22006, 22007, 22107, 22108, 22115, 22117, 22120, 22122, 22124, 22126, 22127, 22128, 22129, 22130, 22131, 22132, 22136, 22138.5, 22140, 22143, 22144, 22146, 22148, 22149, 22156, 22158, 22165, 22166, 22171, 22200, 22201, 22207, 22213, 22214, 22215, 22218, 22220, 22221, 22222, 22223, 22224, 22225, 22250, 22251, 22252, 22253, 22254, 22255, 22259, 22301, 22302, 22303, 22303.5, 22304, 22307, 22308, 22309, 22310, 22311, 22313, 22315, 22316, 22317, 22318, 22319, 22321, 22322, 22323, 22324, 22327, 22328, 22329, 22330, 22335, 22358, 22360, 22361, 22362, 22375, 22400, 22450, 22451, 22453, 22454, 22455.5, 22456, 22457, 22458, 22459, 22460, 22461, 22500, 22510, 22511, 22513, 22514, 22515, 22516, 22601, 22602, 22604, 22650, 22651, 22653, 22655, 22656, 22657, 22658, 22659, 22661, 22662, 22663, 22664, 22665, 22700, 22703, 22705, 22706, 22709, 22711, 22713, 22714, 22715, 22716, 22717, 22718, 22719, 22720, 22721, 22800, 22801, 22802, 22803, 22805, 22806, 22808, 22809, 22810, 22900, 22901, 22903, 22904, 22906, 22907, 22950, 22951, 22952, 22953, 22956, 23000, 23001, 23004, 23004.5, 23008, 23009, 23101, 23102, 23103, 23104, 23106, 23107, 23200, 23201, 23202, 23203, 23300, 23302, 23303, 23304, 23401, 23700, 23702, 23800, 23804, 23850, 23851, 23854, 23859, 23880, 23881, 24001, 24003, 24004, 24005, 24011, 24012, 24013, 24014, 24015, 24018, 24100, 24101, 24102, 24103, 24104, 24105, 24107, 24110, 24111, 24112, 24113, 24114, 24116, 24117, 24119, 24201, 24202, 24203, 24204, 24205, 24207, 24208, 24209, 24210, 24214, 24215, 24216, 24219, 24300, 24301, 24302, 24303, 24304, 24305, 24306, 24306.5, 24307, 24309, 24310, 24400, 24401, 24405, 24406, 24407, 24408, 24409, 24410, 24411, 24412, 24415, 24500, 24501, 24504, 24505, 24603, 24604, 24605, 24606, 24607, 24608, 24609, 24610, 24611, 24612, 24613, 24614, 24615, 24616, 24617, 24620, 24700, 24701, 24702, 24703, 24704, 24706, 24751, 24950, 24951, 25000, and 25001 of, to add Sections 22110.1, 22110.2, 22110.5, 22122.4, 22122.5, 22146.5, 22155.5, 22161.5, 22162.5, 22201.2, 22201.3, 22501, 22601.5, and 22712.5 to, to repeal Sections 22125, 22164, 22334, and 22654 of, and to repeal and add Sections 22163, 22306, and 22501 of, the Education Code, relating to school employees.

[Approved by Governor September 19, 1996.]

[Filed with Secretary of State September 19, 1996.]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 2041, Hughes. School employees: retirement.

(1) The State Teachers' Retirement Law prescribes the rights and benefits of members of the State Teachers' Retirement System.

This bill would delete, redefine, and define various terms for purposes of determining rights and benefits under that system, including providing that the name of the system is the "State Teachers' Retirement System Defined Benefit Plan." The bill would make corresponding changes in some of the provisions of the law.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

(2) Existing law prescribes the membership of the Teachers' Retirement Board.

This bill would provide that certain members of the board appointed by the Governor may be participants in the Cash Balance Plan or members of the system.

(3) The State Teachers' Retirement Law prescribes service and disability retirement benefits for members of the State Teachers' Retirement System.

This bill would require the Teachers' Retirement Board to consider, in determining whether a disabled member has good cause to fail to follow a medical treatment program, whether the medical condition has worsened. The bill would recast provisions relating to the reinstatement of a member who is retired for disability.

(4) The bill would delete a limitation upon part-time employment by academic employees of school and community college districts and the California State University who are older than 70 years of age.

(5) The State Teachers' Retirement Law defines various terms for purposes of administering the provisions of the State Teachers' Retirement System.

This bill would define additional terms and make other technical changes.

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

SECTION 1. Section 22002 of the Education Code is amended to read:

<< CA EDUC § 22002 >>

22002. The Legislature recognizes that the assets of the State Teachers' Retirement System are insufficient to meet the obligations of that system already accrued or to accrue in the future in respect to service credited to members of that system prior to July 1, 1972. Therefore, the Legislature declares the following policies in respect to the financing of the State Teachers' Retirement System:

- (a) Members shall << \* \* \* >> contribute a percentage of salaries earned << +, unless otherwise specified in this part >>.
- (b) << \* \* \* >> << +Employers >> shall contribute a percentage of total salaries on which member contributions are based.
- (c) The state shall contribute a sum certain for a given number of years for the purpose of payment of benefits.

SEC. 2. Section 22006 of the Education Code is amended to read:

<< CA EDUC § 22006 >>

22006. The right of a person to an annuity << \* \* \* >> or a retirement allowance, to the return of contributions, the annuity, << \* \* \* >> or retirement allowance itself, any optional benefit, any other right or benefit accrued or accruing to any person under this part, and the moneys in the fund created under this part are not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this part.

SEC. 3. Section 22007 of the Education Code is amended to read:

<< CA EDUC § 22007 >>

22007. The obligations of any member << \* \* \* >>, or the member's beneficiaries, to this system << +and the plan >> continue throughout membership, and thereafter until all of the obligations of this system << +and the plan >> to or in respect to the member or the member's beneficiaries have been discharged.

SEC. 4. Section 22107 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 22107 >>

22107. "Beneficiary" means any person or entity receiving or entitled to receive <<-\* \* \*->><<+an allowance and payment+>> pursuant to this part because of the <<+disability or+>> death of a member<<-\* \* \*->>.

SEC. 5. Section 22108 of the Education Code is amended to read:

<< CA EDUC § 22108 >>

22108. <<-\* \* \*->><<+"Benefit" or "b+>>enefits" means any monthly payment due a <<-\* \* \*->><<+retired member, disabled member+>>, or <<-\* \* \*->>beneficiary, and includes lump-sum payments due on account of death.

SEC. 6. Section 22110.1 is added to the Education Code, to read:

<< CA EDUC § 22110.1 >>

22110.1. "Cash Balance Plan" means the State Teachers' Retirement System Cash Balance Plan as set forth in Part 14 (commencing with Section 26000).

SEC. 6.5. Section 22110.2 is added to the Education Code, to read:

<< CA EDUC § 22110.2 >>

22110.2. "Credential," "credentials," and "certificate" mean any life diploma, credential, certificate, or other document provided for, by, and issued pursuant to the laws of the state that authorize service in the public school system of this state.

SEC. 7. Section 22110.5 is added to the Education Code, to read:

<< CA EDUC § 22110.5 >>

22110.5. "Certificated" means the holding by a person of a credential that is required by the laws of the state to be held as a condition to valid employment in the position in which the person is employed.

SEC. 8. Section 22115 of the Education Code is amended to read:

<< CA EDUC § 22115 >>

22115. (a) "Compensation earnable" means the annual compensation that a person would earn if he or she were employed on a full-time basis and <<+if that person+>> worked full time in that position.

(b) The board may determine compensation earnable for persons employed on a part-time basis.

(c) For purposes of determining final compensation for persons employed on a part-time basis, compensation earnable shall be determined by dividing the compensation earned by the service credit.

SEC. 9. Section 22117 of the Education Code is amended to read:

<< CA EDUC § 22117 >>

22117. "Contribution rate for additional service credit" means the contribution rate adopted by the board <<-\* \* \*->><<+for the+>> purchase <<+ of+>> service credit. This rate shall be based upon the most recent valuation of the system and increased to include any subsequently required contribution rates designated for funding subsequent allowance increases.

SEC. 10. Section 22120 of the Education Code is amended to read:

<< CA EDUC § 22120 >>

22120. "Credited interest" <<+means+>> interest that is credited to members' accounts at a rate set annually by the board.

SEC. 11. Section 22122 of the Education Code is amended to read:

<< CA EDUC § 22122 >>

22122. "Custodian" as used in Section 22359, <<+means+>> any bank or trust company that serves as custodian for safekeeping, delivery, securities valuation, investment performance reporting, and other services in connection with investment of the fund.

SEC. 12. Section 22122.4 is added to the Education Code, to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 22122.4 >>

22122.4. "Death payment" means the amount payable upon the death of a member pursuant to Section 23801, 23851, or 23880.

SEC. 13. Section 22122.5 is added to the Education Code, to read:

<< CA EDUC § 22122.5 >>

22122.5. "Defined Benefit Plan" means the State Teachers' Retirement System Defined Benefit Plan as set forth in this part.

SEC. 14. Section 22124 of the Education Code is amended to read:

<< CA EDUC § 22124 >>

22124. "Dependent parent" means a natural parent of a member, or a parent who adopted the member prior to the earlier of the occurrence of the member's marriage or his or her attaining 18 years of age, and who was receiving one-half <<+or more+>> of his or her support from the member at the time of the member's death.

<< Repealed: CA EDUC § 22125 >>

SEC. 15. Section 22125 of the Education Code is repealed.

SEC. 16. Section 22126 of the Education Code is amended to read:

<< CA EDUC § 22126 >>

22126. "Disability" or "disabled" means any medically determinable physical or mental impairment that is permanent or that can be expected to last continuously for at least 12 months, measured from the onset of the disability, but no earlier than the day following the last day of <<-\* \* \*->><<+ service+>> that prevents a member from performing the member's usual duties for the member's employer, the member's usual duties for the member's employer with reasonable modifications, or the duties of a comparable level position for which the member is qualified or can become qualified within a reasonable period of time by education, training, or experience. Any impairment from a willful self-inflicted injury shall not constitute a disability.

SEC. 17. Section 22127 of the Education Code is amended to read:

<< CA EDUC § 22127 >>

22127. "Disability allowance" means <<-\* \* \*->><<+the amount+>> payable to a <<-\* \* \*->><<+disabled member on a monthly basis+>>.

SEC. 18. Section 22128 of the Education Code is amended to read:

<< CA EDUC § 22128 >>

22128. "Early retirement" and "early retirement age" mean age 55 years <<+ which+>> is the plan age upon attainment of which the member becomes eligible for a service retirement allowance with reduction because of age and without special qualifications.

SEC. 19. Section 22129 of the Education Code is amended to read:

<< CA EDUC § 22129 >>

22129. "Educational institution" <<+means+>> any accredited public or private institution whose primary purpose is to provide classroom teaching and includes a high school, trade or vocational school or college, community college, or other college or university.

SEC. 20. Section 22130 of the Education Code is amended to read:

<< CA EDUC § 22130 >>

22130. "Effective date" means the date <<-\* \* \*->><<+upon which the benefit becomes payable+>>.

SEC. 21. Section 22131 of the Education Code is amended to read:



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 22131 >>

22131. "Employer" or "employing agency" means the state or any agency or political subdivision thereof << \* \* \* >> <<+for which creditable service subject to coverage by the plan is performed+>>.

SEC. 21.5. Section 22132 of the Education Code is amended to read:

<< CA EDUC § 22132 >>

22132. << \* \* \* >> <<+"Employed" or "e+>>employment" means employment << \* \* \* >> <<+to perform creditable service subject to coverage by the State Teachers' Retirement System Defined Benefit Plan+>>.

SEC. 22. Section 22136 of the Education Code is amended to read:

<< CA EDUC § 22136 >>

22136. (a) "Final compensation" with respect to a member whose salary << \* \* \* >> <<+while an active member was+>> reduced because of a reduction in school funds means the highest average annual compensation earnable by the member during any three years << \* \* \* >> <<+while employed to perform creditable service subject to coverage by the plan+>> if the member elects to be subject to this section.

(b) For the purposes of this section, a year shall be considered to be a period of 12 consecutive months.

SEC. 23. Section 22138.5 of the Education Code is amended to read:

<< CA EDUC § 22138.5 >>

22138.5. (a) "Full-time" means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, "full time" shall not be less than the minimum standards specified in this section.

(b) The minimum standard for full time in kindergarten through grade 12 shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year except as provided in paragraph (2).

(2)(A) One hundred ninety days per year or 1,520 hours per year for all <<+ principals and+>> program managers << \* \* \* >> <<+, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs,+>> and for administrators except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the board for administrators at a county office of education.

(c) The minimum standard for full time in community colleges shall be:

(1) Thirty teaching units per year of not less than 35 weeks in duration for annual or hourly employment; or 175 days per year for daily employment. Full time shall include time for duties the employer requires to be performed as part of the full-time assignment in a particular classification, even if that time is not included in the expression of teaching units.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the board for administrators at a district office.

(d) The minimum standard for full time in adult education programs in any school district or community college district shall be 30 hours per week for 35 weeks per year, or 1,050 hours per year.

(e) The board shall have final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified herein.

SEC. 23.5. Section 22140 of the Education Code is amended to read:

<< CA EDUC § 22140 >>

22140. "Improvement factor" means an increase of 2 percent in benefits for each year commencing on September 1, following the first anniversary of the effective <<+date of+>> retirement << \* \* \* >>, or the date on which <<+the+>> monthly benefits commenced to accrue to any beneficiary other than a << \* \* \* >> <<+retired member+>> or other periods specifically stated in this part. The factor shall not be compounded nor shall it be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions. The Legislature reserves the right to adjust the amount of the improvement factor up or down as economic conditions dictate. No adjustments of the

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

improvement factor shall reduce the monthly retirement allowance or benefit below that which would be payable to the recipient under this part had this section not been enacted.

SEC. 24. Section 22143 of the Education Code is amended to read:

<< CA EDUC § 22143 >>

22143. "Investment manager" and "investment adviser" mean any person, firm, or custodian referred to in Section 22359, either appointed by or under contract with the board to engage in investment transactions or to manage or advise in the management of the assets of the Teachers' Retirement Fund <<+and the Cash Balance Fund under Part 14 (commencing with Section 26000)+>>.

SEC. 25. Section 22144 of the Education Code is amended to read:

<< CA EDUC § 22144 >>

22144. "Investment transactions" means investment services of an asset management or investment advisory nature and may include advisory services, research material, trading assistance, trading expenses, discretionary management of funds of the <<+plan+>> upon approval by the board, acquisition of equipment to be used as part of the investment function, services that provide a recommended course of action or personal expertise, investment-related legal expenses, investment-related contracting expenses, or custodian services referred to in Section 22359.

SEC. 26. Section 22146 of the Education Code is amended to read:

<< CA EDUC § 22146 >>

22146. <<-\* \* \*->>"Member" means any person, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 <<-\* \* \*->>and has earned compensation for that service and has not received a refund for that service. A member's rights and obligations under this part shall be determined by the applicability of subdivision (a), (b), (c), or (d)<<-\* \* \*->>, unless the member's rights and obligations are determined under other provisions of this part.

<<+(a)+>> An active member is a member who <<+is not retired or disabled and who+>> earns compensation during the school year.

<<+(b)+>> An inactive member is a member who <<+is not retired or disabled and who+>>, by the pay period ending June 30, has not earned compensation during the school year.

<<+(c)+>> A disabled member is a member to whom a disability allowance is payable under Section 24006.

<<+(d)+>> A retired member is a member who has terminated employment and has retired for service under the provisions of Section 24204 or has retired for disability under the provisions of Section 24105, and to whom a retirement allowance is therefore payable.

SEC. 27. Section 22146.5 is added to the Education Code, to read:

<< CA EDUC § 22146.5 >>

22146.5. "Membership" means membership in the Defined Benefit Plan, except as otherwise specifically provided in this part.

SEC. 28. Section 22148 of the Education Code is amended to read:

<< CA EDUC § 22148 >>

22148. "Normal retirement" and "normal retirement age" mean age 60 years <<-\* \* \*->><<+which is+>> the plan age upon attainment of which the member becomes eligible for a service retirement allowance without reduction because of age and without special qualifications.

SEC. 29. Section 22149 of the Education Code is amended to read:

<< CA EDUC § 22149 >>

22149. "Option beneficiary" means a person designated to receive an actuarially reduced retirement allowance upon a <<-\* \* \*->>member's death.

SEC. 18. Section 22155.5 is added to the Education Code, to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 22155.5 >>

22155.5. "Plan" means the State Teachers' Retirement System Defined Benefit Plan as set forth in this part.  
SEC. 32. Section 22156 of the Education Code is amended to read:

<< CA EDUC § 22156 >>

22156. "Plan vesting" means the rights of the member upon completion of the minimum number of required years of credited service provided in the retirement plan to entitle the member or his or her beneficiary to a monthly retirement allowance, disability allowance, survivor, family or death benefit at a future date, prior to the completion of which the member upon resignation from service is entitled only to a refund of his or her accumulated <<+retirement+>> contributions as provided in this part.

SEC. 33. Section 22158 of the Education Code is amended to read:

<< CA EDUC § 22158 >>

22158. "Projected service" means the credited service plus the service which would have been earned had the member <<-\* \* \*->>continued to earn credited service to the earlier of normal retirement age or the date the disability allowance is terminated at the same rate as the highest of any one of the three school years immediately preceding death or the date <<+the+>> disability allowance began to accrue.

SEC. 34. Section 22161.5 is added to the Education Code, to read:

<< CA EDUC § 22161.5 >>

22161.5. "Refund" means a lump-sum return of the member's accumulated retirement contributions.

SEC. 35. Section 22162.5 is added to the Education Code, to read:

<< CA EDUC § 22162.5 >>

22162.5. "Regular meeting" means a meeting of the board held in accordance with a schedule of meetings that states the dates and places of the meetings and that is adopted by the board.

<< Repealed: CA EDUC § 22163 >>

SEC. 36. Section 22163 of the Education Code is repealed.

SEC. 37. Section 22163 is added to the Education Code, to read:

<< CA EDUC § 22163 >>

22163. "Reinstatement" means the termination of a service or disability retirement allowance and establishing status as an inactive member if service is not subsequently performed or establishing status as an active member if service is subsequently performed.

<< Repealed: CA EDUC § 22164 >>

SEC. 38. Section 22164 of the Education Code is repealed.

SEC. 39. Section 22165 of the Education Code is amended to read:

<< CA EDUC § 22165 >>

22165. "Retirement" means <<-\* \* \*->><<+termination of status as an inactive member or an active member to receive+>> a retirement allowance.

SEC. 40. Section 22166 of the Education Code is amended to read:

<< CA EDUC § 22166 >>

22166. "Retirement allowance" means the <<-\* \* \*->><<+amount+>> payable to a <<-\* \* \*->><<+retired member or

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

an+>> option beneficiary <<+on a monthly basis+>>.

SEC. 41. Section 22171 of the Education Code is amended to read:

**<< CA EDUC § 22171 >>**

22171. "Spouse" means a person who was married to the member <<+for a continuous period beginning+>> at least 12 months prior to the death of the member unless a child is born to the <<-\* \* \*->><<+member and his or her spouse+>> within the 12-month period or <<+unless+>> the <<-\* \* \*->> spouse is carrying the member's unborn child.

SEC. 42. Section 22200 of the Education Code is amended to read:

**<< CA EDUC § 22200 >>**

22200. (a) The system is managed by the Teachers' Retirement Board. The members of the board are as follows:

(1) The Superintendent of Public Instruction.

(2) The Controller.

(3) The Treasurer.

(4) The Director of Finance.

(5) One <<+person+>> who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(6) Three <<+persons who are+>> members of the <<-\* \* \*->><<+Defined Benefit Plan or participants of the Cash Balance Plan+>>, as follows:

(A) Two <<+persons+>> who, at the time of appointment, are classroom teachers in kindergarten or grades I through 12.

(B) One <<+person+>> who, at time of appointment, is a community college instructor with expertise in the areas of business or economics or both business and economics and who shall be appointed by the Governor for a term of four years from a list submitted by the Board of Governors of the California Community Colleges.

<<-\* \* \*->>

<<+(7) One person who is a retired member of the Defined Benefit Plan or a participant receiving an annuity under the Cash Balance Plan.+>>

(8) One officer of a life insurance company appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(9) One officer of a bank or a savings and loan institution who has had at least five years of broad professional investment experience handling various asset classes such as stocks, bonds, and mortgage investments and who shall be appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(10) One <<+person+>> representing the public, appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(b) The members of the board described in paragraphs (5) and (7) and subparagraph (A) of paragraph (6) of subdivision (a) shall be appointed by the Governor for four-year terms from a list submitted by the Superintendent of Public Instruction.

(c) The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 43. Section 22201 of the Education Code is amended to read:

**<< CA EDUC § 22201 >>**

22201. (a) The board shall set policy <<-\* \* \*->><<+and shall have+>> the sole power and authority to hear and determine all facts pertaining to application for benefits under the <<+plan+>> or any matters pertaining to the administration of the system.

(b) The board shall meet at least once every calendar quarter <<+at such times as it may determine. The meetings shall be presided over by the chairperson. In the event of the chairperson's absence from a meeting the vice chairperson shall act as presiding officer and perform all other duties of the chairperson+>>.

SEC. 44. Section 22201.2 is added to the Education Code, to read:

**<< CA EDUC § 22201.2 >>**

22201.2. A quorum of the board shall consist of the majority of the board members. In determining whether or not a quorum is present, vacant positions on the board shall not be considered. The concurrence of the majority of the board members present shall be necessary to the validity of any action taken by the board.

SEC. 45. Section 22201.3 is added to the Education Code, to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 22201.3 >>

22201.3. The chief executive officer of the system shall act as secretary of the board and shall have charge of all board correspondence and shall keep a record of board proceedings.

SEC. 46. Section 22207 of the Education Code is amended to read:

<< CA EDUC § 22207 >>

22207. The board shall perform any other acts necessary for the administration of the system <<+and the plan+>> in carrying into effect the provisions of this part.

SEC. 47. Section 22213 of the Education Code is amended to read:

<< CA EDUC § 22213 >>

22213. The board shall regulate the duties of <<+employers and+>> employing agencies and other public authorities, imposed upon them by this part, and shall require reports from <<-\* \* \*->><<+employers,+>> employing agencies and <<+other public+>> authorities as it deems advisable in connection with the performance of its duties.

SEC. 48. Section 22214 of the Education Code is amended to read:

<< CA EDUC § 22214 >>

22214. The board may take any action it deems necessary to ensure the continued right of <<-\* \* \*->><<+members+>> or beneficiaries <<-\* \* \*->>to receive monthly payments.

SEC. 49. Section 22215 of the Education Code is amended to read:

<< CA EDUC § 22215 >>

22215. The board shall determine the service performed by members to be credited toward qualification for retirement, and shall fix <<-\* \* \*->>and modify <<-\* \* \*->>allowances <<+provided under this part+>>.

SEC. 50. Section 22218 of the Education Code is amended to read:

<< CA EDUC § 22218 >>

22218. The board shall establish and maintain <<-\* \* \*->>records and accounts following recognized accounting principles and controls.

SEC. 51. Section 22220 of the Education Code is amended to read:

<< CA EDUC § 22220 >>

22220. The board <<+may+>> subpoena witnesses and compel their attendance to testify before it.

SEC. 52. Section 22221 of the Education Code is amended to read:

<< CA EDUC § 22221 >>

22221. The board shall adopt, upon the recommendation of the actuary of the system, any mortality and other tables and interest rates necessary to do <<-\* \* \*->>the following:

- (a) Permit valuation of the assets and liabilities of the system.
- (b) Make any determination or calculation necessary to carry out this part.

SEC. 53. Section 22222 of the Education Code is amended to read:

<< CA EDUC § 22222 >>

22222. The board may adjust the amounts of the death <<+payments+>> based on changes in the All Urban California Consumer Price Index, provided that the most recent actuarial valuation report indicates that the adjustment would not increase the normal cost.

SEC. 53.5. Section 22223 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 22223 >>**

22223. The members of the board who are not members of the << \* \* \* >> <<+ Defined Benefit Plan or participants of the Cash Balance Plan+>> and who are appointed by the Governor pursuant to Section 22200 shall receive one hundred dollars (\$100) for every day of actual attendance at meetings of the board or any meeting of any committee of the board of which the person is a member, and that is conducted for the purpose of carrying out the powers and duties of the board, together with their necessary traveling expenses incurred in connection with performance of their official duties.

SEC. 54. Section 22224 of the Education Code is amended to read:

**<< CA EDUC § 22224 >>**

22224. Members of the << \* \* \* >> <<+Defined Benefit Plan and participants of the Cash Balance Plan+>>, who are either appointed to the board by the Governor pursuant to Section 22200, or who are appointed by the board to serve on a committee or <<+subcommittee of the board or a+>> panel of the system, shall be granted, by << \* \* \* >> <<+his or her+>> employer, sufficient time away from regular duties, without loss of <<+ compensation+>> or other benefits to which the <<+person+>> is entitled by reason of employment, to attend meetings of the board << \* \* \* >> or any << \* \* \* >> <<+of its committees or subcommittees+>> of which the <<+person+>> is a member, or to serve as a member of a panel of the system, and to attend to the duties << \* \* \* >> <<+expected to be performed by the person+>>.

SEC. 55. Section 22225 of the Education Code is amended to read:

**<< CA EDUC § 22225 >>**

22225. (a) The compensation of the members of the << \* \* \* >> <<+Defined Benefit Plan and participants of the Cash Balance Plan+>> who are appointed to the board, or by the board to a committee or subcommittee, or to a panel of the system, shall not be reduced by << \* \* \* >> <<+his or her employer+>> for any absence from service occasioned by attendance upon the business of the board, pursuant to Section 22224.

(b) Each << \* \* \* >> <<+employer+>> that employs a member <<+of the Defined Benefit Plan or a participant of the Cash Balance Plan+>> appointed pursuant to Section 22224 and that employs a person to replace the member <<+ or participant+>> during attendance at meetings of the board, << \* \* \* >> <<+its+>> committees or subcommittees << \* \* \* >>, or when serving as a << \* \* \* >> member of <<+a panel of+>> the system, << \* \* \* >> or when carrying out other duties approved by the board, shall be reimbursed from the retirement fund for the cost incurred by employing a replacement.

SEC. 56. Section 22250 of the Education Code is amended to read:

**<< CA EDUC § 22250 >>**

22250. The board and its officers and employees <<+of the system+>> shall discharge their duties with respect to the system <<+and the plan+>> solely in the interest of the members << \* \* \* >> and beneficiaries as follows:

(a) For the exclusive purpose of the following:

(1) Providing benefits to members << \* \* \* >> <<+and+>> beneficiaries.

(2) Defraying reasonable expenses of administering the plan.

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(c) By diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(d) In accordance with the documents and instruments governing the system insofar as those documents and instruments are consistent with this part.

SEC. 57. Section 22251 of the Education Code is amended to read:

**<< CA EDUC § 22251 >>**

22251. (a) Except as provided in subdivision (b), the assets of the <<+ plan+>> shall never inure to the benefit of << \* \* \* >> <<+an employer+>> and shall be held for the exclusive purposes of providing benefits to members << \* \* \* >> and beneficiaries and defraying reasonable expenses of administering the system.

(b) In the case of a contribution that is made by << \* \* \* >> <<+an employer+>> by a mistake of fact, subdivision (a) shall not prohibit the return of that contribution within one year after the system knows, or should know in the ordinary course of business, that the contribution was made by a mistake of fact.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

SEC. 58. Section 22252 of the Education Code is amended to read:

**<< CA EDUC § 22252 >>**

22252. Except as otherwise provided by law, the board and <<+its+>> officers and employees <<+of the system+>> shall not cause the system to engage in a transaction if they know or should know that the transaction constitutes a direct or indirect:

- (a) Sale or exchange, or leasing, of any property from the system to a member <<-\* \* \*->> or beneficiary for less than adequate consideration, or from a member <<-\* \* \*->> or beneficiary to the system for more than adequate consideration.
- (b) Lending of money or other extension of credit from the system to a member <<-\* \* \*->> or beneficiary without the receipt of adequate security and a reasonable rate of interest, or from a member <<-\* \* \*->> or beneficiary with the provision of excessive security or an unreasonably high rate of interest.
- (c) Furnishing of goods, services, or facilities from the system to a member <<-\* \* \*->> or beneficiary for less than adequate consideration, or from a member, retirant, or beneficiary to the system for more than adequate consideration.
- (d) Transfer to, or use by or for the benefit of, a member <<-\* \* \*->> or beneficiary of any assets of the <<+plan+>> for less than adequate consideration.
- (e) Acquisition, on behalf of the system, of any <<-\* \* \*->><<+ employer+>> security, real property, or loan.

SEC. 59. Section 22253 of the Education Code is amended to read:

**<< CA EDUC § 22253 >>**

22253. The board and its officers and employees <<+of the system+>> shall not do any of the following:

- (a) Deal with the assets of the system in their own interest or for their own account.
- (b) In their individual or in any other capacity, act in any transaction involving the system on behalf of a party, or represent a party, whose interests are adverse to the interests of the <<+plan+>> or the interests of <<+the+>> members <<-\* \* \*->> and beneficiaries.
- (c) Receive any consideration for their personal account from any party <<-\* \* \*->><<+conducting business+>> with the system in connection with a transaction involving the assets of the <<+plan+>>.

SEC. 60. Section 22254 of the Education Code is amended to read:

**<< CA EDUC § 22254 >>**

22254. (a) Any <<+board+>> member <<-\* \* \*->><<+or officer+>> who breaches any of the responsibilities, obligations, or duties imposed upon them by Section 22251, 22252, or 22253 shall be personally liable to make <<+ restitution+>> to the retirement fund <<+for+>> any losses to it resulting from each breach, and to restore any profits that have been made through use of assets of the fund and shall be subject to any other equitable or remedial relief the court may deem appropriate, including removal <<+ from+>> the board<<-\* \* \*->>.

(b) No board member or officer shall be liable with respect to a breach of fiduciary duty under this part if the breach was committed before the board member or officer became one, or ceased to be one.

SEC. 61. Section 22255 of the Education Code is amended to read:

**<< CA EDUC § 22255 >>**

22255. (a) No board member or officer shall be personally liable for the breach of a fiduciary duty except as set forth in Section 22254 or 22256. This subdivision shall apply only to causes of actions arising on or after January 1, 1990.

(b) Nothing in this section shall be interpreted to lessen the scope of liability of <<+board+>> members <<-\* \* \*->> or employees of the system for gross negligence or fraud in the investment of the retirement fund assets, nor to lessen the scope of liability of the <<+board or+>> system for breach of fiduciary duty pertaining to the administration of <<-\* \* \*->><<+the plan+>>.

SEC. 62. Section 22259 of the Education Code is amended to read:

**<< CA EDUC § 22259 >>**

22259. (a) All <<+board+>> members <<-\* \* \*->> and <<-\* \* \*->> officers and employees <<+of the system+>> shall execute a fidelity bond, in an amount determined by the board to be prudent, conditioned upon the faithful performance of the duties of the <<+board+>> member or employee.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

(b) All <<+board+>> members <<-\* \* \*->>and <<-\* \* \*->>officers and all staff of the investment division who are authorized to invest funds shall be covered with fiduciary liability insurance in an amount determined by the board to be prudent.

SEC. 63. Section 22301 of the Education Code is amended to read:

<< CA EDUC § 22301 >>

22301. The chief executive officer has the authority and responsibility for the administration of the system <<+and the plan+>> pursuant to the policies and rules adopted by the board. <<-\* \* \*->><<+The chief executive officer+>> may delegate to his or her subordinates any act or duty unless the board by motion or resolution recorded in its minutes has required <<-\* \* \*->><<+the chief executive officer+>> to act personally.

SEC. 64. Section 22302 of the Education Code is amended to read:

<< CA EDUC § 22302 >>

22302. (a) The board shall establish an ombudsman position to serve as an advocate for the members of the <<+plan+>>. The duties of the ombudsman position shall include reviewing and making recommendations to the chief executive officer regarding complaints by school employees, members, <<-\* \* \*->>employee organizations, <<-\* \* \*->>the Legislature, or <<-\* \* \*->>the public regarding actions of the <<+employees+>> of the system.

(b) It is the intent of the Legislature that the salary of the position of ombudsman be offset, as much as possible, through savings realized <<-\* \* \*->><<+from a+>> reduction in interest payments on delinquent benefits to members, and through a more efficient and improved public relations program.

SEC. 65. Section 22303 of the Education Code is amended to read:

<< CA EDUC § 22303 >>

22303. Due to an increase in the demand for retirement counseling services, the system, notwithstanding any other provision of law, may contract with a county superintendent or other <<-\* \* \*->><<+employer+>> to provide retirement counseling<<-\* \* \*->><<+. R+>>etired public employees <<+ may be employed+>> on a part-time basis for that purpose, unless and until the study required by subdivision (b) of Section 7 of Chapter 1532 of the Statutes of 1985 recommends against the employment of retired public employees for these purposes. This authorization is subject to the availability of funds appropriated for that purpose in the annual Budget Act.

SEC. 66. Section 22303.5 of the Education Code is amended to read:

<< CA EDUC § 22303.5 >>

22303.5. (a) Notwithstanding any other provision of law, the board shall offer a midcareer retirement information program for the benefit of all members.

(b) In implementing this section, the board shall develop plans for the development and delivery of information to enhance awareness of the features, benefits, and services of the system, federal Social Security Act programs and benefits as they apply to members, and awareness of personal planning responsibilities. This information shall be provided to assist members in understanding the importance of financial, legal, estate, and personal planning, and how choices and options offered by the system may impact retirement.

<<-\* \* \*->>

<<+(c)+>> The board, at a public meeting, <<+may+>> assess a participation fee for the recovery of all startup and ongoing expenses of the midcareer information program.

SEC. 67. Section 22304 of the Education Code is amended to read:

<< CA EDUC § 22304 >>

22304. The costs of administration of the <<+plan+>> shall be paid from the retirement fund and those costs may not exceed the amount made available by law during any fiscal period.

<< Repealed: CA EDUC § 22306 >>

SEC. 68. Section 22306 of the Education Code is repealed.



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

SEC. 69. Section 22306 is added to the Education Code, to read:

<< CA EDUC § 22306 >>

22306. (a) Information filed with the system by a member or beneficiary is confidential and shall be used by the system for the sole purpose of carrying into effect the provisions of this part. No official or employee of the system who has access to the individual records of a member or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

- (1) To the member or beneficiary to whom the information relates.
- (2) To the authorized representative of the member or beneficiary.
- (3) To the governing board of the member's current or former employer.
- (4) To any department, agency, or political subdivision of this state.
- (5) To other individuals as necessary to locate a person to whom a benefit may be payable.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the member to those persons who may provide information necessary for the distribution of benefits.

(c) The information is not open to inspection by anyone except the board and its officers and employees of the system, and any person authorized by the Legislature to make inspections.

SEC. 70. Section 22307 of the Education Code is amended to read:

<< CA EDUC § 22307 >>

22307. (a) The board may authorize the transfer and disbursement of funds from the retirement fund for the purpose of carrying into effect this part upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(b) Notwithstanding Section 13340 of the Government Code, the board may disburse funds for the payment of benefits to << \* \* \* >> and beneficiaries, for the payment of refunds and for investment transactions and these funds shall not be required to be appropriated through the annual Budget Act. Funds for the payment of administrative expenses are not continuously appropriated, and shall be appropriated by the annual Budget Act.

SEC. 71. Section 22308 of the Education Code is amended to read:

<< CA EDUC § 22308 >>

22308. (a) Subject to subdivision (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any member << \* \* \* >> or beneficiary << \* \* \* >>, provided that all of the following facts exist:

(1) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(2) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

(b) Failure by a member << \* \* \* >> or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(c) Subject to subdivision (d), the board may correct all actions taken as a result of errors or omissions of the employer or this system.

(d) The duty and power of the board to correct errors and omissions, as provided in this section, shall terminate upon the expiration of obligations of << \* \* \* >> << the board, >> system << , and plan >> to the party seeking correction of the error or omission, as those obligations are defined by Section 22008.

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) are adjusted to be the same that they would have been if the act that << was taken or >> would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a), (b), and (c) cannot be adjusted to be the same as they would have been if the error or omission had not occurred.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

SEC. 72. Section 22309 of the Education Code is amended to read:

<< CA EDUC § 22309 >>

22309. (a) The board shall issue to each <<+active and inactive+>> member, after the close of the school year, a statement of his or her individual account, provided the employer or member has informed the system of the member's current mailing address.

(b) <<-\* \* \*->>The board shall periodically make a good faith effort to locate inactive members to provide these members with information concerning any benefit for which they may be eligible.

<<-\* \* \*->>

SEC. 73. Section 22310 of the Education Code is amended to read:

<< CA EDUC § 22310 >>

22310. (a) If a benefit or refund <<-\* \* \*->>cannot be paid because, after a good faith effort, the member or beneficiary cannot be located, the <<+ amount+>> payable shall be <<-\* \* \*->><<+returned to the r+>> etirement <<+f+>>und until the time the party entitled to payment is located.

(b) Interest shall continue to accrue on the accumulated contributions pursuant to this part.

SEC. 74. Section 22311 of the Education Code is amended to read:

<< CA EDUC § 22311 >>

22311. (a) The board shall keep in convenient form any data necessary for the actuarial valuation of the <<+plan+>>.

(b) The board shall make an actuarial investigation into the mortality, service, and other experience of members and beneficiaries <<-\* \* \*->><<+ of the plan and shall+>> make an actuarial valuation of the assets and liabilities of the <<+plan+>>, at least once every six years. The actuary shall perform the actuarial valuation using actuarial assumptions adopted by the board and that are, in the aggregate, reasonably related to the past experience of the <<+plan+>> and the best estimate by the actuary of the future experience of the <<+plan+>>. The report of the actuary of the results of the actuarial valuation shall identify and include the components of normal cost and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on the actuarial valuation shall be transmitted to the Governor and to the Legislature. Upon the basis of any or all of the actuarial investigation and valuation, the board shall adopt for the <<+plan+>> any rates of return on investments, rates of contribution to the retirement fund, mortality, service, and other tables it deems necessary.

SEC. 75. Section 22313 of the Education Code is amended to read:

<< CA EDUC § 22313 >>

22313. (a) No adjustment shall be included in new rates of <<-\* \* \*->> contribution adopted by the board on the basis of an investigation, valuation, and determination or because of amendment to the Teachers' Retirement Law, for time prior to the effective date of the adoption or amendment, as the case may be.

(b) No action of the board, other than correction of errors in calculating the <<+allowance or+>> annuity at the time of retirement, <<+disability or death of a member+>> shall change the <<+allowance or+>> annuity payable to a <<-\* \* \*->>retired <<+member or beneficiary+>> prior to the date the action is taken.

SEC. 76. Section 22315 of the Education Code is amended to read:

<< CA EDUC § 22315 >>

22315. (a) The Legislature hereby finds and declares that it is the intent of the Legislature in enacting this section and Section 22316 that members of the <<+plan+>> not be adversely impacted, to the extent deemed reasonable, by the application of Section 415 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 415).

(b) The system shall work closely with teacher organizations to develop a supplemental plan that, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code of 1986, maintains the future retirement benefits of the members and the fiscal integrity of the retirement fund. The supplemental plan should not result in any additional liability to the employer.

(c) The system shall also monitor the benefits of its members and notify affected individuals of their options, if deemed appropriate by the system.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

SEC. 77. Section 22316 of the Education Code is amended to read:

<< CA EDUC § 22316 >>

22316. (a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986 without regard to Section 415(b)(2)(F) of the Internal Revenue Code of 1986.

(b) Notwithstanding any other provision of law, the benefits payable to any person who became a member prior to January 1, 1990, shall not be less than the accrued benefit of the member<< \* \* \* >>, determined without regard to any amendment to the <<+plan+>> made after October 14, 1987, and as provided in Section 415(b)(10) of the Internal Revenue Code of 1986.

(c) The board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution to each person who, for the first time, becomes a member on or after January 1, 1990.

SEC. 78. Section 22317 of the Education Code is amended to read:

<< CA EDUC § 22317 >>

22317. (a) With respect to members with membership effective dates of December 31, 1989, and earlier, benefit enhancements due to a plan amendment enacted after October 14, 1987, are subject to the limitations imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 415).

(b) With respect to members with membership effective dates of January 1, 1990, and later, retirement benefits, including enhancements due to a plan amendment, are subject to the limitations imposed by Section 415 of the Internal Revenue Code of 1986.

(c) With respect to members << \* \* \* >>described in subdivision (a) or (b), or beneficiaries of those persons, a change in the benefit structure of the plan pursuant to a plan amendment shall not be subject to Section 415(b)(5)(D) of the Internal Revenue Code of 1986 in the case of all plan amendments enacted before, on, or after August 3, 1992.

SEC. 79. Section 22318 of the Education Code is amended to read:

<< CA EDUC § 22318 >>

22318. (a) The initial payment to a << \* \* \* >><<+disabled member or member retired for+>> disability << \* \* \* >>shall be paid within 45 days following the date the disability is approved, the effective date of the disability retirement or disability allowance, or receipt of all necessary information, whichever occurs last. Monthly payments shall continue thereafter. Initial payments may be based on a good faith estimated amount pending receipt by the system of all necessary employment, dependent, and other public benefit information.

(b) The << \* \* \* >><<+allowance payable to a disabled member or member retired for+>> disability << \* \* \* >>shall be << \* \* \* >><<+ finalized and+>> a retroactive payment, if one is due, <<+shall be issued+>> within 45 days of receipt by the system of all necessary information.

SEC. 80. Section 22319 of the Education Code is amended to read:

<< CA EDUC § 22319 >>

22319. (a) The initial payment to a << \* \* \* >><<+member retired for service+>> shall be issued within 45 days of either the effective date of retirement or receipt by the system of a completed application for retirement, whichever is later. The initial payment to an option beneficiary shall be issued within 45 days following receipt by the system of a completed application for death benefits and proof of death of the member<< \* \* \* >>. Monthly payments shall continue thereafter. Payments may be based on a good faith << \* \* \* >><<+estimate+>> pending receipt by the system of all necessary employment information.

(b) The << \* \* \* >><<+allowance payable to a member retired for service+>> or option beneficiary shall be << \* \* \* >><<+finalized and+>> a retroactive payment, if one is due, <<+shall be issued+>> within 45 days of receipt by the system of all necessary information.

SEC. 81. Section 22321 of the Education Code is amended to read:

<< CA EDUC § 22321 >>

22321. The system shall pay << \* \* \* >>interest for delays in excess of the allowable days specified in Sections 22318 to 22320, inclusive. The interest rate for late payments shall be the regular interest rate. Interest payments shall be deemed to be

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

interest earned in the calendar year in which paid. All interest payments under this section shall be paid in addition to any credited interest that is paid.

SEC. 81. Section 22322 of the Education Code is amended to read:

<< CA EDUC § 22322 >>

22322. The system shall <<-\* \* \*->>report <<+monthly+>> to the board <<+on+>> all late payments<<-\* \* \*->>.

SEC. 82. Section 22323 of the Education Code is amended to read:

<< CA EDUC § 22323 >>

22323. The system shall report monthly to the board concerning outstanding death benefits <<+payable+>> that have not been paid within six months of the notification of the death of the member.

SEC. 83. Section 22324 of the Education Code is amended to read:

<< CA EDUC § 22324 >>

22324. The board shall file an annual report with the Governor and the Legislature by March 1 of each year on all phases of its work that could affect the need for public contributions for costs of administration of the system, including the subjects of benefits, programs, practices, procedures, comments on trends and developments in the field of retirement, and the following information on the assets of the <<+plan+>>:

(a) A copy of the annual audit performed pursuant to Section 22217.

(b) A certification letter from the system's consulting actuary concerning the findings of the most recent actuarial valuation, accompanied by summaries of the actuarial cost method, assumptions, and demographic data and analysis of funding progress.

(c) A review of the system's asset mix strategy, a market review or the economic and financial environment in which investments were made, and a summary of the system's general investment strategy.

(d) A description of the investments of the system at cost and market value, and a summary of major changes that occurred since the previous year.

(e) The following information regarding the rate of return of the system by asset type:

(1) Time-weighted market value rate of return on a five-year, three-year, and one-year basis.

(2) Time-weighted book value rate of return on a five-year, three-year, and one-year basis.

(3) Portfolio return comparisons that compare investment returns with universes and indexes.

(f) A report on the use of outside investment advisers and managers.

(g) A report on shareholder voting.

SEC. 84. Section 22327 of the Education Code is amended to read:

<< CA EDUC § 22327 >>

22327. Notwithstanding any other provision of law, the Employment Development Department shall disclose to the board information in its possession relating to the earnings of any person who is receiving a disability <<-\* \* \*->><<+benefit+>> from the <<+plan+>>. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving <<+disability+>> benefits <<-\* \* \*->>from the <<+plan+>>. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing. The board shall notify recipients of disability <<-\* \* \*->><<+ benefits+>> that earnings information from <<+shall be obtained from+>> the Employment Development Department's <<-\* \* \*->>upon request by the board.<sup>2</sup> The board shall not release any earnings information received from the Employment Development Department to any person, agency, or other entity. The system shall reimburse the Employment Development Department for all reasonable administrative expenses incurred pursuant to this section.

SEC. 85. Section 22328 of the Education Code is amended to read:

<< CA EDUC § 22328 >>

22328. (a) Upon termination of a retirement <<+allowance+>> or disability allowance that began to accrue on or after July 1, 1972, the person's individual account shall be credited with the amount of his or her accumulated retirement contributions as they were on the effective date of retirement or disability<<-\* \* \*->>, less the sum of all payments made under paragraph (1)

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

of subdivision (a) of Section 24202, and under Sections 24006 and 24007. The reduction shall not be greater than the total of the accumulated retirement contributions.

(b) Upon the termination of a retirement allowance, the person's accumulated annuity deposit contribution accounts shall be credited with the amounts of the contributions as they were on the date the annuity became payable because of the retirement less the sum of all payments made under paragraph (2) of subdivision (a) of Section 24202.

SEC. 86. Section 22329 of the Education Code is amended to read:

<< CA EDUC § 22329 >>

22329. In order to provide equitable telephone assistance to all members <<+ and+>> beneficiaries, <<-\* \* \*->> regardless of their location in California, the system shall install a toll-free, "800" prefix, line.

SEC. 87. Section 22330 of the Education Code is amended to read:

<< CA EDUC § 22330 >>

22330. (a) The board shall provide the Legislature with an analysis of the asset and liability implications of each bill that would affect the investment strategy of the system, the funding of the <<+plan+>>, or the benefit structure of the <<+plan+>>. The analysis shall include an explanation of the methodology employed and the assumptions used in its preparation. Neither fiscal committee of the Legislature shall hear any such bill until the analysis has been provided to the committee.

(b) There is hereby continuously appropriated, without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from subdivision (a), but not to exceed fifty thousand dollars (\$50,000) in any one fiscal year.

<< Repealed: CA EDUC § 22334 >>

SEC. 88. Section 22334 of the Education Code is repealed.

SEC. 89. Section 22335 of the Education Code is amended to read:

<< CA EDUC § 22335 >>

22335. (a) All moneys in the <<+Teachers+>> Tax-Sheltered Annuity Fund are continuously appropriated to the board for disbursement for the purposes of the tax-sheltered annuity plan previously provided under this part.

(b) The board may provide by board rule for optional forms of payment from the <<+Teachers+>> Tax-Sheltered Annuity Fund.

(c) The <<+Teachers+>> Tax-Sheltered Annuity Fund as it existed on December 31, 1994, shall continue to exist for purposes of this section.

(d) This section shall cease to be operative 180 days after the date that an annuity contract and custodial account established pursuant to Chapter 36 (commencing with Section 24950) becomes operative. On the date this section ceases to be operative this section is repealed unless a statute that is enacted before that date deletes or extends that date.

SEC. 90. Section 22358 of the Education Code is amended to read:

<< CA EDUC § 22358 >>

22358. The board shall submit a review of the <<+plan's+>> assets to the Legislature on a quarterly basis, which shall include all of the following:

(a) Concentration and current holdings at cost and market value of all assets by type.

(b) Rate of return of the fund by type of asset.

(c) Portfolio return comparisons that compare investment returns with universes and indexes.

SEC. 91. Section 22360 of the Education Code is amended to read:

<< CA EDUC § 22360 >>

22360. (a) Notwithstanding any other provision of law, the board may, pursuant to Section 22203 and in conformance with its fiduciary duty as set forth in Section 22250, enter into correspondent agreements with private institutions in this state to utilize the retirement fund to assist <<-\* \* \*->> members <<-\* \* \*->> through financing, to obtain homes in this state.

(b) The terms and conditions of the correspondent agreements shall address all of the following:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

- (1) That home loans be made available to eligible members <<-\* \* \*->>for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.
  - (2) That the private lending institution shall originate and service these home loans.
  - (3) That the recipients of the loans occupy the homes as their permanent residences pursuant to rules and regulations adopted by the board or as these terms are defined in the correspondent agreements.
  - (4) That home loans shall be available only for the purchase of homes in this state.
  - (5) That the amount and length of the loans shall include terms and conditions that set a loan to value ratio of: (A) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (B) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (C) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.
  - (6) That there may be prepayment penalties assessed on loans, the terms and conditions of which shall be set forth in the correspondent agreement.
  - (7) That the criteria and terms for loans shall provide the greatest benefit to eligible members <<-\* \* \*->>consistent with the financial integrity of the program and the sound investment of the retirement fund.
  - (8) That loans shall not be made at a rate lower than the market rate.
  - (9) Any other terms and conditions as the parties to the correspondent agreement may deem appropriate.
- (c) This section shall be known and may be cited as the Dave Elder State Teachers' Retirement System Member Home Loan Program Act.

SEC. 92. Section 22361 of the Education Code is amended to read:

<< CA EDUC § 22361 >>

22361. (a) The board may, subject to and consistent with its fiduciary duty, establish a program utilizing the retirement fund to assist currently employed members and <<-\* \* \*->><<retired members+>> who are victims of a natural disaster to obtain loans from the retirement fund for the sole purpose of repairing or rebuilding their homes that have been damaged by a natural disaster. In order to qualify for such a loan, the home of the <<+currently employed+>> member or <<-\* \* \*->><<retired member+>> shall have been damaged by a natural disaster and the home shall have been in an area that has been declared a disaster area in a proclamation of the Governor of a state of emergency affecting the area in which the <<+currently employed+>> member or <<-\* \* \*->><<retired member+>> resides.
- (b) The board may loan any amount of money, up to and including 100 percent of the current appraised value of a home of a <<+currently employed+>> member or <<-\* \* \*->><<retired member+>>. However, 5 percent of the loan may, at the discretion of the board, be secured by the contributions of the member who requests the loan.
- (c) The board may, under such conditions as it may deem prudent, require that a <<+currently employed+>> member or <<-\* \* \*->><<retired member+>> pledge other assets as collateral for a loan.
- (d) The board shall establish terms for the termination of loans made pursuant to this section upon the separation of members from service, to ensure, in the case of any default, that the <<+fund+>> shall not suffer any loss and to provide, as a condition of retirement, for alternative security. The board may impose any other terms and conditions the board may determine appropriate.
- (e) The Legislature hereby reserves full power and authority to change, revise, limit, expand, or repeal the loan program authorized by this section.

SEC. 92.5. Section 22362 of the Education Code is amended to read:

<< CA EDUC § 22362 >>

22362. (a) Notwithstanding any other provision of law, the board shall give first priority to investing not less than 25 percent of all funds <<+of the plan+>> that become available in a fiscal year for new investments, in any of the following:
- (1) Obligations secured by a lien or charge solely on residential realty, including rental housing, located in the state and on the security of which, commercial banks are permitted to make loans pursuant to Article 2 (commencing with Section 1220) of Chapter 10 of Division 1 of the Financial Code.
  - (2) Securities representing a beneficial interest in a pool of obligations secured by a lien or charge solely on residential realty located in the state.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

- (3) Certificates of deposit issued by savings and loan associations, if the savings and loan associations agree to make loans, or to fund tax-exempt notes or bonds issued by housing authorities, cities, or counties, on residential realty located in the state, including rental housing, in an amount equal to the amount of the deposit.
- (b) Funds subject to investment pursuant to this section include all moneys received as employer and member contributions, investment income, and the proceeds from all net gains and losses from securities, reduced by the amount of benefit payments and withdrawals occurring during the fiscal year. In computing the amount of investment pursuant to this section, a dollar-for-dollar credit shall be given for residential realty investments described in this section that are contractually agreed to be made by a financial institution from which the board, in consideration thereof, purchases other such investments. In computing the amount of investment pursuant to this section, the board may elect to include the dollar amount of commitments to purchase mortgages from public revenue bond programs in the year the commitment is given. However, that election may not exceed one-fifth of the total guideline amount.
- (c) Nothing in this section shall be construed to require the acquisition of any instrument or security at less than the market rate.
- (d) If the board determines during any fiscal year that compliance with this section will result in lower overall earnings for the <<+retirement+>> fund than obtainable from alternative investment opportunities that would provide equal or superior security, including guarantee of yield, the board may substitute those higher yielding investments, to the extent actually available for acquisition, for the investments otherwise specified by this section. Additionally, if, and to the extent that, adherence to the diversification guideline specified in this section would conflict with its fiduciary obligations in violation of Section 9 of Article I of the California Constitution or Section 10 of Article I of the United States Constitution, or would conflict with the standard for prudent investment of the fund as set forth in Section 17 of Article XVI of the California Constitution, the board may substitute alternative investments. In that case, the board shall estimate the amount of funds available in substitute alternative investments and the amount of funds invested pursuant to subdivision (a) and shall submit its resolution of findings and determinations, together with a description of the type, quantity, and yield of the investments substituted, to the Governor and to the Joint Legislative Audit Committee within 20 days following the conclusion of the fiscal year. Within 30 days thereafter, the Joint Legislative Audit Committee shall transmit the Auditor General's report to the Speaker of the Assembly and to the Senate Committee on Rules for transmittal to affected policy committees.
- (e) The board, upon determining the final amount of funds available for investment in substitute alternative investments and the estimated amount of funds invested pursuant to subdivision (a), shall submit that information to the Governor and the Joint Legislative Audit Committee. Thereafter, the Joint Legislative Audit Committee shall transmit the report of the Auditor General to the Speaker of the Assembly and the Senate Committee on Rules for transmittal to the affected policy committees.
- SEC. 93. Section 22375 of the Education Code is amended to read:

<< CA EDUC § 22375 >>

22375. Notwithstanding Section 20205.9 or Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the board may select, purchase, or acquire in the name of the <<+plan+>>, the fee or any lesser interest in real property, improved or unimproved, and may remodel and equip, or construct an office building in the County of Sacramento for the purposes of establishing a permanent headquarters facility for the system.

SEC. 94. Section 22400 of the Education Code is amended to read:

<< CA EDUC § 22400 >>

22400. (a) There is in the State Treasury a special trust fund to be known as the Teachers' Retirement Fund. There shall be deposited in that fund the assets of the <<+plan+>> and its predecessors, consisting of employee contributions, employer contributions, state contributions, appropriations made to it by the Legislature, income on investments, other interest income, income from fees and penalties, donations, legacies, bequests made to it and accepted by the board, and any other amounts provided by this part. General Fund transfers pursuant to Section 22954 shall be placed in a segregated account known as the Supplemental Benefit Maintenance Account within the retirement fund, which is continuously appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code, for expenditure for the purposes of Section 24415 and subdivisions (a) and (b) of Section 24414.

(b) Disbursement of money from the retirement fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds except that notwithstanding the foregoing disbursements may be made to return funds deposited in the fund in error.

SEC. 95. Section 22450 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 22450 >>**

22450. (a) Each member and beneficiary shall furnish to the board any information affecting his or her status as a member or beneficiary of the <<-\* \* \*->><<+plan as+>> the board requires.

(b) A member who has not had any service reported during the prior school year shall provide the system with his or her current mailing address and beneficiary information.

SEC. 96. Section 22451 of the Education Code is amended to read:

**<< CA EDUC § 22451 >>**

22451. (a) Each member shall file a statement with the board, at the option of, and upon the form furnished by, the <<+system+>>, giving the following information:

(1) <<-\* \* \*->><<+D+>>ate of birth.

(2) All service previously performed <<-\* \* \*->><<+subject to coverage by the plan+>> or its predecessors.

(b) Each person becoming a member on or after January 1, 1983, shall include in the health résumé required by the teacher preparation and licensing agency all information that shall verify any and all handicaps and disabling conditions at the time of application. Upon request by the system this information shall be made available when <<-\* \* \*->><<+an application for+>> disability <<-\* \* \*->><<+benefits is received+>>.

SEC. 96.5. Section 22453 of the Education Code is amended to read:

**<< CA EDUC § 22453 >>**

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member <<-\* \* \*->> shall be required on any application for, or cancellation of, an unmodified allowance, the election<<+, change,+>> or cancellation of an option, request for a refund of the member's accumulated retirement contributions or accumulated annuity deposit contributions, or other requests related to the selection of benefits by a member <<-\* \* \*->> in which a spousal interest may be present, unless the member <<-\* \* \*->> declares, in writing, under penalty of perjury, that one of the following conditions exists:

(1) The member <<-\* \* \*->> does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(2) The spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(3) The member <<-\* \* \*->> and spouse have executed a marriage settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(4) The member <<-\* \* \*->> is not married.

(5) The current spouse has no identifiable community property interest in the benefit.

(b) This section is not applicable to an application for a disability allowance.

(c) The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member<<-\* \* \*->>.

SEC. 97. Section 22454 of the Education Code is amended to read:

**<< CA EDUC § 22454 >>**

22454. If a spouse refuses to sign an application, as set forth in Section 22453, the member <<-\* \* \*->> may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section 1101 of the Family Code to determine the rights of the party.

SEC. 98. Section 22455.5 of the Education Code is amended to read:

**<< CA EDUC § 22455.5 >>**

22455.5. (a) The Legislature finds and declares that the federal Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) requires all public employers to provide their employees with either social security coverage or membership in a qualified retirement plan.

(b) <<-\* \* \*->><<+Employers+>> shall make available criteria for membership, including optional membership, in a timely manner to all <<-\* \* \*->><<+persons employed to perform creditable service subject to coverage by the plan,+>> and shall inform part-time and substitute <<-\* \* \*->> employees, within 30 days of <<+the date of+>> hire<<-\* \* \*->>, or by March 1, 1995, whichever is later, that they may elect membership in the <<+plan+>> at any time while employed. Written acknowledgment by the employee shall be maintained in employer files on a form provided by this system.

(c) <<-\* \* \*->><<+Employers+>> shall be liable to the <<+plan+>> for employee and employer contributions and interest



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

from the date of hire, or March 1, 1995, whichever is later, in addition to system administrative and audit costs, if an audit or a member's complaint reveals noncompliance. However, no employer shall be liable for employee contributions for service performed prior to January 1, 1995.

SEC. 99. Section 22456 of the Education Code is amended to read:

<< CA EDUC § 22456 >>

22456. At any time upon the request of the system, the << \* \* \* >><<+ employer+>> shall furnish a statement of the amount of contributions deducted from <<+the+>> salary << \* \* \* >> of any member, the service performed and the salary earned by << \* \* \* >><<+the member+>> since the end of the period covered by the last report of the << \* \* \* >> employer. The system may use the information shown in the statement in determining contributions to be paid by or to the member or to a beneficiary, or use it in determining the member's status upon retirement, even though the member's and employer's contributions will not be received by the board until after the payment or determination.

SEC. 100. Section 22457 of the Education Code is amended to read:

<< CA EDUC § 22457 >>

22457. (a) Each county superintendent shall give immediate notice in writing to the board of the employment, death, resignation, or discharge of any person employed << \* \* \* >> by the county or by a school district <<+or community college district+>> in the county <<+to perform creditable service subject to coverage by the plan+>>.

(b) Every other employing agency shall give similar notice with respect to each person << \* \* \* >><<+it employs to perform creditable service subject to coverage by the plan+>>.

SEC. 101. Section 22458 of the Education Code is amended to read:

<< CA EDUC § 22458 >>

22458. Each << \* \* \* >><<+employer+>> shall provide the system with << \* \* \* >><<+information regarding+>> the compensation to be paid to employees <<+subject to the plan+>> in that school year. The <<+ information+>> shall be submitted annually as determined by the board and may include, but shall not be limited to, employment contracts, salary schedules, and local board minutes.

SEC. 102. Section 22459 of the Education Code is amended to read:

<< CA EDUC § 22459 >>

22459. (a) The county superintendent or other employing agency shall withhold the salary of any member who fails to file information required by the board in the administration of the <<+plan+>>, or to pay amounts due from the members to the <<+plan+>>.

(b) The salary shall be withheld by the county superintendent or employing agency upon his or her own knowledge, if any, of the failure or upon notice from the board of the failure of the <<+member+>> to file or pay.

(c) The salary shall be withheld and not released until notice is given by the board to the county superintendent or employing agency, or until the county superintendent or agency knows otherwise, that the information has been filed or the payment has been made.

SEC. 103. Section 22460 of the Education Code is amended to read:

<< CA EDUC § 22460 >>

22460. << \* \* \* >><<+Employers+>> shall notify all members who terminate employment with less than five years' credited California service that the only benefit for which they are eligible at any time is the refund of accumulated contributions, the rate of interest that will be earned, and actions that may be taken by the board if the contributions are not withdrawn. << \* \* \* >><<+Employers+>> shall transmit the information to the member as part of the usual separation documents.

SEC. 104. Section 22461 of the Education Code is amended to read:

<< CA EDUC § 22461 >>

22461. (a) Upon retaining the services of a << \* \* \* >><<+retired member+>> under Section 24116, 24214, or 24215, the

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

school district, community college district, county superintendent of schools, California State University, or other employing agency 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+>>:

(1) Advise the <<-\* \* \*->><<+retired member+>> of the earnings limitation set forth in Sections 24116, 24214, and 24215.

(2) 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.

(b) This section shall not be construed to make any school district, community college district, county superintendent of schools, the California State University, or other employing agency liable for any amount paid to the <<-\* \* \*->><<+retired member+>> in excess of the earnings limitation under any circumstance, including the failure to inform the <<-\* \* \*->><<+retired member+>> that continuation of service would exceed the limitations.

SEC. 105. Section 22500 of the Education Code is amended to read:

<< CA EDUC § 22500 >>

22500. All persons who were members of the California State Teachers' Retirement System on June 30, <<+1996+>>, are members of the <<-\* \* \*->><<+Defined Benefit Plan+>>.

<< Repealed: CA EDUC § 22501 >>

SEC. 106. Section 22501 of the Education Code is repealed.

SEC. 107. Section 22501 is added to the Education Code, to read:

<< CA EDUC § 22501 >>

22501. All persons employed to perform creditable service as defined in Section 22119.5 are members of the plan as of the first day of employment, unless excluded from membership pursuant to Chapter 11 (commencing with Section 22600). Creditable service in more than one position shall not be aggregated for the purpose of determining mandatory membership in the plan. This section shall be deemed to have become operative on July 1, 1996.

SEC. 108. Section 22510 of the Education Code is amended to read:

<< CA EDUC § 22510 >>

22510. Members who on January 1, 1976, are in state service positions according to former Section 13948 as it read on December 31, 1975, or who are employees of the Trustees of the California State University, may elect in writing prior to July 1, 1976, not to continue as members of this system and to transfer membership to the Public Employees' Retirement System. Failure to execute and file the election, which shall be received in the office of this system by the close of business on June 30, 1976, shall be deemed a decision to remain <<-\* \* \*->> a member of the <<+plan+>>.

SEC. 109. Section 22511 of the Education Code is amended to read:

<< CA EDUC § 22511 >>

22511. Members eligible to elect under Section 22510 and who elect to retain membership in <<-\* \* \*->><<+the plan+>> shall be eligible only for those benefits available for all other members <<-\* \* \*->>and <<+ shall+>> not <<+be+>> eligible for the benefits of the Berryhill Total Compensation Act, as amended, except for the reduced hospitalization insurance premiums. These members shall not be considered eligible for any additional benefits that may accrue to other state employees.

SEC. 110. Section 22513 of the Education Code is amended to read:

<< CA EDUC § 22513 >>

22513. <<-\* \* \*->><<+Members who elect membership in the Public Employees' Retirement System and have+>> achieved plan vesting <<-\* \* \*->><<+according to Section 22173+>> shall retain <<+ the+>> vested rights to survivor and disability benefits <<+under this plan+>> until they qualify for the similar benefits in the Public Employees' Retirement System.

SEC. 111. Section 22514 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 22514 >>**

22514. <<+Members+>> who have not achieved plan vesting shall <<-\* \* \*->><<+become eligible+>> for benefits under this <<+ plan+>> when total service under <<-\* \* \*->><<+this plan and the Public Employees' Retirement System+>> equals the minimum required under Sections 23801 and 23804. These <<+members+>> shall retain vested rights to survivor and disability benefits under this plan until they qualify for the similar benefits in the Public Employees' Retirement System.  
SEC. 112. Section 22515 of the Education Code is amended to read:

**<< CA EDUC § 22515 >>**

22515. Persons excluded from membership <<-\* \* \*->><<+pursuant to+>> Sections <<+22601.5,+>> 22602, <<-\* \* \*->>and 22604 may elect membership in the <<+plan+>> at any time while employed <<-\* \* \*->><<+to perform creditable service+>>. The election is irrevocable, shall be in writing, and shall be filed in the office of this system prior to submission of contributions. <<+The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.+>>  
SEC. 113. Section 22516 of the Education Code is amended to read:

**<< CA EDUC § 22516 >>**

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in this <<+plan+>> any <<-\* \* \*->><<+person employed to perform creditable service at a level that requires mandatory+>> membership in this <<-\* \* \*->><<+plan for+>> which he or she has the right to elect membership in this <<+plan+>> or another retirement system and who elects membership in the other retirement system, or who <<-\* \* \*->><<+is employed to perform creditable service at a level+>> that does not require mandatory membership in this <<-\* \* \*->><<+plan+>>.  
(b) <<-\* \* \*->><<+Service performed+>> after becoming a member of <<-\* \* \*->><<+another retirement+>> system shall not be credited to the member under this <<+plan+>>, nor shall contributions or benefits under this <<+plan+>> be based upon that <<-\* \* \*->><<+service or the compensation+>> received by the member during that <<-\* \* \*->><<+period of service+>>, except as provided in the definition of "final compensation" contained in Section 22133.  
SEC. 114. Section 22601 of the Education Code is amended to read:

**<< CA EDUC § 22601 >>**

22601. Persons serving as exchange teachers or sojourn teachers from outside of this state are excluded from membership in the <<+plan+>>.  
SEC. 115. Section 22601.5 is added to the Education Code, to read:

**<< CA EDUC § 22601.5 >>**

22601.5. (a) Persons who are not already members of the plan who are employed to perform creditable service and whose basis of employment is less than 50 percent of the full-time equivalent for the position are excluded from mandatory membership in the plan.  
(b) Persons whose basis of employment to perform creditable service changes to 50 percent or more of the full-time equivalent for the position shall become members of the plan on the first day of the pay period in which the change in the basis of employment occurred.  
(c) This section shall apply to persons employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).  
(d) This section shall be deemed to have become operative on July 1, 1996.  
SEC. 116. Section 22602 of the Education Code is amended to read:

**<< CA EDUC § 22602 >>**

22602. (a) Persons <<-\* \* \*->>who are not already members <<-\* \* \*->><<+of the plan who are+>> employed <<+as substitutes+>> and who perform less than 100 complete days of <<+ creditable+>> service during the school year are excluded from <<+ mandatory+>> membership in the <<+plan+>>.  
(b) Persons employed <<-\* \* \*->><<+as substitutes+>> who have performed 100 or more complete days of <<+creditable+>> service in one school district<<+, community college district,+>> or county superintendent's office in that

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

school year shall become members on the first day of the <<+ pay period+>> following <<+the+>> pay period <<+in+>> which the <<+ creditable+>> service <<+in excess of 100 days+>> was performed.

(c) This section shall <<+not+>> apply to employers who <<-\* \* \*->> provide benefits for their employees under Part 14 (commencing with Section 26000).

<<+(d) The amendments to this section enacted during the 1996–96 ' Regular Session shall be deemed to have become operative on July 1, 1996.+>>

SEC. 117. Section 22604 of the Education Code is amended to read:

<< CA EDUC § 22604 >>

22604. (a) Persons <<+who are not already members of the plan who are+>> employed on a part-time basis<<-\* \* \*->>, and who perform less than 60 hours of <<+creditable+>> service per pay period <<+if employed on an hourly basis,+>> or less than 10 days of <<+creditable+>> service in a pay period <<+if employed+>> on a daily basis, are excluded from <<+mandatory+>> membership in the <<+plan+>>.

(b) Persons employed on a part-time basis who have performed 60 or more hours of <<+creditable+>> service in a pay period, or 10 <<-\* \* \*->>or more <<-\* \* \*->><<+days of creditable+>> service in a pay period <<-\* \* \*->>in one school district<<+, community college district,+>> or county superintendent's office shall become members on the first day of the <<+pay period+>> following <<+the+>> pay period <<+ in+>> which the <<+creditable+>> service <<+in excess of 60 hours or 10 days+>> was performed.

(c) This section shall <<+not+>> apply to employers who <<-\* \* \*->> provide benefits for their employees under Part 14 (commencing with Section 26000).

<<+(d) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.+>>

SEC. 118. Section 22650 of the Education Code is amended to read:

<< CA EDUC § 22650 >>

22650. This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in accounts with the <<+plan+>> and establishes and defines the rights of nonmember spouses in the <<+plan+>>.

SEC. 119. Section 22651 of the Education Code is amended to read:

<< CA EDUC § 22651 >>

22651. For purposes of this chapter and Section 23300, "nonmember spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the service credit and accumulated retirement contributions <<-\* \* \*->>or the benefits of a <<+member+>>. A nonmember spouse who is awarded a separate account of service credit and accumulated retirement contributions <<-\* \* \*->><<+or+>> who receives a retirement allowance, or <<+who+>> is awarded an interest in a <<+ member's+>> retirement allowance <<-\* \* \*->>is not a <<-\* \* \*->><<+ member+>>.

SEC. 120. Section 22653 of the Education Code is amended to read:

<< CA EDUC § 22653 >>

22653. The nonmember spouse who is awarded a separate account pursuant to Section 22652 is not a member of the <<-\* \* \*->><<+plan based on that award+>>. The nonmember spouse is entitled only to rights and benefits <<+ based on that award+>> explicitly established by this chapter.

<<+(b) This section shall not be construed to limit any right arising from the account of a nonmember spouse under this part that exists because the nonmember spouse is or was employed to perform creditable service subject to coverage by the plan.+>>

<< Repealed: CA EDUC § 22654 >>

SEC. 121. Section 22654 of the Education Code is repealed.

SEC. 122. Section 22655 of the Education Code is amended to read:

<< CA EDUC § 22655 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

22655. <<(a)>> Upon the legal separation or dissolution of marriage of a <<\* \* \*>><<retired member>>, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the <<\* \* \*>><<retired member>> consistent with this section. Upon election under << subparagraph (B) of>> paragraph <<(3)>> of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a <<\* \* \*>><<retired member>> shall be consistent with this section.

<<(b)>> If the court does not award the entire retirement allowance to the <<\* \* \*>><<retired member>> and the <<\* \* \*>><<retired member>> is receiving a retirement allowance <<\* \* \*>><<that has not been modified pursuant to>> Section 24300, the court shall require only that the system pay the nonmember spouse, by separate warrant <<from the plan>>, his or her community property share of the retirement allowance of the <<\* \* \*>><<retired member>>.

<<(c)>> If the court does not award the entire retirement allowance to the <<\* \* \*>><<retired member>> and the <<\* \* \*>><<retired member>> is receiving an allowance which has been actuarially modified pursuant to Section 24300, the court shall order only one of the following:

(1) The <<\* \* \*>><<retired member>> shall maintain the retirement allowance without change.

(2) The <<\* \* \*>><<retired member>> shall cancel the <<option under which the>> retirement allowance <<is modified>> pursuant to Section 24305 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant <<from the plan>>, his or her community property share of the retirement allowance of the <<\* \* \*>><<retired member>>, the option beneficiary, or both.

(3) The <<\* \* \*>><<retired member>> shall cancel the <<option under which the>> retirement allowance <<is modified>> pursuant to Section 24305 and select an unmodified retirement <<allowance>> and the system shall pay the nonmember spouse, by separate warrant <<from the plan>>, his or her community property share of the retirement allowance of the <<\* \* \*>><<retired member>>.

<<(d)>> If the option beneficiary, other than the nonmember spouse, <<\* \* \*>><<predeceases the retired member>>, the court shall order the <<\* \* \*>><<retired member>> to select a new option beneficiary pursuant to Section 24306 and shall order the system to pay the nonmember spouse, by separate warrant <<from the plan>>, his or her share of the community property interest in the retirement allowance of the <<\* \* \*>><<retired member>> or the new option beneficiary, or both.

<<(e)>> The right of the nonmember spouse to receive his or her community property share <<of the retirement allowance of the retired member>> under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of <<the retired member's>> accumulated retirement contributions in the event that accumulated retirement contributions become payable.

SEC. 122.5. Section 22656 of the Education Code is amended to read:

<< CA EDUC § 22656 >>

22656. No judgment or court order issued pursuant to this chapter is binding on the <<plan>> until the <<plan>> has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

SEC. 123. Section 22657 of the Education Code is amended to read:

<< CA EDUC § 22657 >>

22657. (a) The following provisions shall apply to a nonmember spouse as if he or she were a member<<\* \* \*>>: Sections 22107, 22306, 22906, 23802, subdivisions (a) and (b) of Section 24600, 24601, 24602, 24603, 24605, 24606, 24607, 24608, 24611, 24612, 24613, 24616, and 24617.

(b) Notwithstanding subdivision (a), this section shall not be construed to establish any right for the nonmember spouse that is not explicitly established in Sections 22650 to 22655, inclusive, and Sections 22658 to 22665, inclusive.

SEC. 123.5. Section 22658 of the Education Code is amended to read:

<< CA EDUC § 22658 >>

22658. (a) <<A>> separate <<\* \* \*>><<account awarded to>> a nonmember spouse <<pursuant to Section 22652>> shall be administered <<\* \* \*>><<independently of the member's account>>.

<<(b)>> Accumulated contributions, service credit, and final compensation attributable to a separate account of a nonmember spouse shall not be combined in any way <<or>> for any purpose with the accumulated contributions, service credit, and final compensation of any other separate account of the nonmember spouse.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< \* \* \* >> << (c) A >> accumulated contributions, service credit, and final compensation << \* \* \* >> << attributable to >> the separate account of a nonmember spouse shall not be combined in any way << or >> for any purpose with the accumulated contributions, service credit, and final compensation of an account that exists because the nonmember spouse is employed or has been employed << \* \* \* >> << to perform creditable service subject to coverage by the plan >>.

SEC. 124. Section 22659 of the Education Code is amended to read:

<< CA EDUC § 22659 >>

22659. Upon being awarded a separate account or an interest in the << retirement >> allowance of a << \* \* \* >> << retired member >>, a nonmember spouse shall provide the system with proof of his or her date of birth, social security number, and any other information requested by the system, in the form and manner requested by the system.

SEC. 125. Section 22661 of the Education Code is amended to read:

<< CA EDUC § 22661 >>

22661. << (a) >> The nonmember spouse who is awarded a separate account shall have the right to a refund of << the >> accumulated retirement contributions in the << \* \* \* >> account of the nonmember << spouse >>.

<< \* \* \* >>

- (b) The nonmember spouse shall file an application on a form provided by the system to obtain the refund.
- (c) The refund is effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember spouse and addressed to the latest address for the nonmember spouse on file in the system. If the nonmember spouse has elected on a form provided by the system to transfer all or a specified portion of the accumulated contributions that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the nonmember spouse's accumulated contributions.
- (d) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit and represented by the accumulated retirement contributions when the refund becomes effective.
- (e) The nonmember spouse may not cancel a refund after the refund is effective.
- (f) The nonmember spouse shall have no right to elect to redeposit the refunded accumulated retirement contributions after the refund is effective and shall have no right to redeposit under Section 22662 or purchase additional service credit under Section 22663 after the refund becomes effective.
- (g) If the total service credit in the separate account of the nonmember spouse, including service credit purchased under Sections 22662 and 22663, is less than two and one-half years, the board shall refund the << \* \* \* >> << accumulated retirement contributions in >> the account.
- SEC. 126. Section 22662 of the Education Code is amended to read:

<< CA EDUC § 22662 >>

22662. The nonmember spouse who is awarded a separate account may redeposit accumulated retirement contributions previously refunded to the member in accordance with the determination of the court << \* \* \* >> << pursuant to >> Section 22652.

(a) The nonmember spouse may redeposit only those accumulated retirement contributions that were previously refunded to the member and << \* \* \* >> << in which >> the court has determined << \* \* \* >> << the nonmember spouse has a >> community property interest << \* \* \* >>.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order addressing the redeposit rights of the nonmember spouse is entered. The nonmember spouse shall elect to redeposit on a form provided by the system within 30 days after the system mails << an >> election form and the billing.

(c) If the nonmember spouse elects to redeposit, he or she shall repay the accumulated retirement contributions and shall pay regular interest from the date of the refund to the date of payment.

(d) An election to redeposit shall be considered an election to repay all accumulated retirement contributions previously refunded << in which the nonmember spouse has a community property interest >>. All payments shall be received by the system before the effective date of retirement of the nonmember spouse. If any payment due because of the election is not received at the << system's office in >> Sacramento << \* \* \* >> within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall <<+not+>> have <<+a+>> right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions whether or not the nonmember spouse elects to redeposit. However, any previously refunded accumulated retirement contributions not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 127. Section 22663 of the Education Code is amended to read:

**<< CA EDUC § 22663 >>**

22663. The nonmember spouse who is awarded a separate account shall have the right to purchase additional service credit in accordance with the determination of the court <<-\* \* \*->><<+pursuant to+>> Section 22652.

(a) The nonmember spouse may purchase only the service credit that the court, pursuant to Section 22652, has determined to be the community property interest of the nonmember spouse.

(b) The nonmember spouse shall inform the system in writing of his or her intent to purchase additional service credit within 180 days after the date the judgment or court order addressing the right of the nonmember spouse to purchase additional service credit is entered. The nonmember spouse shall elect to purchase additional service credit on a form provided by the system within 30 days after the system mails <<+an+>> election form and <<-\* \* \*->> billing.

(c) If the nonmember spouse elects to purchase additional service credit, he or she shall pay, prior to retirement, all contributions with respect to the additional service at the contribution rate for additional service credit in effect at the time of election and regular interest from July 1 of the year following the year upon which contributions are based.

(1)(A) The nonmember spouse shall purchase additional service credit by paying the required contributions and interest in one lump sum, or in not more than 60 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars (\$25). Regular interest shall be charged on the monthly unpaid balance if the nonmember spouse pays in installments.

(B) If any payment due because of the election is not received at the <<+ system's office in+>> Sacramento <<-\* \* \*->> within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(2) The contributions shall be based on the <<+member's+>> compensation earnable <<-\* \* \*->> in the most recent school year during which the member was employed, preceding the date of separation established by the court pursuant to Section 22652.

(3) All payments of contributions and interest shall be received by the system before the effective date of the retirement of the nonmember.

(d) The nonmember spouse shall <<+not+>> have <<+a+>> right to purchase additional service credit after the effective date of a refund of the accumulated <<+retirement+>> contributions in the separate account of the nonmember spouse.

(e) The member <<-\* \* \*->><<+shall not have a+>> right to purchase the community property interest of the nonmember spouse of additional service credit whether or not the nonmember spouse elects to purchase the additional service credit. However, any additional service credit eligible for purchase that is not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 128. Section 22664 of the Education Code is amended to read:

**<< CA EDUC § 22664 >>**

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance.

(a) The nonmember spouse shall be eligible to retire for service if the following conditions are satisfied:

(1) The member had performed at least five years of creditable California service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated <<+retirement+>> contributions, if five of the member's six years of credited service immediately before the dissolution or legal separation had been in California. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, and permissive service credit which the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, which is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received <<+at+>> the <<\* \* \*->><<+system's office+>> in Sacramento and the effective date is after the date the judgment was entered.

(c) Upon service retirement <<+at or over normal retirement age+>>, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments <<\* \* \*->>equal to 2 percent of final compensation for each year of credited service. If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(1) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(2) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22133 or Section 22135, whichever is applicable, and shall be based on the earnable compensation of the member up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to <<\* \* \*->><<+employment to perform creditable service subject to coverage by the plan+>> or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to <<\* \* \*->><<+employment to perform creditable service subject to coverage by the plan+>>, or the termination of the disability allowance and the employment or self-employment of the member <<+in any capacity, notwithstanding Section 22132+>>. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the benefits for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the benefits for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a <<\* \* \*->><<+retired member+>>. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 129. Section 22665 of the Education Code is amended to read:

<< CA EDUC § 22665 >>

22665. The system shall include the service credit awarded to a nonmember spouse in the judgment or court order to determine the eligibility of a member for a <<\* \* \*->>retirement <<\* \* \*->>or disability allowance. That portion of awarded service credit based on previously refunded contributions or on permissive service credit may not be used by the member for eligibility requirements until the member has redeposited or purchased his or her portion of the service credit. The <<+member's+>> service retirement <<\* \* \*->>allowance <<\* \* \*->>shall be calculated based on the service credit in the <<+member's+>> account on the effective date of <<\* \* \*->><<+service+>> retirement.

SEC. 130. Section 22700 of the Education Code is amended to read:



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 22700 >>**

22700. This chapter governs the computation of service to be credited to a member for the purpose of determining << \* \* \* >> eligibility for benefits under the plan<>>, the amount of contributions required of the member, and the amount of benefits paid to a << \* \* \* >> retired member<>>.

SEC. 131. Section 22703 of the Education Code is amended to read:

**<< CA EDUC § 22703 >>**

22703. (a) Service shall be computed by school years and not by calendar years, portions of years served being accumulated and counted as service. All of the << +creditable+ >> service performed during any one school year << \* \* \* >> subject to coverage by the plan<>> shall not count for more than one year.

(b) In lieu of any other benefits provided by this part, any member who performed service prior to July 1, 1956, shall receive retirement benefits for that service at least equal to the benefits which he or she would have received for that service under the provisions of this part as they existed on June 30, 1956. The provisions of this paragraph do not apply to service which is credited in the San Francisco City and County Employees Retirement System.

SEC. 132. Section 22705 of the Education Code is amended to read:

**<< CA EDUC § 22705 >>**

22705. No << +service+ >> shall be included for which a member is entitled to receive a << \* \* \* >> retirement benefit<>> in a lump sum or installment payments, for other than << \* \* \* >> military service<< +, + >> from any << \* \* \* >> public retirement system<>> other than this system, or under the American Gratuity Act No. 4151 relating to service in the Philippine Islands under which 15 or more years of creditable service has accrued, or a local << \* \* \* >> system. If a << \* \* \* >> retired member<>> becomes entitled to such a << \* \* \* >> retirement benefit<>>, his or her retirement allowance shall be reduced thereafter to exclude the << +service+ >> upon which the << \* \* \* >> retirement benefit<>> is based, without other change in his << +or her+ >> retirement status.

SEC. 133. Section 22706 of the Education Code is amended to read:

**<< CA EDUC § 22706 >>**

22706. No << +service+ >> shall be included during which a person is << \* \* \* >> receiving << +a retirement or+ >> disability allowance from this << +plan+ >>.

SEC. 133.5. Section 22709 of the Education Code is amended to read:

**<< CA EDUC § 22709 >>**

22709. A member shall receive credit for time during which << \* \* \* >> the member<>> is prevented from performing << +creditable+ >> service << \* \* \* >> subject to coverage by this plan<>>, by act of God, or by reason of the closing of a school by any duly authorized officer or body. If by reason of a member's Japanese ancestry, << \* \* \* >> the member<>> was required by the Wartime Civil Control Administration to leave his or her teaching position in California and returned prior to July 1, 1972, to << \* \* \* >> service subject to coverage by the plan,<>> the system << +shall give the member+ >> four years of service credit in the << +plan+ >>.

SEC. 134. Section 22711 of the Education Code is amended to read:

**<< CA EDUC § 22711 >>**

22711. (a) A member shall receive full credit for time during which the member serves as an elected officer of an employee organization while on a compensated leave of absence pursuant to Section 44987 or 87768.5, if all of the following conditions are met:

- (1) The member was employed and performed << +creditable+ >> service << \* \* \* >> subject to coverage by the plan<>> in the month prior to commencement of the leave of absence.
- (2) The member contributes to the Teachers' Retirement Fund the amount that would have been contributed had the member been employed << +full time+ >>.
- (3) The member's << \* \* \* >> employer<>> contributes to the Teachers' Retirement Fund << +at a rate specified by the board+ >> an amount based upon the << +compensation+ >> that would have been paid to the member had the member been

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

employed <<-\* \* \*->><<+full time+>>.

(b) The maximum amount of <<-\* \* \*->><<+time for which+>> a member <<-\* \* \*->><<+can receive full credit pursuant to this section+>> shall not exceed 12 calendar years.

SEC. 135. Section 22712.5 is added to the Education Code, to read:

<< CA EDUC § 22712.5 >>

22712.5. All members employed by a school district, community college district, or superintendent of schools who received credit during the school year ending June 30, 1996, for service performed as a community service teacher or in a classified position that does not qualify for membership in the Public Employees' Retirement System, shall continue to receive credit for that service performed after June 30, 1996, provided the member remains continuously employed to perform that service.

SEC. 136. Section 22713 of the Education Code is amended to read:

<< CA EDUC § 22713 >>

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member <<-\* \* \*->> to reduce his or her workload from <<+full time+>> to <<-\* \* \*->><<+part time+>>, and receive the service credit the member would <<-\* \* \*->><<+have received+>> if the member <<-\* \* \*->><<+had been+>> employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based upon the <<+compensation+>> that the member would have received if <<+the member had been+>> employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option <<-\* \* \*->><<+to reduce the member's workload+>> shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed <<-\* \* \*->><<+full time to perform creditable service subject to coverage by the plan+>> for at least 10 years <<-\* \* \*->><<+including five years+>> immediately preceding <<-\* \* \*->><<+the reduction in workload+>>.

(3) <<-\* \* \*->><<+The member shall not have had a break in service during the+>> five years <<-\* \* \*->><<+immediately preceding the reduction in workload+>>. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. <<-\* \* \*->><<+However, t+>>ime spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(4) The member shall have reached the age of 55 years prior to <<+the+>> reduction in workload.

(5) The period of <<-\* \* \*->><<+the reduced workload+>> shall not exceed 10 years.

(6) The <<-\* \* \*->><<+reduced workload+>> shall be <<-\* \* \*->><<+ equal to+>> one-half of the <<-\* \* \*->><<+full-time equivalent+>> required by the member's contract of employment during his or her final year of <<-\* \* \*->><<+full-time employment+>>.

(7) The member shall be paid a <<+compensation+>> that is the pro rata share of the <<+compensation+>> the member would <<-\* \* \*->><<+have earned had the member not opted to reduce his or her workload+>>.

(c) Prior to the reduction of <<-\* \* \*->><<+a member's+>> workload under this section, the <<-\* \* \*->><<+employer+>> in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the <<+member's+>> eligibility <<-\* \* \*->>for the reduced workload program.

(d) The member shall contribute to the Teachers' Retirement Fund the amount that would have been contributed had the member been employed <<+full time+>>.

(e) The employer shall contribute to the Teachers' Retirement Fund <<+at a rate specified by the board+>> an amount based upon the <<+ compensation+>> that would have been paid to the member had the member been employed <<-\* \* \*->><<+full time+>>.

(f) The employer shall maintain the necessary records to separately identify each member receiving credit pursuant to this section.

SEC. 137. Section 22714 of the Education Code is amended to read:

<< CA EDUC § 22714 >>

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action taken prior to January 1, 1999, determines pursuant to Section 44929 or 87488 that because of impending

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging <<-\* \* \*->>certificated employees or academic employees <<+to retire for service+>> and that the retirement will either: result in a net savings to the district or county office of education; result in a reduction of the number of certificated employees or academic employees as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in, or faculty who are qualified to teach in, teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited to a member if all of the following conditions exist:

(1) The member is credited with five or more years of service and retires during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period. For the 1993–94 fiscal year, the retirement period shall begin on the date of the formal action and shall end on June 30, 1994.

(2) The employer <<+transfers+>> to the retirement fund an amount determined by the Teachers' Retirement Board <<-\* \* \*->><<+to equal+>> the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit under this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board <<-\* \* \*->><<+to equal+>> the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Sections 24414 and 24415. The transfer to the retirement fund shall be made in a manner, and time period <<-\* \* \*->>not <<+to+>> exceed four years, that <<+is+>> acceptable to the Teachers' Retirement Board. The employer shall <<-\* \* \*->><<+transfer the required amount for+>> all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b)(1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The county superintendent shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502. A district that qualifies under clause (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to Section 42238.5.

(3) The school district shall reimburse the county superintendent for all the costs of the county superintendent that result from the certification.

(c)(1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in either: (A) a net savings to the county office of education; (B) a reduction of the number of certificated employees as a result of declining enrollment; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d)(1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction in the number of academic employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701; or (C) the retention of faculty who are qualified to teach in teacher shortage disciplines.

(2) The chancellor shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under clause (B) of paragraph (1) of subdivision (b) of this section shall also certify that it qualifies as a declining enrollment district as computed pursuant to subdivision (c) of Section 84701.

(3) The chancellor may request reimbursement from the community college for all administrative costs that result from the certification.

(e) The <<+opportunity to be granted+>> service credit <<-\* \* \*->> pursuant to this section shall be available to all members

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member who retires with service credit granted under this section and who subsequently reinstates into the system, shall forfeit the service credit granted under this section.

(h) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 138. Section 22715 of the Education Code is amended to read:

**<< CA EDUC § 22715 >>**

22715. (a) Notwithstanding any other provisions of this part, whenever the Governor, by executive order, determines that because of an impending curtailment of, or change in the manner of performing service, the best interest of the state would be served by encouraging the retirement of state employees, and that sufficient economies could be realized to offset any cost to state agencies resulting from this section, an additional two years of service shall be credited to members, who are state employees, if the following conditions exist:

(1) The member is credited with five or more years of service and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the date of issuance of the Governor's executive order specifying that period.

(2) The appointing power, as defined in Section 18524 of the Government Code, <<+transfers+>> to the retirement fund an amount determined by the board <<-\* \* \*->><<+to+>> equal <<-\* \* \*->>the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board.

(3) The appointing power determines that it is electing to exercise the provisions of this section, pursuant to the Governor's order, and certifies to the Department of Finance and to the Legislative Analyst, as to the specific economies that <<+would+>> be realized <<+if+>> the additional service credit <<+toward+>> retirement <<+were+>> granted.

(b) As used in this section, "member" means a state employee who is employed in a job classification, department, or other organizational unit designated by the appointing power, as defined in Section 18524 of the Government Code.

(c) The amount of service credit shall be two years regardless of credited service, but shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age. The appointing power shall make the payment with respect to all eligible employees who <<+retire+>> pursuant to this section.

(d) Any member who qualifies under this section, upon subsequent reinstatement, shall forfeit the service credit <<+granted+>> under this section.

(e) This section shall not be applicable to any member otherwise eligible if that member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the date of issuance of the executive order or if the member is not eligible to retire without the additional credit available under this section.

(f) The benefit provided by this section shall not be applicable to the employees of any appointing power until the Director of Finance approves the transmittal of funds by that appointing power or the Board of Regents or the Board of Trustees to the retirement fund pursuant to paragraph (2) of subdivision (a).

(g) The Director of Finance shall approve the transmittal of funds by the appointing power not sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house that considers appropriations and the chairperson of the Joint Legislative Budget Committee, or not sooner than any lesser time that the chairperson of the committee, or his or her designee, may in each instance determine. If there is any written communication between the Director of Finance and the Legislative Analyst, a copy of the communication shall be transmitted to the chairperson of each appropriate policy committee.

SEC. 139. Section 22716 of the Education Code is amended to read:

**<< CA EDUC § 22716 >>**

22716. Notwithstanding any other provision of law, a member upon any subsequent service under unpaid contract or any other unpaid basis with the trustees, shall not be required to forfeit the service <<-\* \* \*->><<+ credit granted+>> under former Section 22732, as it read on June 29, 1993.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

SEC. 140. Section 22717 of the Education Code is amended to read:

**<< CA EDUC § 22717 >>**

22717. (a) A member shall be <<-\* \* \*->><<+granted credit+>> at service retirement for each day of accumulated and unused leave of absence for illness or injury for which full salary is allowed <<-\* \* \*->><<+to which+>> the member was entitled <<-\* \* \*->>on the <<+member's+>> final day <<-\* \* \*->><<+of employment with the employer+>> by which the member was last employed <<-\* \* \*->><<+to perform creditable service subject to coverage by the plan+>>.

(b) The <<-\* \* \*->><<+amount+>> of service credit to be granted shall be determined by dividing the number of days of accumulated and unused leave of absence for illness or injury by the number of days of service <<-\* \* \*->><<+the employer requires+>> the member's <<-\* \* \*->><<+class of employees to perform in a school year during the member's final year of creditable service subject to coverage by the plan, which shall not be less than the minimum standard specified in Section 22138.5+>>. In no event shall the divisor be less than 175.

(c) When the member has made application for service retirement under this part, the <<-\* \* \*->><<+employer+>> shall certify to the board, within 30 days following the effective date of the member's service retirement, the number of days of accumulated and unused leave of absence for illness or injury that the <<-\* \* \*->><<+member was+>> entitled to on the final day of employment. The board may assess a penalty on delinquent reports.

(d) This section shall not be applicable to any person who became a member <<-\* \* \*->>on or after July 1, 1980, whether or not the person was ever a member prior to that date.

SEC. 141. Section 22718 of the Education Code is amended to read:

**<< CA EDUC § 22718 >>**

22718. (a) The Teachers' Retirement Board shall establish rules and regulations for the purpose of billing school employers for service credit <<+ granted+>> for sick leave, including, but not limited to, both of the following provisions:

(1) The billing shall be authorized only if the employer grants more than one day of sick leave per pay period of at least four weeks <<+to+>> members of the <<-\* \* \*->><<+plan+>>.

(2) The employer shall be billed only for the present value of sick leave <<-\* \* \*->><<+days granted in excess of+>> one day per pay period of at least four weeks<<-\* \* \*->>.

(b) If a school employer fails to pay a bill charged according to the rules and regulations established pursuant to subdivision (a), the Teachers' Retirement Board may request the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, as appropriate, to reduce state apportionments to the school employer by an amount equal to the amount billed. The superintendent or chancellor shall make the reduction, and if requested by the board, direct the Controller to reduce the amount transferred from the General Fund to Section A or Section B, as appropriate, of the State School Fund by an equal amount, which shall instead be transferred to the Teachers' Retirement Fund.

SEC. 142. Section 22719 of the Education Code is amended to read:

**<< CA EDUC § 22719 >>**

22719. If <<-\* \* \*->><<+the allowance of a retired member is terminated, the employer+>> shall not restore sick leave <<+days+>> for which service credit was <<+granted+>> at retirement. A <<-\* \* \*->><<+retired member whose retirement allowance is terminated on or after July 1, 1980,+>> shall not receive service credit <<+upon+>> a subsequent retirement for <<+any+>> unused sick leave accrued after <<-\* \* \*->><<+the retirement allowance is terminated+>>.

SEC. 143. Section 22720 of the Education Code is amended to read:

**<< CA EDUC § 22720 >>**

22720. The <<-\* \* \*->><<+service credited+>> pursuant to Section 22717 shall not be used in the <<+determination+>> of final compensation<<-\* \* \*->>.

SEC. 144. Section 22721 of the Education Code is amended to read:

**<< CA EDUC § 22721 >>**

22721. Except as provided in Section 22717, no <<+service+>> credit <<-\* \* \*->>shall be granted for any payment made for accumulated sick leave upon transfer from one <<+employer+>> to another, upon termination of service, upon <<+retirement, or upon+>> death<<-\* \* \*->>. No contributions shall be <<+withheld+>> from <<-\* \* \*->><<+any

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

such+>> payments. Payments for accumulated sick leave shall <<+be paid to the member by separate warrant and shall+>> not be included in any payroll warrant <<+\* \* \*+>><<+issued to the member+>>. The payments shall not be included in the <<+\* \* \*+>><<+determination of+>> "final compensation." No continued leave of absence shall be granted a member solely for the purpose of allowing the member to receive compensation for accumulated sick leave for which the member could otherwise have elected to receive payment.

SEC. 145. Section 22800 of the Education Code is amended to read:

<< CA EDUC § 22800 >>

22800. (a) Claims for permissive and additional service credit shall be corroborated by a statement from the superintendent of schools or custodian of records of the <<+\* \* \*+>><<+employer for which+>> the service was performed.

(b) Claims for creditable service performed outside the United States or in federal schools within the United States shall be corroborated by a statement from the custodian of records.

(c) When the official records of the service have been destroyed, the claim may be corroborated by one or more affidavits of knowledge of the service, preferably by persons who served with the member at the time the service was performed.

SEC. 146. Section 22801 of the Education Code is amended to read:

<< CA EDUC § 22801 >>

22801. (a) A member who elects to receive additional service credit as provided in this chapter shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit in effect at the time of election.

(b) If the member is <<+\* \* \*+>>employed <<+\* \* \*+>><<+to perform creditable service subject to coverage by the plan at the time of the election+>>, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

(c) If the member is not <<+\* \* \*+>>employed <<+\* \* \*+>><<+to perform creditable service subject to coverage by the plan at the time of the election+>>, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.<<+\* \* \*+>>

(d) The employer may pay the amount required as employer contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section 22803.

<<+(e)+>> Regular interest shall be charged on all contributions from the end of the school year on which the contributions were based to the date of payment.+>>

<<+(f)+>> Regular interest shall be charged on the monthly unpaid balance if the member pays in installments.

SEC. 147. Section 22802 of the Education Code is amended to read:

<< CA EDUC § 22802 >>

22802. <<+(a)+>> A member who was previously excluded from membership in <<+\* \* \*+>><<+the plan+>> may elect to receive credit for:

<<+\* \* \*+>><<+(1)+>> Service as a s+>>ubstitute <<+\* \* \*+>>excluded under Section 22602.

<<+\* \* \*+>><<+(2)+>> Service performed on a p+>>art-time <<+basis+>> excluded under Section <<+22601.5 or Section+>> 22604.

<<+(3)+>> Adult education service excluded under Section 22603<<+, as it read on December 31, 1995+>>.

<<+(4)+>> Service as a school nurse excluded under Section 22606<<+, as it read on December 31, 1995+>>.

<<+(5)+>> Service performed in a position prior to the date the position was made <<+\* \* \*+>><<+subject to coverage by the plan+>>.

<<+(6)+>> Service <<+\* \* \*+>><<+subject to coverage by the plan performed+>> while a member of another California public retirement system, provided the member has ceased to be a member of, and has ceased to be entitled to benefits from, the other retirement system. The member shall not receive credit for the service if the member may redeposit withdrawn contributions and subsequently be eligible for any benefits based upon the same service or based upon other full-time service performed during the same period, from another California public retirement system.

<<+(b)+>> A member who elects to receive credit for service performed while excluded from membership shall pay <<+the required contributions+>> for all such service.

SEC. 148. Section 22803 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 22803 >>**

22803. (a) A member may elect to receive credit for any of the following:

- (1) Service performed in a teaching position in a publicly supported and administered university or college in this state.
- (2) Service performed in a certificated teaching position in a child care center operated by a county superintendent of schools or a school district in this state.
- (3) Service performed in a teaching position in the California School for the Deaf or the California School for the Blind, or in special classes maintained by the public schools of this state for the instruction of the deaf, the hard of hearing, the blind, or the semisighted.
- (4) Service performed in a certificated teaching position in a federally supported and administered Indian school in this state.
- (5) Time served, not to exceed two years, in a certificated teaching position in a job corps center administered by the United States government in this state if the member was employed <<-\* \* \*-><<+to perform creditable service subject to coverage by the plan+>> within one year prior to entering the service and returned to <<-\* \* \*-><<+employment to perform creditable service subject to coverage by the plan+>> within six months following the date of termination of service in the job corps.
- (6) Time spent on a sabbatical leave after July 1, 1956.
- (7) Time spent on an approved leave to participate in any program under the federal Mutual Educational and Cultural Exchange Program.
- (8) Time spent on an approved maternity or paternity leave of two years or less in duration, regardless of whether or not the leave was taken before or after the addition of this subdivision.
- (9) Time spent on an approved leave, up to four months in any 12-month period, for family care or medical leave purposes, as defined by Section 12945.2 of the Government Code, as it read on the date leave was granted, excluding maternity and paternity leave.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (9), inclusive, of subdivision (a) if the member has received or is eligible to receive credit for the same service or time in <<+ the Cash Balance Plan under Part 14 (commencing with Section 26000) or+>> another retirement system.

SEC. 149. Section 22805 of the Education Code is amended to read:

**<< CA EDUC § 22805 >>**

22805. (a) A member may elect to receive credit for time served in the active military service of the United States or of this state, including active service in any uniformed auxiliary to any branch of that military service authorized as an auxiliary by the United States Congress or the California State Legislature, or in the full-time paid service of the American Red Cross prior to September 1957, if both of the following conditions exist:

- (1) The time served was during war with any foreign power or during other national emergency, or in time of peace if the member was drafted for that service by the United States government.
- (2) The member was employed <<-\* \* \*-><<+to perform creditable service subject to coverage by the plan+>> within one year prior to entering that service. Time included under this section shall be considered as served in the state in which the member was last employed before entering that service.

(b) Time during which the member is absent without compensation for other cause, on leave, or otherwise, shall not be included.

SEC. 150. Section 22806 of the Education Code is amended to read:

**<< CA EDUC § 22806 >>**

22806. (a) A member who is a state employee <<-\* \* \*->>who retired on or after December 31, 1981, and who was at retirement a state employee may elect to receive credit, of not to exceed four years, for time served of not less than one year, prior to entering this system, in the armed forces of the United States or in the Merchant Marine of the United States prior to January 1, 1950. Service credit shall not be granted if that service terminated with a discharge under dishonorable conditions. The service credit to be accorded pursuant to this section for that service shall be on the basis of one year of credit for each five years of credited service, but shall not exceed a total of four years of service credit regardless of the number of years of either that service or subsequent service. A member <<-\* \* \*->>electing to receive a credit for that service shall have been credited with at least 10 years of service on the date of election or the date of retirement.

(b) An election by a member with respect to service credit under this section may be made only while the member is in state or university employment, and a <<-\* \* \*-><<+retired member+>> shall have retired immediately following service as a

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

member who was at retirement a state employee. The retirement allowance of a <<+member+>> who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the date of election.

(c) A member <<-\* \* \*->> who elects to become subject to this section shall pay all reasonable administrative costs and contributions, sufficient to cover the total employer and employee cost plus interest of the military service credit, at rates to be determined by the board. The amount shall be contributed in lump sum or by installments over the period and subject to those minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditure by the board to fund positions deemed necessary by the board to implement this section.

(d) The board has no duty to locate or notify any <<+member+>> or to provide the name or address of any <<+member+>>, agency, or entity for the purpose of notifying those persons.

SEC. 151. Section 22808 of the Education Code is amended to read:

<< CA EDUC § 22808 >>

22808. A member shall not be required to pay contributions to receive credit for service under Section 22805 under any of the following conditions:

(a) The service was performed after September 15, 1940, and the member returned to <<-\* \* \*->><<+employment subject to coverage by the plan+>> prior to March 19, 1948.

(b) The service was performed prior to January 1, 1950, and the member was continuously performing the service prior to that date and returned to <<-\* \* \*->><<+employment subject to coverage by the plan+>> within six months following the termination of the service.

(c) The service was performed prior to September 14, 1978, and the member entered that service after December 31, 1949, and returned to <<-\* \* \*->><<+employment subject to coverage by the plan+>> within six months following the termination of the service.

(d) The service was performed prior to January 1, 1992, and the member entered that service after August 1, 1990, and retired or returned to <<-\* \* \*->><<+employment subject to coverage by the plan+>> and earned additional service credit within six months following the termination of that service or within six months after the completion of any period of rehabilitation offered by the United States government, excluding rehabilitation solely for educational purposes. Notwithstanding Section 22250, 22251, or 22253, <<-\* \* \*->><<+employers of+>> members <<-\* \* \*->><<+subject to this section+>> shall not be required to make the contributions required by Chapter 16 (commencing with Section 22950).

SEC. 152. Section 22809 of the Education Code is amended to read:

<< CA EDUC § 22809 >>

22809. A member may elect to receive credit for teaching service performed within and outside of this state in a war relocation center administered by the Wartime Civil Control Administration if all of the following conditions exist:

(a) By reason of the member's Japanese ancestry the member was placed in a war relocation center prior to <<-\* \* \*->><<+becoming a member of the plan+>>.

(b) The member <<+earned+>> compensation for service in a teaching capacity in the relocation center.

(c) The member possessed a valid California teaching credential issued by the State Department of Education or had a bachelor's degree in education from a California postsecondary institution.

SEC. 153. Section 22810 of the Education Code is amended to read:

<< CA EDUC § 22810 >>

22810. (a) Any member, who was a member of <<-\* \* \*->><<+the plan+>> on June 30, 1944, may elect to receive credit for the following service performed prior to July 1, 1944, in other states, territories, or possessions of the United States, or in Canada:

(1) Service in a teaching position that in this state would <<-\* \* \*->><<+be subject to coverage by the plan+>>.

(2) Service in a teaching position in a publicly supported and administered university or college.

(3) Service in a teaching position with the Civilian Conservation Corps or in an Indian school supported and administered by the United States government.

(4) Service in a publicly supported residential school for the deaf or the blind.

(b) In no event shall the member receive credit for this service if the member has received or is eligible to receive credit for



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

the same service in another retirement system.

SEC. 154. Section 22900 of the Education Code is amended to read:

<< CA EDUC § 22900 >>

22900. Acceptance of employment <<-\* \* \*-><<to perform creditable service subject to coverage by the plan+>> is consent to have <<-\* \* \*-><<contributions deducted from compensation+>>.

SEC. 155. Section 22901 of the Education Code is amended to read:

<< CA EDUC § 22901 >>

22901. Each member of <<-\* \* \*-><<the plan+>> shall contribute to the retirement fund an amount equivalent to 8 percent of the member's compensation.

SEC. 156. Section 22903 of the Education Code is amended to read:

<< CA EDUC § 22903 >>

22903. Notwithstanding Sections 22901, 22956, and 23000, each school district, community college district, county board of education, and county superintendent of schools, may pick up, for the sole purpose of deferring taxes, as authorized by Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, all of the employee's contributions towards retirement made by members of the <<-\* \* \*-><<plan+>>, provided that the contributions are deducted from the salary of the member.

SEC. 157. Section 22904 of the Education Code is amended to read:

<< CA EDUC § 22904 >>

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the <<-\* \* \*-><<contributions required to be paid by a state employee who is a member of the <<-\* \* \*-><<plan+>>, provided that the contributions are deducted from the salary of the member. The pick up of member contributions shall be through a salary reduction program pursuant to Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)). These contributions shall be reported as employer-paid member contributions, and shall be credited to member accounts.

SEC. 158. Section 22906 of the Education Code is amended to read:

<< CA EDUC § 22906 >>

22906. If at the time of retirement, disability, or death, there are contributions remaining to the credit of the member that were made with respect to time on the basis of which <<-\* \* \*-><<a benefit+>> will not be <<-\* \* \*-><<payable+>>, the board shall refund <<-\* \* \*-><<the+>> contributions as it may allocate to the time.

SEC. 159. Section 22907 of the Education Code is amended to read:

<< CA EDUC § 22907 >>

22907. Accumulated <<retirement+>> contributions credited to the account of a member whose date of birth is changed in the records of the system after December 31, 1979, shall be adjusted to the proper amount based on the correct birth date by either of the following methods:

(a) A refund of the excess contributions plus credited interest from the end of the school year in which contributions were overpaid because of the incorrect birth date.

(b) Payment by the member of the contributions due the <<plan+>> plus regular interest from the end of the school year in which the contributions were underpaid to the date of payment.

SEC. 160. Section 22950 of the Education Code is amended to read:

<< CA EDUC § 22950 >>

22950. <<-\* \* \*-><<Employers+>> shall contribute monthly to the Teachers' Retirement Fund 8 percent of the total of the salaries upon which members' contributions are based.

SEC. 161. Section 22951 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 22951 >>

22951. In addition to any other contributions required by this part, << \* \* \* >><<+employers+>> shall contribute monthly to the Teachers' Retirement Fund 0.25 percent of the total of the salaries upon which members' contributions are based.

SEC. 162. Section 22952 of the Education Code is amended to read:

<< CA EDUC § 22952 >>

22952. (a) Effective January 1, 1980, << \* \* \* >>in addition to all other contributions required by this part, on account of liability for benefits pursuant to Section 24407, <<+employers+>> shall contribute monthly to the Teachers' Retirement Fund 0.307 percent of the total of the salaries upon which members' contributions are based.

(b) The Controller shall adjust the contributions required by this section within 10 days of notification by the board of the actual creditable earnings on which the contributions are based. A copy of the notification shall be transmitted to the Legislature, the Director of Finance, the Office of the Legislative Analyst, and the Commission on State Mandates. The payroll data shall be subject to audit by the Controller pursuant to Section 17558.5 of the Government Code.

SEC. 163. Section 22953 of the Education Code is amended to read:

<< CA EDUC § 22953 >>

22953. (a) Effective January 1, 1981, << \* \* \* >>in addition to all other contributions required by this chapter, on account of liability for benefits pursuant to Section 24408, <<+employers+>> shall contribute monthly to the Teachers' Retirement Fund 0.108 percent of the total of the salaries upon which members' contributions are based.

(b) The Controller shall adjust the contributions required by this section within 10 days of notification by the board of the actual creditable earnings on which the contributions are based. A copy of the notification shall be transmitted to the Legislature, the Director of Finance, the Office of the Legislative Analyst, and the Commission on State Mandates. The payroll data shall be subject to audit by the Controller pursuant to Section 17558.5 of the Government Code.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 164. Section 22956 of the Education Code is amended to read:

<< CA EDUC § 22956 >>

22956. Employer and state contributions made to the <<+plan+>> are to finance the employer obligation for all of the members of the <<+plan+>> and, therefore, shall not be credited to the individual accounts of the members of the <<+plan+>>. These contributions shall be held in the reserves of the <<+plan+>> to finance the employers' share of the cost of all benefits payable << \* \* \* >><<+under the plan+>>. Under no circumstances shall employer contributions be allocated or awarded to individual members, << \* \* \* >>their spouses, or beneficiaries.

SEC. 165. Section 23000 of the Education Code is amended to read:

<< CA EDUC § 23000 >>

23000. << \* \* \* >><<+Each employer+>> shall deduct from the salary of << \* \* \* >>members of << \* \* \* >><<+the plan employed by the employer the member+>> contributions required by this part and shall <<+ remit+>> to the <<+plan+>> those contributions plus the employer contributions required by this part and Section 44987.

SEC. 166. Section 23001 of the Education Code is amended to read:

<< CA EDUC § 23001 >>

23001. <<+Each+>> county superintendent shall draw his or her requisitions for contributions required by Sections 22901 and 22950 in favor of the State Teachers' Retirement System, and the requisitions, when allowed and signed by the county auditor, shall constitute a warrant against the county treasury. The county superintendent thereupon shall forward the warrants to the board in Sacramento. The amounts received shall be deposited immediately in the State Treasury to the Teachers' Retirement Fund.

SEC. 167. Section 23004 of the Education Code is amended to read:

<< CA EDUC § 23004 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

23004. The county superintendent of schools or employing agency other than a school district or a county or community college district shall make a report monthly to the system containing such information as the board may require in the administration of the <<+plan+>>.

SEC. 168. Section 23004.5 of the Education Code is amended to read:

**<< CA EDUC § 23004.5 >>**

23004.5. (a) In order for an employer to manage its budget during a time of fiscal emergency and, during that time, to preserve benefits for employees who are employed <<-\* \* \*-><<+to perform creditable service subject to coverage by the plan+>> and whose salaries, as defined in Section 22114, have been reduced because of the fiscal emergency, the employer may report to the system the earnable and earned salaries that would have been reported to the board had the fiscal emergency not occurred, provided that the employer complies with the specific reporting requirements in this section or as otherwise required by the board.

(b) This section shall not apply to any school district, community college district, or county office of education until the appropriate governing body adopts a resolution, in a form provided by the board, to elect to be covered by this section. The resolution shall be filed with, and approved by, the board prior to the submission of the reports required by this section. The resolution shall specify the percentage reduction in earnable salaries, identify the bargaining unit, or the <<-\* \* \*->>class of <<-\* \* \*->> employees <<+that is nonrepresented+>>, or both, to be covered by this section, as defined, and specify the period of time during which the resolution is to be in effect.

(c) An employer may resolve to be covered by this section for all employees of a bargaining unit who are employed <<-\* \* \*-><<+to perform creditable service subject to coverage by the plan+>> and have had their salaries uniformly reduced because of a fiscal emergency. If the employer adopts a resolution to be covered by this section for all employees in a bargaining unit, the employer may also adopt a resolution to be covered by this section for any <<-\* \* \*->>class of <<-\* \* \*->>employees <<+that is nonrepresented and+>> who are employed <<-\* \* \*-><<+to perform creditable service subject to coverage by the plan+>> and have had their salaries uniformly reduced because of a fiscal emergency. A separate resolution shall be adopted for each bargaining unit and <<-\* \* \*->>class of <<-\* \* \*->>employees <<+that is nonrepresented+>> whose earnable and earned salaries will be reported under this section.

(d) The employer shall transmit to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(e) If the board determines that any conditions or requirements of a submitted resolution have not been fulfilled, the resolution shall immediately become inoperative. In that case, a new resolution may be adopted and submitted pursuant to this section.

(f) The earnable salaries prior to the salary reduction and the earned salaries based on the earnable salaries prior to the salary reduction shall be uniformly reported for all employees covered by a resolution.

(g) Member and employer contributions shall be reported and remitted to the system based on salaries reported as earned under this section and not on actual earned salaries after reduction.

(h) Employer reports shall be submitted in a manner prescribed by the system to reflect identification of each individual whose earned salaries are reported under this section.

(i) An employer that elects to be covered by this section shall maintain and provide to the system, as requested, copies of payroll records, contracts, and other related documentation regarding both the reduced and reported earnable and earned salaries on all individuals who are reported under this section. The system may perform periodic audits of each employer that elects to be covered by this section.

(j) The reported earnable and earned salaries of an employee who has taken a demotion in lieu of layoff, or has transferred to a part-time position, or has been subject to any other personnel action for which a reduction in salary occurs for reasons other than the fiscal emergency shall be based on the salary of the new position, not on the higher salary of the previous position.

(k) As used in this section, "<<-\* \* \*->>class of <<-\* \* \*->> employees <<+that is not represented+>>)" means a number of employees considered <<-\* \* \*-><<+as a group+>> because they share job similarities, work location, or other logical work-related grouping. Under no circumstances shall one employee be considered a group or class <<+for purposes of this section+>>.

(l) It is the intent of the Legislature that this section shall not be used for the purpose of inflating the compensation of any employee who is employed <<-\* \* \*-><<+to perform creditable service subject to coverage by the plan+>>, nor to artificially provide a salary increase that is not actually paid, nor to engage in any other form of pension abuse.

(m) This section shall remain in effect only until July 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1996, deletes or extends that date.

SEC. 169. Section 23008 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 23008 >>**

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the <<+plan+>> based on any salary payment to a member, proper adjustments shall be made by the county superintendent or other employing agency on a monthly report within 60 days of discovery or of notification by the system and any refunds shall be made to the member within the same time period by the employing agency.

(b) The board may assess penalties for late or improper adjustments. These penalties shall be no more than the regular interest as defined in Section <<+22162+>>. The penalty so assessed shall be deemed interest earned in the year in which it was received.

(c) If a required report contains erroneous information and the system, acting in good faith, disburses funds <<+from the plan+>> based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the <<+plan+>> in full for the amount of the <<+erroneous+>> disbursement. Reimbursement shall be made immediately upon notification by the system.

SEC. 170. Section 23009 of the Education Code is amended to read:

**<< CA EDUC § 23009 >>**

23009. The board, if in the interest of the <<+plan+>>, may, in connection with adjustments to the required contributions referred to in Section 23008, receive or make payments directly from or to the member or beneficiary with interest.

SEC. 171. Section 23101 of the Education Code is amended to read:

**<< CA EDUC § 23101 >>**

23101. When a member's <<+accumulated retirement+>> contributions are <<-\* \*->><<+refunded+>>, as provided in Section 23100, all rights to benefits pertaining to the service <<+credit+>> represented by those contributions are forfeited. Those rights and benefits, based upon service performed prior to refund, shall not be restored until the member has redeposited the total of the refunded <<+accumulated retirement+>> contributions, and paid the regular interest thereon as provided in Chapter 19 (commencing with Section 23200).

SEC. 172. Section 23102 of the Education Code is amended to read:

**<< CA EDUC § 23102 >>**

23102. Prior to the system paying a refund of <<+accumulated retirement+>> contributions, the employer <<-\* \*->> shall certify that the member's employment has been terminated.

SEC. 173. Section 23103 of the Education Code is amended to read:

**<< CA EDUC § 23103 >>**

23103. Refunds to a member shall be made upon request of the member, or may be made without a request if it appears to the board that the member's employment is permanently terminated and the member does not have enough service under the <<+plan+>> to qualify for receipt of a retirement benefit.

SEC. 174. Section 23104 of the Education Code is amended to read:

**<< CA EDUC § 23104 >>**

23104. (a) Deposit in the United States mail of an initial warrant drawn as directed by the member as a refund of contributions upon termination of employment, and addressed to the address directed by the member, constitutes a return of the member's accumulated <<+retirement+>> contributions.

(b) If the member has elected on a form provided by the system to transfer all or a specified portion of the accumulated <<+retirement+>> contributions that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the member's accumulated <<+retirement+>> contributions.

(c) For refunds not involving direct trustee-to-trustee transfers, if the member returns the total gross distribution amount to the system's office <<+ in Sacramento+>> within 30 days from the mailing date, the refund shall be canceled and the person shall be restored <<-\* \*->><<+as a member of the plan+>> with all the rights and privileges restored.

(d) For refunds involving direct trustee-to-trustee transfers, if the member returns the warrant drawn to the trustee of the

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

qualified plan and, if applicable, any additional amounts necessary to equal, but in no event to exceed, the total gross distribution amount to the system's office <<in Sacramento>> within 30 days from the mailing date, the refund shall be canceled and the person shall be restored <<\* \* \*->><<as a member of the plan>> with all the rights and privileges restored.

SEC. 175. Section 23106 of the Education Code is amended to read:

<< CA EDUC § 23106 >>

23106. If a member ceases to be entitled to credit for service in <<\* \* \*->><<the plan>> because <<\* \* \*->><<the member>> has become entitled to credit for that service in another retirement system supported wholly or in part by funds of the United States government, or any state government or political subdivision thereof, <<\* \* \*->><<the member>> is entitled to a refund of the accumulated retirement contributions made during the period for which he or she is entitled to credit in the other retirement system.

SEC. 176. Section 23107 of the Education Code is amended to read:

<< CA EDUC § 23107 >>

23107. Any member without terminating membership and upon making application on forms provided by the system shall be paid a refund of the accumulated annuity deposit <<contributions>>.

SEC. 177. Section 23200 of the Education Code is amended to read:

<< CA EDUC § 23200 >>

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the <<\* \* \*->><<plan, the person>> may elect to redeposit those contributions with regular interest from the date of refund to the date of payment. If the member elects to redeposit, the member shall repay all accumulated <<retirement>> contributions that were previously refunded.<<\* \* \*->>

(b) For time prior to July 1, 1944, regular interest shall be at 2½ percent compounded annually.

SEC. 178. Section 23201 of the Education Code is amended to read:

<< CA EDUC § 23201 >>

23201. Any person whose accumulated <<retirement>> contributions were refunded <<\* \* \*->>and who has received, or will qualify <<\* \* \*->><<to receive>>, a retirement allowance from the Public Employees' Retirement System, the University of California Retirement System, the Legislators' Retirement System, or the San Francisco City and County Employees' Retirement System may elect to redeposit the accumulated <<retirement>> contributions that were refunded, with regular interest from the date of refund to the date of payment, without being employed <<\* \* \*->><<to perform creditable service subject to coverage by the plan>>. A person who elects to redeposit pursuant to this section shall not receive credit for service that might otherwise be creditable under Section 22810.

SEC. 179. Section 23202 of the Education Code is amended to read:

<< CA EDUC § 23202 >>

23202. (a) An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the <<effective>> date of the <<member's>> retirement<<\* \* \*->>.

(b) An election to redeposit refunded <<accumulated retirement>> contributions shall be considered as an election to repay all <<accumulated retirement>> contributions previously refunded.

(c) If any payment due because of this election is not received at the <<system's office in>> Sacramento <<\* \* \*->>within 120 days of its due date, the election shall be canceled. Upon the cancellation of election any payments made under the election shall be refunded.

(d) <<\* \* \*->><<If the election is cancelled,>> the member may at any time prior to the <<effective>> date of <<\* \* \*->> retirement<<\* \* \*->>, again elect to redeposit accumulated retirement contributions previously withdrawn or refunded, in accordance with Section 23200 and all the laws, rules, and regulations pertaining thereto.

SEC. 180. Section 23203 of the Education Code is amended to read:

<< CA EDUC § 23203 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

23203. << \* \* \* >><<+Redeposit of refunded+>> accumulated retirement contributions shall be made in one sum, or in not more than 60 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars (\$25).

SEC. 181. Section 23300 of the Education Code is amended to read:

<< CA EDUC § 23300 >>

23300. (a) A member << \* \* \* >> may at any time designate a beneficiary<<+, or change the designation of a beneficiary,+>> to receive benefits payable under this part, except that no beneficiary designation may be made in derogation of the community property share of any nonmember spouse when any such benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for distribution pursuant to Section 2610 of the Family Code. << \* \* \* >><<+A designation+>> of beneficiary shall be in writing on a form prescribed by the system, executed by the member, witnessed by two witnesses, neither of whom may be beneficiaries. To be valid the instrument shall be received in the office of the system in Sacramento before the member's death.

(b) Except as otherwise stated in this section, the designation of beneficiary, other than an option beneficiary, may be revoked << \* \* \* >><<+by the member+>> making the <<+ designation+>>, and a different beneficiary designated in the same manner as provided in this section.

SEC. 182. Section 23302 of the Education Code is amended to read:

<< CA EDUC § 23302 >>

23302. Payment to a beneficiary designated in the form on file in the system at the date of death by a warrant drawn prior to any claim under community property rights shall constitute full discharge of any and all liability of the board<<+,+>> system<<+, and plan+>> by reason of the member's death.

SEC. 183. Section 23303 of the Education Code is amended to read:

<< CA EDUC § 23303 >>

23303. (a) << \* \* \* >><<+I+>>f the whereabouts of the <<+ designated+>> beneficiary cannot be determined, or if the beneficiary is the estate of the deceased person, <<+the board+>> may pay to the undertaker who conducted the funeral, or to any person who, or any organization that, has paid the undertaker from funds owned by the person or organization, in its discretion all or a portion of any amount payable under the <<+plan+>>, but not to exceed the funeral expenses of the deceased person, or the portion of the expenses paid by the person or organization, as evidenced by the sworn itemized statement of the undertaker, person, or organization and by any other documents the board may require.

(b) The payment shall be in full and complete discharge and acquittance of the board<<+,+>> system<<+, and plan+>> up to the amount paid.

SEC. 184. Section 23304 of the Education Code is amended to read:

<< CA EDUC § 23304 >>

23304. If no beneficiary designation is in effect on the date of death, any benefit payable shall be paid to the estate of the member<< \* \* \* >>. Payment pursuant to the board's determination in good faith upon evidence satisfactory to it of the existence, identity or other facts relating to entitlement of persons under this section shall constitute a complete discharge and release of the system <<+and plan+>> from liability for the benefit.

SEC. 185. Section 23401 of the Education Code is amended to read:

<< CA EDUC § 23401 >>

23401. The board may require any <<+member who retired for+>> disability<< \* \* \* >>, prior to July 1, 1972, and who has not attained 58 years of age, to undergo a medical examination. If the examination, together with other available information, shows to the satisfaction of the board that << \* \* \* >><<+the member+>> is no longer disabled, << \* \* \* >><<+the+>> retirement allowance shall << \* \* \* >><<+be terminated+>>. Should any << \* \* \* >><<+ member retired for disability+>> refuse to submit to medical examination, as provided in this section, << \* \* \* >><<+the+>> disability retirement <<+allowance+>> shall be <<+terminated+>> and all rights of the <<+member+>> in the disability retirement allowance shall be revoked.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

SEC. 186. Section 23700 of the Education Code is amended to read:

<< CA EDUC § 23700 >>

23700. (a) New survivor benefit and disability retirement programs that are provided pursuant to Chapter 23 (commencing with Section 23850) and Chapter 26 (commencing with Section 24100), are effective as of October 16, 1992. All members with an effective date of membership on or after October 16, 1992, shall be covered by these survivor benefit and disability retirement programs.

(b) The purpose of this chapter is to set forth the criteria for granting certain members of the <<+plan+>>, as defined in Section 23702, the opportunity to elect to either retain coverage under the current family allowance and disability allowance programs pursuant to Chapter 22 (commencing with Section 23800), and Chapter 25 (commencing with Section 24001) or to be covered under the survivor benefit and disability retirement programs.

SEC. 187. Section 23702 of the Education Code is amended to read:

<< CA EDUC § 23702 >>

23702. (a) All members of the <<-\* \* \*->><<+plan+>> on October 15, 1992, who are not receiving a disability allowance or a retirement allowance with an effective date prior to October 16, 1992, shall be eligible to make an irrevocable election, pursuant to this chapter, to retain coverage under either the disability allowance and family allowance programs or to have coverage under the disability retirement and survivor benefits programs.

(b) The member's eligibility to participate in the election shall be based on the member's status <<-\* \* \*->><<+in the plan+>> on October 15, 1992, only, and not on prior or subsequent events.

SEC. 188. Section 23800 of the Education Code is amended to read:

<< CA EDUC § 23800 >>

23800. (a) This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable upon the death of eligible members. "Members," as used in this chapter, means all members who were <<-\* \* \*->><<+receiving a disability allowance+>> on October 15, 1992, and all persons who were members of the <<+plan+>> on October 15, 1992, who <<+were not receiving an allowance and who+>> did not elect, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under Chapter <<+23+>> (commencing with Section 23850).

(b) This chapter also contains three sections related to survivor benefits payable on account of deaths that occurred prior to July 1, 1972.

SEC. 189. Section 23804 of the Education Code is amended to read:

<< CA EDUC § 23804 >>

23804. (a) A family allowance is payable upon the death of <<-\* \* \*->><<+ an active+>> member or a <<-\* \* \*->><<+disabled member+>> who was receiving a disability allowance that began to accrue after June 30, 1972.

(b)(1) For the family allowance to be payable upon the death of the member, all of the following conditions shall be met at the time of death:

(A) Death occurred after June 30, 1972.

(B) A preretirement election of an option is not in effect.

(C) The provisions for the death payment under this part have been met.

(2) In addition to the conditions specified in paragraph (1), at least one-half year of credited service had been performed subsequent to the end of the last break, if a break in service of more than one year had occurred.

(3) In addition to the conditions specified in paragraph (1), at least one year of credited service had been performed subsequent to the last reinstatement date, if reinstated from service or disability retirement.

(c) The family allowance <<-\* \* \*->><<+shall be paid+>> in lieu of the return of the member's accumulated retirement contributions.

(d) The family allowance may be terminated, if all eligible beneficiaries formally waive their rights in accordance with the requirements established by the system.

SEC. 190. Section 23850 of the Education Code is amended to read:

<< CA EDUC § 23850 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

23850. This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable upon the death of eligible members. "Member," as used in this chapter, means all persons who <<+become+>> members of the <<+plan+>> on <<+or+>> after October 16, 1992, and all persons who were members as of October 15, 1992, who elected, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under the death benefit provisions of this chapter.

SEC. 191. Section 23851 of the Education Code is amended to read:

<< CA EDUC § 23851 >>

23851. (a) A death payment of twenty thousand dollars (\$20,000) shall be paid to the beneficiary, as designated pursuant to Section 23300, upon receipt of proof of death of <<-\* \* \*->><<+an active+>> member<<+,>> who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions, if the member died during any one of the following periods:

- (1) While in employment for which compensation is paid.
- (2) Within four months after termination of service or termination of employment, whichever occurs first.
- (3) Within 12 months of the last day for which compensation was paid, if the member was on an approved leave of absence without compensation for reasons other than disability or military service.
- (b) A death payment pursuant to this section shall not be payable for the death of a member that occurs within one year commencing with the effective date of <<-\* \* \*->><<+termination of the+>> service retirement <<+ allowance+>> pursuant to Section 24208 or during the six calendar months commencing with the effective date of <<-\* \* \*->><<+termination of the+>> disability retirement <<+allowance+>> pursuant to Section 24117.
- (c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.
- (d) A designated beneficiary may waive his or her right to the death payment in accordance with the requirements established by the system.

SEC. 192. Section 23854 of the Education Code is amended to read:

<< CA EDUC § 23854 >>

23854. (a) A survivor benefit allowance is payable upon receipt of proof of death of a member, as defined in Section 23850, who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions.

(b) For the survivor benefit allowance to be payable upon the death of a member, all of the following conditions shall be met at the time of death:

- (1) Death occurred after October 15, 1992.
- (2) A preretirement election of an option is not in effect.
- (3) Death occurs during any one of the following periods:
  - (A) While in employment for which compensation is paid.
  - (B) Within four months after termination of service or termination of employment, whichever occurs first.
  - (C) Within four months after termination of disability allowance.
  - (D) Within four months after reinstatement from disability retirement.
  - (E) Within 12 months following the last day for which compensation was paid if the member was on an approved leave of absence without compensation for reasons other than disability or military service.
- (4) At least one-half year of credited service had been performed subsequent to the end of the last break <<+in service+>>, if a break in service of more than one year had occurred.
- (5) At least one year of credited service had been performed subsequent to the last reinstatement date, if reinstated from service retirement.
- (c) The survivor benefit allowance <<-\* \* \*->><<+shall be paid+>> in lieu of the return of the member's accumulated retirement contributions.
- (d) The survivor benefit allowance may be terminated, if all eligible beneficiaries formally waive their rights in accordance with the requirements established by the system.

SEC. 193. Section 23859 of the Education Code is amended to read:

<< CA EDUC § 23859 >>



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

23859. (a) Upon termination of a survivor benefit allowance pursuant to this chapter<<-\* \* \*->><<+, if the total allowance paid or payable is less than+>> the amount of the member's accumulated retirement contributions at the time of death, the remaining balance <<+of accumulated retirement contributions+>> shall be paid to the estate of the spouse.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date <<+the last+>> survivor benefit <<-\* \* \*->><<+allowance payment was made+>> or from the date of death of the member, if no survivor benefit allowance payments were made, to the date the balance is paid.

SEC. 194. Section 23880 of the Education Code is amended to read:

<< CA EDUC § 23880 >>

23880. (a) A death payment of five thousand dollars (\$5,000) shall be paid to the beneficiary upon receipt of proof of death of <<-\* \* \*->><<+a+>> member, if the death payment pursuant to Section 23801 would have otherwise been payable or if the conditions specified pursuant to <<+paragraphs+>> (3) <<+and (5)+>> of subdivision (b) of Section 23854 are met, and if the member's death occurs during one of the following periods:

<<+(1)+>> Within one year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

<<+(2)+>> Within six months commencing with the effective date of reinstatement from disability retirement pursuant to Section 24117.

(b) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.

SEC. 195. Section 23881 of the Education Code is amended to read:

<< CA EDUC § 23881 >>

23881. (a) Upon receipt of proof of death of a <<+member+>> who retired after June 30, 1972, and of the <<-\* \* \*->><<+retired member's+>> option beneficiary, <<-\* \* \*->><<+if+>> the total retirement allowance paid or payable <<-\* \* \*->><<+is less than+>> the amount of the member's+>> accumulated retirement contributions at <<+the time of+>> retirement, the <<-\* \* \*->><<+remaining balance of accumulated retirement contributions+>> shall be paid to the beneficiary, if no option was elected, or to the estate of the option beneficiary, if an option was elected.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date <<-\* \* \*->><<+the last allowance payment was made+>> to the date the balance is paid.

SEC. 196. Section 24001 of the Education Code is amended to read:

<< CA EDUC § 24001 >>

24001. (a) A member may apply for <<+a+>> disability allowance if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed <<-\* \* \*->><<+subject to coverage by the plan+>>. Credit received because of workers' compensation payments shall be counted toward the four-year requirement.

(2) The last five years of credited service have been served in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member <<-\* \* \*->><<+terminated the service retirement allowance+>> under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has not attained normal retirement age, or has unused sick leave with sufficient days to have the member receive salary on account of sick leave to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in <<-\* \* \*->><<+the plan+>> commenced and <<+that+>> remains substantially unchanged at the time of application.

(b) Nothing in this section shall affect the right of a member to a disability allowance if the reason that the member has <<+performed+>> less than four years of actual service is due to an on-the-job injury or <<+a+>> disease <<-\* \* \*->><<+while in employment subject to coverage by the plan+>>.

(c) A member shall not be eligible for disability under this <<+plan+>> while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 197. Section 24003 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

**<< CA EDUC § 24003 >>**

24003. (a) The member shall provide medical documentation <<-\* \* \*->><<+ to substantiate+>> the impairment qualifying <<-\* \* \*->><<+the member+>> for the disability allowance.

(b) On receipt of an application for disability allowance, the system may order a medical examination of a member to determine whether the member is incapacitated for <<-\* \* \*->><<+performance of+>> service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability allowance shall be rejected. The member shall either remain in <<+this+>> state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be <<+rejected+>>, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability allowance application if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section <<+22126+>>, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is <<-\* \* \*->> mentally or physically incapacitated<<-\* \* \*->>.

(d) If the board determines that a member who has applied for a disability allowance may perform <<-\* \* \*->><<+service in the member's former position of employment or in+>> a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability allowance application.

(e) <<-\* \* \*->><<+If+>> the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability allowance.

(f) The system shall inform the member of <<+the+>> rejection <<-\* \* \*->><<+or cancellation of the member's+>> disability allowance application within 30 days after that determination is made by the system.

SEC. 198. Section 24004 of the Education Code is amended to read:

**<< CA EDUC § 24004 >>**

24004. In <<-\* \* \*->>cases of <<+a member's+>> willful substance abuse or <<+if+>> the board determines a member <<-\* \* \*->><<+who qualifies+>> for a disability allowance pursuant to Section 24001 has mental, physical, or vocational rehabilitation potential, the board may limit the disability allowance to a period not to exceed two years from the date of approval of the disability allowance. Notwithstanding Section 24013, the disability allowance shall terminate at the end of the period granted unless <<-\* \* \*->><<+an extension is granted+>> by the board.

SEC. 199. Section 24005 of the Education Code is amended to read:

**<< CA EDUC § 24005 >>**

24005. (a) A disability allowance shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for disability allowance is filed on a form provided by the system.

(2) The effective date is later than the last day of service for which <<+ compensation+>> is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the <<-\* \* \*->><<+system's office+>> in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If the member is employed <<-\* \* \*->><<+to perform creditable service subject to coverage by the plan+>> at the time the disability allowance is approved, the member shall notify the system in writing, within 90 days, of the last day on which <<-\* \* \*->><<+the member+>> will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of approval of the disability allowance, the member's application for a disability allowance shall be rejected and a disability allowance shall not be payable to the member.

SEC. 200. Section 24011 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 24011 >>**

24011. <<+A+>> member <<.\* \* \*->><<+who qualifies+>> for disability allowance pursuant to this chapter <<.\* \* \*->><<+because of+>> a disabling impairment <<+that is+>> amenable to treatment that could be expected to restore <<+the member's+>> ability to perform <<+service in+>> the member's <<.\* \* \*->><<+former position of employment or+>> a comparable level position shall participate in a treatment program prescribed by the member's <<.\* \* \*->><<+primary treating physician+>>. Willful failure to initiate and continue participation in the program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to follow the treatment, the board shall take into account whether treatment would abridge the member's right to the free exercise of religion <<+or whether the member's physical or mental condition has worsened, as determined by the member's treating physician and substantiated by medical evidence+>>.

SEC. 201. Section 24012 of the Education Code is amended to read:

**<< CA EDUC § 24012 >>**

24012. (a) <<+A+>> member <<.\* \* \*->><<+who qualifies+>> for a disability allowance pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore <<+the member's+>> ability to perform <<+service in+>> the member's <<.\* \* \*->><<+former position of employment or+>> a comparable level position shall participate in an appropriate <<+rehabilitation+>> program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the <<+rehabilitation+>> program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to participate in the program the board shall take into account whether the participation would abridge the member's right to the free exercise of religion <<+or whether the member's physical or mental condition has worsened, as determined by the member's treating physician and substantiated by medical evidence+>>.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system <<+from the fund+>>.

SEC. 202. Section 24013 of the Education Code is amended to read:

**<< CA EDUC § 24013 >>**

24013. The board may require any member receiving a disability allowance to undergo medical examination at such times as <<.\* \* \*->><<+the board+>> deems necessary. The system may request the <<+member's+>> treating physician, upon authorization by the <<.\* \* \*->><<+disabled member+>>, to complete a medical reevaluation questionnaire. The system shall reimburse the <<.\* \* \*->><<+disabled member+>> for all reasonable costs related to <<+completion of+>> this questionnaire <<.\* \* \*->><<+in an amount not to exceed+>> two hundred fifty dollars (\$250) <<+if+>> the <<.\* \* \*->><<+disabled member+>> has no other health coverage <<.\* \* \*->><<+that would pay+>> the costs of <<+completing+>> the medical questionnaire. The board may authorize <<.\* \* \*->><<+a+>> medical examination to be conducted by the <<+disabled member's+>> treating source <<.\* \* \*->>at the <<+ disabled member's+>> expense <<.\* \* \*->>and, in any case, may require a medical examination to be conducted by a physician selected by the board, in which event, the board shall pay all reasonable costs associated with the examination. The board shall, in scheduling medical examinations, give consideration to the interests and convenience of the <<.\* \* \*->><<+ disabled member+>>. If the examination, together with other available information, shows to the satisfaction of the board that the <<+member+>> is no longer disabled, the disability allowance shall <<.\* \* \*->><<+be terminated+>>. Should the <<.\* \* \*->><<+disabled member+>> refuse to submit to medical examination, as provided in this section, the disability allowance <<.\* \* \*->>shall be <<+terminated+>> and all rights of the <<.\* \* \*->><<+disabled member to+>> the disability allowance shall be revoked.

SEC. 203. Section 24014 of the Education Code is amended to read:

**<< CA EDUC § 24014 >>**

24014. A <<.\* \* \*->><<+disabled member+>> may be employed <<.\* \* \*->><<+to perform creditable service+>>. The employment <<.\* \* \*->><<+shall not cause+>> the disability allowance <<+to be suspended or terminated+>> except as provided in Sections 23401<<+, 24013,+>> and 24015, and no deduction shall be made from the <<.\* \* \*->><<+disabled member's compensation+>> as contributions to <<.\* \* \*->><<+the plan+>>.

SEC. 203.5. Section 24015 of the Education Code is amended to read:

**<< CA EDUC § 24015 >>**

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

24015. <<-\* \* \*->><<+Notwithstanding Section 22132, i>>f a person who begins to receive a disability allowance after June 30, 1972, is employed, or is self-employed in any capacity in which his or her average earnings for any prior continuous six months amount to 66⅔ percent of the indexed final compensation, the person shall be presumed capable of performing gainful employment and no longer disabled. The disability allowance shall be terminated on the first day of the month following the six-month period. Any allowance paid thereafter shall be considered an overpayment and recovery shall be made.

SEC. 204. Section 24018 of the Education Code is amended to read:

<< CA EDUC § 24018 >>

24018. <<-\* \* \*->><<+When a disabled member>> returns to work in <<+ his or her former position of employment or in>> a comparable level position and within six months of return experiences a recurrence of the original disability, that can be medically substantiated, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its onset as of the date the member first became disabled. The former disability allowance shall <<-\* \* \*->><<+again become payable>> as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of <<+service for which>> compensation <<+is payable to the member>> provided the member complies with the provisions of Section 24003.

SEC. 205. Section 24100 of the Education Code is amended to read:

<< CA EDUC § 24100 >>

24100. This chapter governs the eligibility, allowance computations, and related provisions for the disability retirement program. This chapter applies to all persons who become members of the <<+plan>> on <<+or>> after October 16, 1992, all persons who <<-\* \* \*->><<+become members of the plan>> on <<+or>> after October 16, 1992, <<-\* \* \*->><<+subsequent to>> a refund, and to all members as of October 15, 1992, who elect, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered by the disability retirement program set forth in this chapter.

SEC. 206. Section 24101 of the Education Code is amended to read:

<< CA EDUC § 24101 >>

24101. (a) A member may apply for a disability retirement if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed <<-\* \* \*->><<+subject to coverage by the plan>>. Credit received because of workers' compensation payments shall be counted toward the four-year requirement.

(2) The last five years of credited service have been served in this state.

(3) At least one year (1.000) of credited service was earned subsequent to the date on which the member <<-\* \* \*->><<+terminated the service retirement allowance>> under Section 24208.

(4) At least one year (1.000) of credited service was earned subsequent to the date on which the member's disability allowance was terminated.

(5) At least one year (1.000) of credited service was earned subsequent to the most recent refund of accumulated retirement contributions.

(6) The member is not applying for a disability retirement because of a physical or mental condition known to exist at the time the most recent membership in <<-\* \* \*->><<+the plan>> commenced and that remains substantially unchanged at the time of application.

(b) Nothing in this section shall affect the right of a member to a disability retirement if the reason that the member has <<+performed>> less than four years of actual service is due to an on-the-job injury or <<+a>> disease <<-\* \* \*->><<+while in employment subject to coverage by the plan>>.

(c) A member shall not be eligible for disability retirement from this <<+ plan>> while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 207. Section 24102 of the Education Code is amended to read:

<< CA EDUC § 24102 >>

24102. The board may authorize payment of a disability retirement allowance to any member who is qualified upon application by the member, the <<+ member's>> guardian or conservator, or the <<+member's>> employer, if the application is made during any one of the following periods:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

- (a) While the member is employed or on a compensated leave of absence.
- (b) While the member is physically or mentally incapacitated for performance of <<-\* \* \*-><<+service+>> and the incapacity has been continuous from the last day for which compensation <<-\* \* \*-><<+is payable+>> to the member.
- (c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of <<-\* \* \*-><<+service+>>, and within four months after the last day of <<+service+>> for which compensation <<-\* \* \*-><<+is payable+>> to the member, or within 12 months <<-\* \* \*-><<+of that date if the member was on an employer-approved+>> leave to study at an approved college or university.
- (d) Within four months after the termination of the member's employment <<-\* \* \*-><<+subject to coverage by the plan+>>, if the application was not made under subdivision (b) and was not made more than four months after the last day <<+of service+>> for which compensation <<-\* \* \*-><<+is payable+>> to the member.
- (e) The member is not applying for a disability retirement allowance because of a physical or mental condition that existed at the time the most recent membership in <<-\* \* \*-><<+the plan+>> commenced and <<+which+>> remains substantially unchanged at the time of application.

SEC. 208. Section 24103 of the Education Code is amended to read:

<< CA EDUC § 24103 >>

24103. (a) The member shall provide medical documentation <<-\* \* \*-><<+ substantiating+>> the impairment qualifying <<-\* \* \*-><<+the member+>> for the disability retirement.
- (b) On receipt of an application for disability retirement, the system may order a medical examination of a member to determine whether the member is incapacitated for <<-\* \* \*-><<+performance of+>> service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability, and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability retirement shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations or the application shall be <<+ rejected+>>, unless this requirement is waived by the board. If the member is too ill to <<-\* \* \*-><<+be examined+>>, the system shall postpone the examination until <<-\* \* \*-><<+the member can be examined+>>. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.
- (c) The system may reject the disability retirement application if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section <<+22126+>>, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is <<-\* \* \*-><<+mentally or physically+>> <<-\* \* \*-><<+incapacitated+>>.
- (d) If the board determines that a member who has applied for disability retirement may perform <<-\* \* \*-><<+service in the member's former position of employment or in+>> a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability retirement application.
- (e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability retirement allowance.
- (f) The system shall inform the member of <<+the+>> rejection <<-\* \* \*-><<+or cancellation of the member's+>> disability <<+retirement+>> allowance application within 30 days after that determination is made by the system.

SEC. 209. Section 24104 of the Education Code is amended to read:

<< CA EDUC § 24104 >>

24104. In <<-\* \* \*-><<+cases of+>> <<+a member's+>> willful substance abuse or <<+if+>> the board determines a member <<-\* \* \*-><<+who qualifies+>> for disability retirement pursuant to this chapter has mental, physical, or vocational rehabilitation potential, the board may limit the disability retirement to a period not to exceed two years from the date of approval of the disability retirement. Notwithstanding Section 24112, the disability retirement allowance shall terminate at the end of the period granted unless <<-\* \* \*-><<+an extension is granted+>> by the board.

SEC. 210. Section 24105 of the Education Code is amended to read:

<< CA EDUC § 24105 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

24105. (a) A disability retirement allowance shall become effective upon any date designated by the member, provided that all of the following conditions are met:

(1) An application for disability retirement is filed on a form provided by the system.

(2) The effective date is later than the last day of service for which <<+ compensation+>> is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received << \* \* \* ->><<+at the system's office+>> in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If a member's application for disability retirement does not contain an election of either an unmodified allowance or an allowance modified under an option and if the member subsequently submits an election, but not within the 30-day period established pursuant to Section 24301, the board shall set a benefit effective date which is no earlier than the first day of the month in which the subsequent election is received by the system. If the member fails to submit an election pursuant to Section 24301 and within six months of the date the <<+acknowledgment+>> notice is mailed pursuant to Section 24301, the member's application for disability retirement shall be rejected.

(c) If the member is employed << \* \* \* ->><<+to perform creditable service subject to coverage by the plan+>> at the time the disability retirement is approved, the member shall notify the system in writing, within 90 days, of the last day on which << \* \* \* ->><<+the member+>> will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of the approval of disability retirement, the member's application for disability retirement shall be rejected and a disability retirement allowance shall not be payable to the member.

SEC. 211. Section 24107 of the Education Code is amended to read:

<< CA EDUC § 24107 >>

24107. A <<+member retired for+>> disability << \* \* \* ->> may elect an option pursuant to Section 24301 to modify the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

SEC. 212. Section 24110 of the Education Code is amended to read:

<< CA EDUC § 24110 >>

24110. <<+A+>> member << \* \* \* ->><<+who qualifies+>> for disability retirement pursuant to this chapter << \* \* \* ->><<+because of+>> a disabling impairment <<+that is+>> amenable to treatment that could be expected to restore <<+the member's+>> ability to perform <<+ service in+>> the member's << \* \* \* ->><<+former position of employment or in+>> a comparable level position shall participate in a treatment program prescribed by the member's primary treating physician. Willful failure to initiate and continue participation in the program shall cause the disability retirement allowance to be terminated. In determining whether a member has good cause for failure to follow that treatment, the board shall take into account whether the treatment would abridge the member's right to the free exercise of religion or whether the << \* \* \* ->><<+member's physical or mental+>> condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

SEC. 213. Section 24111 of the Education Code is amended to read:

<< CA EDUC § 24111 >>

24111. (a) <<+A+>> member << \* \* \* ->><<+who qualifies+>> for disability retirement pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore <<+the member's+>> ability to perform <<+service in+>> the member's << \* \* \* ->><<+former position of employment or in+>> a comparable level position shall participate in an appropriate <<+ rehabilitation+>> program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the <<+rehabilitation+>> program shall cause the disability retirement allowance to be terminated. In determining whether a member has good cause for failure to participate in the program the board shall take into account whether the participation would abridge the member's right to the free exercise of religion or whether the << \* \* \* ->><<+member's physical or mental+>> condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system <<+from the fund+>>.

SEC. 214. Section 24112 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

**<< CA EDUC § 24112 >>**

24112. The board may require <<-\* \* \*->><<+a member+>> receiving <<-\* \* \*->><<+a disability retirement+>> allowance to undergo medical examination at such times as <<-\* \* \*->><<+the board+>> deems necessary. The system may request the <<+member's+>> treating physician, upon authorization by the <<-\* \* \*->><<+retired member+>>, to complete a medical reevaluation questionnaire. The system shall reimburse the <<-\* \* \*->><<+retired member+>> for all reasonable costs related to <<+completion of+>> this questionnaire <<-\* \* \*->><<+in an amount not to exceed+>> two hundred fifty dollars (\$250) <<-\* \* \*->><<+if the retired member+>> has no other health coverage that <<-\* \* \*->><<+would pay+>> for the cost of completing the medical questionnaire. The board may authorize <<-\* \* \*->><<+a+>> medical examination to be conducted by the <<+retired member's+>> treating source <<-\* \* \*->>at the <<+ retired member's+>> expense <<-\* \* \*->>and, in any case, may require a medical examination to be conducted by a physician selected by the board, in which event, the board shall pay all reasonable costs associated with the examination. The board shall, in scheduling medical examinations, give consideration to the interests and convenience of the <<-\* \* \*->><<+ retired member+>>. If the examination, together with other available information, shows to the satisfaction of the board that the <<-\* \* \*->><<+retired member+>> is no longer disabled, the disability retirement allowance shall <<-\* \* \*->><<+be terminated+>>. Should the <<-\* \* \*->><<+retired member+>> refuse to submit to medical examination, as provided in this section, <<-\* \* \*->><<+the member's+>> disability <<+retirement allowance+>> shall be <<+terminated+>> and all rights of the <<+retired+>> member <<+to+>> the disability retirement allowance shall be revoked.

SEC. 215. Section 24113 of the Education Code is amended to read:

**<< CA EDUC § 24113 >>**

24113. A <<+member retired for+>> disability <<-\* \* \*->>may be employed <<-\* \* \*->><<+to perform creditable service+>>. The employment <<+shall+>> not <<-\* \* \*->><<+cause+>> the disability retirement allowance <<+to be suspended or terminated, except as provided in Section 24112,+>> and no deduction shall be made from the <<-\* \* \*->><<+retired member's compensation+>> as contributions to <<-\* \* \*->><<+the plan+>>.

SEC. 216. Section 24114 of the Education Code is amended to read:

**<< CA EDUC § 24114 >>**

24114. (a) A member retired for disability may be employed or self-employed <<+in any capacity, notwithstanding Section 22132,+>> but shall not make contributions to the retirement fund or accrue service credit based on earnings from any employment.

(b) A member retired for disability may earn in any one calendar year up to the limitation specified in subdivision (c) without a reduction in his or her disability retirement allowance.

(c) The limitation that shall apply to the earnings of a member retired for disability shall be fifteen thousand dollars (\$15,000), in any one school year, adjusted annually by the board each July 1 by the annual amount of increase in the All Urban California Consumer Price Index using December 1989 as the base.

(d) If a member retired for disability earns in excess of the limitation specified in subdivision (c) from all employment in any calendar year, <<+ notwithstanding Section 22132,+>> his or her retirement allowance shall be reduced by the amount of the excess earnings. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the calendar year in which the excess compensation was earned.

(e) The earnings limitation specified in this section shall not be applicable to a member retired for disability who is participating in an approved rehabilitation program pursuant to Section 24111.

(f) This section shall not be applicable to a member retired for disability who began receiving a disability retirement allowance prior to October 16, 1992.

SEC. 217. Section 24116 of the Education Code is amended to read:

**<< CA EDUC § 24116 >>**

24116. <<-\* \* \*->><<+A member retired for+>> disability <<-\* \* \*->> whose last employment was in the California State University, as a member of this <<+plan+>> or the Public Employees' Retirement System, may serve as a member of the teaching staff of the California State University and shall be subject to the employment limitations as provided by the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

SEC. 218. Section 24117 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

**<< CA EDUC § 24117 >>**

24117. (a) << \* \* \* >><< A member >> retired for disability << \* \* \* >> may << \* \* \* >><< terminate the disability retirement allowance upon >> written request to << \* \* \* >> the system.

(b) << \* \* \* >><< If a member retired for >> disability << \* \* \* >> is determined by the board to no longer be eligible to receive a disability retirement allowance pursuant to this chapter << >>, the disability retirement allowance >> shall be terminated << \* \* \* >>.

SEC. 219. Section 24119 of the Education Code is amended to read:

**<< CA EDUC § 24119 >>**

24119. << \* \* \* >><< When a member retired for >> disability << \* \* \* >> returns to work in << >> the member's former position of employment or in >> a comparable level position and within six months of return experiences a recurrence of the original disability, which can be medically substantiated, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its onset as of the date the member first became disabled. The former disability retirement allowance shall << \* \* \* >><< again become payable >> as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of << >> service for which >> compensation << >> is payable to the member >>, provided the member complies with Section 24103.

SEC. 220. Section 24201 of the Education Code is amended to read:

**<< CA EDUC § 24201 >>**

24201. (a) << A >> member << \* \* \* >> may << \* \* \* >><< retire >> for service << \* \* \* >> upon written application for retirement to the board, << \* \* \* >><< under paragraph (1) or (2) as follows >>:

(1) The member has attained age 55 years or more and has at least five years of credited California service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions, if five of the final six years of credited service have been in this state.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or << \* \* \* >><< the San Francisco City and County Employees' Retirement S >> system.

(b) In the calculation of allowances of members who qualify for retirement under paragraph (2) of subdivision (a) and who are not qualified for retirement under paragraph (1) of that subdivision, << \* \* \* >> any service performed in other states of the United States, its territories and possessions, or in Canada << >> shall be excluded >>.

(c) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 221. Section 24202 of the Education Code is amended to read:

**<< CA EDUC § 24202 >>**

24202. (a) << \* \* \* >><< A member who retires >> for service << \* \* \* >> after June 30, 1972, << \* \* \* >> shall receive a retirement allowance << \* \* \* >><< consisting >> of both of the following:

(1) An annual allowance payable in monthly installments, upon retirement at normal retirement age or over, equal to 2 percent of the final compensation for each year of credited service. If the << >> member's >> retirement << \* \* \* >> is effective at less than normal retirement age and between early retirement age and normal retirement age, << \* \* \* >><< the member's >> allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month that will elapse until the member will attain normal retirement age.

(2) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of << \* \* \* >><< the member's >> account at the time of << \* \* \* >> retirement.

(b) In computing the amounts described in subdivision (a), the age of the member << on >> the last day of the month in which the retirement allowance begins to accrue or such later date as provided in Section 24204 shall be used.

SEC. 222. Section 24203 of the Education Code is amended to read:

**<< CA EDUC § 24203 >>**

24203. (a) << \* \* \* >><< A member who has >> 30 years of credited service may retire at age 50 years or older and receive an annual allowance equal to 2 percent of final compensation for each year of credited service. If the member has



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

attained age 50 years, but has not attained early retirement age, the allowance shall be reduced by one-quarter of 1 percent for each full month or fraction of a month that will elapse until the member will attain early retirement age and one-half of 1 percent for each full month, or fraction <<of a month>> between early retirement age and normal retirement age.

(b) In computing the amounts described in subdivision (a), the age of the member <<on>> the last day of the month in which the retirement allowance begins to accrue or any later date provided in Section 24204 shall be used.

SEC. 223. Section 24204 of the Education Code is amended to read:

<< CA EDUC § 24204 >>

24204. A <<service>> retirement allowance shall become effective upon any date designated by the member, provided all of the following conditions are met:

(a) An application for <<service>> retirement allowance is filed on a form provided by the system, that is executed no earlier than six months before the effective date of retirement allowance.

(b) The effective date is later than the last day of <<creditable>> service for which <<compensation>> is payable to the member.

(c) The effective date is no earlier than the first day of the month in which the application is received <<\* \* \*>><<at the system's office>> in Sacramento.

(d) Either of the following conditions exists:

(1) The effective date is no earlier than one year following the date on which the <<\* \* \*>><<retirement allowance was terminated>> under Section 24208, or subdivision (a) of Section 24117.

(2) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

SEC. 224. Section 24205 of the Education Code is amended to read:

<< CA EDUC § 24205 >>

24205. (a) The board shall, in consultation with members, develop, adopt, and implement an additional <<early>> retirement <<alternative>> that will allow <<\* \* \*>><<a member>> to receive a minimum retirement allowance prior to normal retirement age if the <<member>> has at least attained early retirement age. Under the <<alternative>>, the member shall continue to receive the minimum retirement allowance past normal retirement age until the <<\* \* \*>><<total amount>> paid prior to normal retirement age <<equals>> the difference between the minimum retirement allowance and the <<\* \* \*>><<retirement allowance>> that would have been <<paid>> to the member under <<\* \* \*>><<Section 24202 or 24203, whichever is applicable,>> at normal retirement age, and thereafter <<the service retirement allowance for normal retirement age>> shall be paid<<\* \* \*>>. The board shall determine the age past normal retirement at which the increase will be made by determining how long the minimum retirement allowance would have to be paid beyond age 60 years in order for the amount paid prior to age 60 years to equal the difference between the minimum retirement allowance and the <<allowance>> that would have been <<paid>> to the member under <<\* \* \*>>service retirement at normal retirement age. The board shall integrate the <<\* \* \*>><<early retirement alternative>> adopted under this section with the other <<early>> retirement <<alternatives>> that a member may elect under this <<chapter>>.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the <<plan>>.

(c) The additional employer contributions required, if any, under this section shall be computed as a level percentage of member compensation. The additional contribution rate required, if any, shall not be less than the sum of (1) the actuarial normal cost, plus (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from January 1, 1979.

SEC. 225. Section 24207 of the Education Code is amended to read:

<< CA EDUC § 24207 >>

24207. If a <<retired member terminates a>> service <<\* \* \*>><<retirement allowance>> and subsequently retires, the minimum retirement allowance <<\* \* \*>><<shall be>> the allowance provided by Section 24206.

SEC. 226. Section 24208 of the Education Code is amended to read:

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 24208 >>

24208. << \* \* \* >><< A member >> retired for service may << \* \* \* >><< terminate the retirement allowance upon >> written request << \* \* \* >><< to >> the system.

SEC. 227. Section 24209 of the Education Code is amended to read:

<< CA EDUC § 24209 >>

24209. Upon retirement for service following << termination of >> a prior service retirement << \* \* \* >>, the member shall receive a service retirement allowance << \* \* \* >> equal << to >> the sum of both of the following:

(a) An amount equal to the monthly allowance the member was receiving immediately preceding the most recent << \* \* \* >><< termination of retirement allowance >>, exclusive of any amounts payable pursuant to Section 22714 or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not << \* \* \* >><< terminated the retirement allowance >>.

(b) An amount calculated pursuant to Section 24202, 24203, or 24206 on service credited subsequent to the most recent << \* \* \* >><< termination of retirement allowance >>, the member's age at retirement, and final compensation.

SEC. 228. Section 24210 of the Education Code is amended to read:

<< CA EDUC § 24210 >>

24210. Upon retirement for service following a prior disability retirement granted pursuant to Chapter 26 (commencing with Section 24100) << \* \* \* >><< that was terminated >>, the member shall receive a service retirement allowance calculated pursuant to Section 24202, 24203, or 24206 and equal to the sum of both of the following:

(a) An amount based on service credit accrued prior to the effective date of the disability retirement, the member's age as of the effective date of the service retirement, and indexed final compensation to the effective date of the service retirement.

(b) An amount based on the service credit accrued after << \* \* \* >><< termination of the >> disability retirement, the member's age as of the effective date of service retirement, and final compensation.

SEC. 229. Section 24214 of the Education Code is amended to read:

<< CA EDUC § 24214 >>

24214. (a) A member retired for service may perform creditable service as defined in Section 22119.5 << \* \* \* >><< as an employee of >> an employer << , as an employee of a third party, or as an independent contractor, >> but shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service.

(b) The rate of pay for service performed by a member retired for service << as an employee of the employer >> shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service shall not be required to reinstate for performing creditable service.

(d) A member retired for service may << \* \* \* >><< receive earnings >> for creditable service << performed >> in any one school year up to the limitation specified in subdivision (e) without a reduction in his or her retirement allowance.

(e) The limitation that shall apply to the earnings from creditable service << \* \* \* >><< performed by >> a member retired for service << either as an employee of an employer, an employee of a third party, or as an independent contractor, >> shall be fifteen thousand dollars (\$15,000), in any one school year, adjusted annually by the board each July 1 by the annual amount of increase in the All Urban California Consumer Price Index using December 1989 as the base.

(f) If a member retired for service earns compensation for creditable service in excess of the limitation specified in subdivision (e), his or her 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 shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

<< The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996. >>

SEC. 230. Section 24215 of the Education Code is amended to read:

<< CA EDUC § 24215 >>

24215. << \* \* \* >><< A member retired for >> service << \* \* \* >> whose last employment was in the California State University, as a member of this << plan >> or the Public Employees' Retirement System, may serve as a member of the teaching staff of the California State University and shall be subject to the employment limitations as provided by the Public

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).  
SEC. 231. Section 24216 of the Education Code is amended to read:

<< CA EDUC § 24216 >>

24216. (a)(1) A member retired for service who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d), (e) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d), (e) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b)(1) A member retired for service who is employed <<+by an employer+>> to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d), (e) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer. The limitation specified in subdivisions (d), (e) and (f) of Section 24214 shall apply to creditable service performed beyond the specified exemption.

(2) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section shall not apply to any person who has received additional service credit pursuant to Section 22714, 22715, or 22716.

(d) This section shall become operative on July 1, 1995, and shall remain in effect only until July 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2000, deletes or extends that date.

SEC. 232. Section 24219 of the Education Code is amended to read:

<< CA EDUC § 24219 >>

24219. Members who were retired under a previously existing local teachers' retirement system or the San Francisco City and County Employees' Retirement System prior to July 1, 1972, who have not retired under <<-\* \* \*->><<+ this part for the+>> local system service performed prior to July 1, 1972, shall have that <<+portion+>> of the retirement allowance computed under the law in effect on June 30, 1972, whenever they retire in the future.

SEC. 233. Section 24300 of the Education Code is amended to read:

<< CA EDUC § 24300 >>

24300. (a) Any member prior to the effective date of the member's retirement may elect an option that would provide an actuarially modified retirement allowance payable throughout the life of the member and his or her option beneficiary as follows:

(1) Option 2.<sup>5</sup> The modified retirement allowance shall be paid to the <<-\* \* \*->><<+retired member+>> and upon the <<-\* \* \*->><<+ retired member's+>> death, an allowance equal to the modified amount the <<-\* \* \*->><<+retired member+>> was receiving shall be paid to the option beneficiary.

(2) Option 3. The modified retirement allowance shall be paid to the <<-\* \* \*->><<+retired member+>> and upon the <<-\* \* \*->><<+ retired member's+>> death, an allowance equal to one-half of the modified amount the <<-\* \* \*->><<+retired member+>> was receiving shall be paid to the option beneficiary.

(3) Option 4. The modified retirement allowance shall be paid to the <<-\* \* \*->><<+retired member+>> as long as both the <<-\* \* \*->><<+retired member+>> and the option beneficiary are living. Upon the death of either the <<-\* \* \*->><<+retired member+>> or the option beneficiary, an allowance equal to two-thirds of the modified amount that the <<-\* \* \*->><<+retired member+>> was receiving shall be paid to the surviving <<-\* \* \*->><<+retired member+>> or the surviving option beneficiary.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

(4) Option 5. The modified retirement allowance shall be paid to the <<-\* \* \*->><<retired member+>> as long as both the <<-\* \* \*->><<retired member+>> and the option beneficiary are living. Upon the death of either the <<-\* \* \*->><<retired member+>> or the option beneficiary, an allowance equal to one-half of the modified amount that the <<-\* \* \*->><<retired member+>> was receiving shall be paid to the surviving <<-\* \* \*->><<retired member+>> or surviving option beneficiary.

(5) Option 6. The modified retirement allowance shall be paid to the <<-\* \* \*->><<retired member+>> and upon the <<-\* \* \*->><<retired member's+>> death, an allowance equal to the modified amount the <<-\* \* \*->><<retired member+>> was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the <<-\* \* \*->><<retired member+>>, the retirement allowance without modification for the option shall be payable to the <<-\* \* \*->><<retired member+>>.

(6) Option 7. The modified retirement allowance shall be paid to the <<-\* \* \*->><<retired member+>> and upon the <<-\* \* \*->><<retired member's+>> death, an allowance equal to one-half of the modified amount the <<-\* \* \*->><<retired member+>> was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the <<-\* \* \*->><<retired member+>>, the retirement allowance without modification for the option shall be payable to the <<-\* \* \*->><<retired member+>>.

(b) The option beneficiary, for purposes of this section, shall have been designated by the <<-\* \* \*->><<member on a form prescribed by the system and+>> duly executed and filed with the system at the time of the member's retirement.

(c) A member may revoke or change <<-\* \* \*->><<an+>> election of an option at any time prior to the effective date of the member's retirement.

SEC. 234. Section 24301 of the Education Code is amended to read:

<< CA EDUC § 24301 >>

24301. (a) <<A+>> member who has filed an application for a disability retirement pursuant to Chapter 26 (commencing with Section 24100) may elect, as provided in Section 24300 to receive an actuarially modified disability retirement allowance. After receipt of a disability retirement application from a member, the board shall mail an acknowledgment notice to the member. A 30-day period shall commence with the mailing of the <<+acknowledgment+>>, during which time the member may change the option election made on the disability retirement application.

(b) The option shall <<+become+>> effective on the effective date of the disability retirement allowance. The modification of the disability retirement allowance under the option elected shall be based on the ages of the <<-\* \* \*->><<retired member+>> and the <<+designated+>> option beneficiary as of the effective date of the disability retirement. The modification shall be applicable only to the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

(c) The elected option may not be revoked or changed after the later of the effective date of the disability retirement allowance or 30 days after the mailing of the acknowledgment notice pursuant to this section.

(d) If a member dies prior to electing an unmodified allowance or an option, the death benefits shall be payable under Chapter 23 (commencing with Section 23850), regardless of whether the disability retirement application is or would have been approved.

SEC. 235. Section 24302 of the Education Code is amended to read:

<< CA EDUC § 24302 >>

24302. Upon <<-\* \* \*->><<termination of a+>> service retirement <<+ allowance+>> pursuant to Section 24208, any option elected pursuant to Section 24300 and in effect at the time of reinstatement shall be considered to be a preretirement election of an option elected as of the effective date of that retirement and shall be subject to the same provisions as an option elected under Section 24307.

SEC. 236. Section 24303 of the Education Code is amended to read:

<< CA EDUC § 24303 >>

24303. <<-\* \* \*->><<Termination of the+>> service retirement <<+ allowance+>> pursuant to Section 24208 shall not cancel an option elected under the provisions of Section 24300 or 24307. The option shall remain in effect unchanged and shall be reapplied to the allowance payable upon the subsequent service retirement.

SEC. 237. Section 24304 of the Education Code is amended to read:

<< CA EDUC § 24304 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

24304. Upon <<-\* \* \*->><<termination of a+>> disability retirement <<+allowance+>> pursuant to Section 24117, any option elected at the time of retirement pursuant to Section 24301 shall be <<+void+>> as of the effective date of the reinstatement. The preretirement election of option subsequent to <<-\* \* \*->><<termination of the allowance+>> pursuant to Section 24117 <<-\* \* \*->><<shall be+>> subject to the following:

(a) <<-\* \* \*->><<A member+>> may not make a preretirement election of option pursuant to Section 24307 prior to <<-\* \* \*->><<becoming qualified to make application for service retirement under Section 24201 or Section 24203+>>.

(b) <<+A+>> member who was receiving an unmodified disability retirement allowance prior to <<-\* \* \*->><<termination of the allowance+>> may not make a preretirement election of option earlier than six months following the date on which the <<-\* \* \*->><<disability retirement allowance was terminated+>> pursuant to Section 24117.

(c) <<+A+>> member who has elected an option pursuant to Section 24301, and is otherwise eligible to make a preretirement election of an option, may make the election anytime during the six months following the date on which the <<-\* \* \*->><<disability retirement allowance was terminated+>> pursuant to Section 24117. The member shall elect the same option and <<+ designate+>> the same option beneficiary as <<+designated+>> under Section 24301 when making the election during the six-month period following the date <<-\* \* \*->><<the+>> disability retirement <<+allowance was terminated+>>.

SEC. 238. Section 24305 of the Education Code is amended to read:

<< CA EDUC § 24305 >>

24305. (a) An option elected under Section 24300 may be canceled by a <<-\* \* \*->><<retired member+>> if the option beneficiary is the <<-\* \* \*->><<retired member's+>> spouse or former spouse and a final decree of dissolution of marriage or a judgment of nullity has been entered or an order of separate maintenance has been made on or after January 1, 1978, by a court of competent jurisdiction. A <<-\* \* \*->><<retired member+>> may cancel the option before or after issuance of the first retirement allowance payment.

(b) The <<-\* \* \*->><<retired member+>> shall notify the board in writing of <<-\* \* \*->> cancellation of the option <<-\* \* \*->><<. N+>>otification shall not be earlier than the effective date of the decree, judgment, or order <<-\* \* \*->><<and+>> shall include a certified copy of the final decree of dissolution, or judgment of nullity, or an order of separate maintenance, and any property settlement agreement.

(c) Upon notification to the board, the <<-\* \* \*->><<retired member+>> may elect (1) to receive the unmodified retirement allowance from the date of receipt of the notification; or (2) a new joint and survivor option under Section 24300 and may <<+designate+>> a new option beneficiary. Modification of the retirement allowance <<-\* \* \*->><< because of+>> the newly elected option <<+or newly designated beneficiary+>> shall be based on the ages of the <<-\* \* \*->><<retired member+>> and the new option beneficiary as of the effective date of the new option. The election of a new joint and survivor option <<+or the designation of a new option beneficiary+>> shall be consistent with the final decree of dissolution, judgment of nullity, order of separate maintenance, or property settlement agreement, and shall not result in any additional liability to the Teachers' Retirement Fund. The effective date of the <<-\* \* \*->><<change+>> shall be the date notification is received by the board.

SEC. 239. Section 24306 of the Education Code is amended to read:

<< CA EDUC § 24306 >>

24306. (a)(1) <<-\* \* \*->><<If the option beneficiary designated at the time the option was elected predeceases the retired member, a retired member+>> who elected Option 2, Option 3, Option 4, or Option 5 may <<-\* \* \*->><<designate either or both of the following:+>>

<<+(A) A+>> new option beneficiary <<-\* \* \*->><<.+>>

<<+(B) A different+>> joint and survivor option described in Section 24300 <<-\* \* \*->>.

(2) The effective date of the <<-\* \* \*->><<change+>> shall be one year following the date notification is received by the board, provided both the <<-\* \* \*->><<retired member+>> and the designated option beneficiary are then living. <<-\* \* \*->><<N+>>otification shall include proof of death of the predeceased beneficiary and a properly executed form for the <<-\* \* \*->><<change+>>.

(3) The selection of the new joint and survivor option under this subdivision and Section 24300 is subject to an actuarial modification in the amount of the retirement allowance. However, a <<-\* \* \*->><<retired member+>> may not elect a joint and survivor option that would result in any additional liability to the fund.

(b) If the option beneficiary designated in the election of an Option 6 or Option 7 pursuant to Section 24307 dies after the member's retirement, the retirement allowance without modification for the option shall be payable to the <<-\* \* \*->>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

\*-><<retired member+>> upon notification to the board and shall commence to accrue to the <<\* \* \*-><<retired member+>> as of the day following the date of the death of the option beneficiary. Notification to the board shall include proof of death of the <<\* \* \*->> beneficiary.

SEC. 240. Section 24306.5 of the Education Code is amended to read:

<< CA EDUC § 24306.5 >>

24306.5. (a) <<\* \* \*-><<A member+>> who retired <<for service+>> under Option 2 or Option 3 with an effective date prior to January 1, 1991, may elect to change Option 2 to Option 6 or Option 3 to Option 7 under all of the following conditions:

- (1) The election is made during the six-month period commencing July 1, 1994, and ending December 31, 1994.
  - (2) The same beneficiary under Option 2 or Option 3 is named as beneficiary under Option 6 or Option 7.
  - (3) The change in options is consistent with Sections 22453 and 24305.
  - (4) The option beneficiary is not afflicted with any known terminal illness and the <<\* \* \*-><<retired member+>> shall state under penalty of perjury that to the best of his or her knowledge the option beneficiary is not afflicted with any known terminal illness.
  - (5) The option beneficiary has not predeceased the <<\* \* \*-><<retired member+>> as of the effective date of the change in options.
- (b) The change in options shall be effective on the date the election is signed, provided that the election is received <<\* \* \*-><<at the system's+>> office <<\* \* \*->>in Sacramento within 30 days after the date of the signature.
- (c) If an election to change options is made pursuant to this section, the modified allowance shall be reduced in a manner determined by the board to ensure that no additional liability shall be incurred by the <<plan+>> pursuant to this section.

SEC. 241. Section 24307 of the Education Code is amended to read:

<< CA EDUC § 24307 >>

24307. (a) <<A+>> member who <<\* \* \*-><<qualifies to apply+>> for retirement under Section 24201 or Section 24203 may make a preretirement election of an option, as provided in Section 24300 without right of revocation or change after the effective date of <<\* \* \*->>retirement, except as provided in this part. The preretirement election of an option shall become effective on the date the election is signed, providing the election is received in the system's office in Sacramento within 30 days after the date of signature.

(b) Upon the member's death, prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, upon the assumption that the member retired for service on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851, shall be paid to the beneficiary in a lump sum.

(c) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(d) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement, or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, at the date the election was signed.

(e) A member who <<\* \* \*-><<terminates the+>> service retirement <<allowance+>> pursuant to Section 24208 shall not be eligible to file a preretirement election of an option until one calendar year elapses from the date <<\* \* \*-><<the allowance is terminated+>>.

(f) The system shall inform members who are qualified to make application for a preretirement election of an option, through the annual statements of account, that the option is available.

SEC. 242. Section 24309 of the Education Code is amended to read:

<< CA EDUC § 24309 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

24309. (a) A member may cancel the election of an option made pursuant to Section 24307, providing written cancellation is received by the board on or before the day preceding the effective date of retirement or during the period between << \* \* \* >> termination of the retirement allowance pursuant to Section 24208 or 24117 and the effective date of the subsequent retirement. Regardless of how the member elects to receive his or her retirement allowance, that allowance shall be reduced by an amount determined by the board to be the actuarial equivalent of the coverage the member received as a result of the preretirement election and that does not result in any adverse funding to the << plan >>.

(b) If the option beneficiary designated in the preretirement election of an option pursuant to Section 24307 dies prior to the member's retirement, the preretirement election shall be canceled as of the day following the date of death and the member's subsequent retirement allowance shall be subject to the allowance reduction prescribed in this section.

SEC. 243. Section 24310 of the Education Code is amended to read:

<< CA EDUC § 24310 >>

24310. If a member cancels an election under Section 24309, the member may again elect an option under Section 24307. If the member elects to change an option during any year, the reduction for that year shall be that for the option to which the greater reduction under Section 24309 << as it read on December 31, 1995, >> is applicable.

SEC. 244. Section 24400 of the Education Code is amended to read:

<< CA EDUC § 24400 >>

24400. The Legislature recognizes that inflation erodes the purchasing power of benefits paid under the << \* \* \* >> plan. It is the intent of the Legislature to understand the degree of erosion of these benefits. The board shall report to the Governor and Legislature no later than April 1 of each year on the extent to which inflation has eroded the purchasing power of benefits << provided >> under the << \* \* \* >> plan. The board shall indicate the amount of supplementary increases in retirement allowances required to preserve the purchasing power of benefits provided << \* \* \* >> under the plan. The board shall also determine and report on the increases.

SEC. 246. Section 24401 of the Education Code is amended to read:

<< CA EDUC § 24401 >>

24401. This chapter does not give any << \* \* \* >> retired member, or a retired member's >> successors in interest << \* \* \* >> or << \* \* \* >> beneficiary, any claim against the << board, >> system << , or plan >> for any increase in any allowance paid or payable prior to July 1, 1972.

SEC. 247. Section 24405 of the Education Code is amended to read:

<< CA EDUC § 24405 >>

24405. The first three hundred dollars (\$300) of the monthly allowances payable << \* \* \* >> to retired members, disabled members >>, and beneficiaries are increased as of July 1, 1976, as follows if the member had 20 or more years of credited service:

- (a) For those with effective dates prior to July 1, 1972, 9 percent.
- (b) For those with effective dates from July 1, 1972, to June 30, 1973, 6 percent.
- (c) For those with effective dates from July 1, 1973, to June 30, 1974, 3 percent.

SEC. 248. Section 24406 of the Education Code is amended to read:

<< CA EDUC § 24406 >>

24406. The first three hundred dollars (\$300) of the monthly allowances payable << \* \* \* >> to retired members, disabled members >>, and beneficiaries are increased as of July 1, 1978, for those members receiving allowances on July 1, 1978, if the member had less than 20 years of credited service, as follows:

- (a) For those with effective dates prior to July 1, 1972, 9 percent.
- (b) For those with effective dates from July 1, 1972, to June 30, 1973, 6 percent.
- (c) For those with effective dates from July 1, 1973, to June 30, 1974, 3 percent.

SEC. 249. Section 24407 of the Education Code is amended to read:

<< CA EDUC § 24407 >>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

24407. (a) The monthly allowances payable <<-\* \* \*-><<+to retired members, disabled members+>>, and beneficiaries are increased as of January 1, 1980, for those persons receiving allowances with respect to members who retired or died prior to June 30, 1973, to the amount that results when the initial allowance that was received by those members is multiplied by the percentage set forth opposite the year of retirement or death in the following schedule:

<b>Period During Which Retirement or Death Occurred</b>	<b>Percentage</b>
On or before June 30, 1958 .....	180.4
12 months ending June 30, 1959 .....	175.8
12 months ending June 30, 1960 .....	172.2
12 months ending June 30, 1961 .....	169.8
12 months ending June 30, 1962 .....	167.8
12 months ending June 30, 1963 .....	165.5
12 months ending June 30, 1964 .....	163.0
12 months ending June 30, 1965 .....	159.8
12 months ending June 30, 1966 .....	156.7
12 months ending June 30, 1967 .....	153.1
12 months ending June 30, 1968 .....	147.5
12 months ending June 30, 1969 .....	141.6
12 months ending June 30, 1970 .....	134.5
12 months ending June 30, 1971 .....	128.7
12 months ending June 30, 1972 .....	124.5



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

12 months ending June 30, 1973 ..... 119.6

**Period During Which Retirement or Percentage  
Death Occurred**

On or before June 30, 1958 .....	180.4
12 months ending June 30, 1959 .....	175.8
12 months ending June 30, 1960 .....	172.2
12 months ending June 30, 1961 .....	169.8
12 months ending June 30, 1962 .....	167.8
12 months ending June 30, 1963 .....	165.5
12 months ending June 30, 1964 .....	163.0
12 months ending June 30, 1965 .....	159.8
12 months ending June 30, 1966 .....	156.7
12 months ending June 30, 1967 .....	153.1
12 months ending June 30, 1968 .....	147.5
12 months ending June 30, 1969 .....	141.6
12 months ending June 30, 1970 .....	134.5
12 months ending June 30, 1971 .....	128.7
12 months ending June 30, 1972 .....	124.5
12 months ending June 30, 1973 .....	119.6

(b) For those <<-\* \* \*->><<retired members, disabled members+>>, and beneficiaries receiving an allowance with an effective date prior to July 1, 1965, the initial allowance, for purposes of this section, shall be deemed to be the allowance payable on July 1, 1965. However, for purposes of determining the allowance payable under this section, the percentage corresponding to the actual year of retirement shall be applied.

SEC. 250. Section 24408 of the Education Code is amended to read:

<< CA EDUC § 24408 >>

24408. (a) The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit and tax-sheltered contributions, of a person retired prior to January 1, 1981, shall be an amount equal to at least sixteen dollars (\$16) per month multiplied by the years of credited service. This guaranteed amount shall be increased as of October 1, 1980, and shall be reduced by the amount of an unmodified allowance payable from a local system based on service credited <<-\* \* \*->><<under this part+>>. If the retirement was effective at less than age 60 years, this allowance shall be reduced by one-half of 1 percent for each full month or fraction of a month that would have elapsed until the <<-\* \* \*->><<retired member+>> would have reached <<+age+>> 60 years. If the <<-\* \* \*->><<retired member+>> elected to have <<-\* \* \*->><<the+>> allowance modified under Option 2 or 3, the increase in the <<-\* \* \*->><<retired member's+>> allowance shall be modified under the option selected.

(b) The board may make lump sum payments for increases between October 1, 1980<<+,+>> and January 1, 1981.

SEC. 251. Section 24409 of the Education Code is amended to read:

<< CA EDUC § 24409 >>

24409. The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit and tax-sheltered contributions, of (a) a person who retired on or before December 31, 1981, (b) the option beneficiary of a person who retired on or before December 31, 1981, or (c) a person receiving a monthly allowance in lieu of the death benefit payable on account of the death of a member whose death occurred prior to July 1, 1972, shall be an amount equal to at least eighteen dollars (\$18) per month multiplied by the years of credited service. This guaranteed amount is increased as of September 1, 1981, and is applicable to allowances paid on and after September 1, 1981. If the retirement was effective at less than age 60 years, this allowance shall be reduced by one-quarter of 1 percent for each full month or fraction of a month that would have elapsed until the <<-\* \* \*->><<retired member+>> reached age 55 years, and the allowance shall be reduced by one-half of 1 percent for each full month or fraction of a month between age 55 and age 60 years. If the <<-\* \* \*->><<retired member+>> elected to have his or her allowance modified under Option 2 or 3, the increase in the <<-\* \* \*->><<retired

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

member's->> allowance shall be modified under the option selected.  
SEC. 252. Section 24410 of the Education Code is amended to read:

<< CA EDUC § 24410 >>

24410. (a) If <<-\* \* \*->>projected final compensation is used to calculate the service retirement allowance following the termination of the disability allowance or if the disability allowance is continued as the <<+lesser+>> of the two allowance calculations under Section <<+24212+>> or <<+ 24213+>>, then the original disability allowance effective date shall be retained as the base date for purposes of determining postretirement benefit increases.

(b) This section shall be applicable for determining the base date for applicable postretirement increases made on or after January 1, 1982.

(c) This section shall only apply to service retirements effective the day after the termination date of the disability allowance.

SEC. 253. Section 24411 of the Education Code is amended to read:

<< CA EDUC § 24411 >>

24411. (a)(1) Annual cost-of-living adjustments for <<-\* \* \*->><<+ retired members, disabled members+>>, and beneficiaries in excess of the 2-percent adjustment authorized by Section <<+22140+>> may be included as a General Fund appropriation in the annual Budget Act. In the annual budget submitted to the Legislature, the Governor shall include a budget item equal to 5 percent of the average annualized statewide increase in payroll for certificated personnel over the three previous school years among school districts, county offices of education, and community college districts.

(2) The amount submitted in the annual Budget Act pursuant to this section shall be considered as part of the overall budget allocations to the public schools and community colleges.

(b) The annual appropriation shall be made to the system on July 1, and shall be placed in a segregated account called the Retirees' Purchasing Power Protection Account. The proceeds of that account are continuously appropriated and shall be distributed annually in quarterly payments commencing on September 1 to <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries as follows:

(1) The proceeds shall be allocated among those <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries whose allowances, after applying the 2-percent adjustment authorized by Section <<+22140+>>, have the lowest purchasing power percentage, based on the amount that would be paid had the original allowance been increased by the increases in the index then being used by the Department of Finance to measure changes in the cost of living, increasing those allowances to a common minimum purchasing power level. In any year in which the purchasing power of the allowances of all <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall be allocated by the board to general accounts to reduce the unfunded actuarial liability of the fund.

(2) The board may deduct from the annual appropriation an amount necessary for administrative expenses to implement this section.

(c) The board shall inform each recipient of benefits under subdivision (b) that the increases are not cumulative, are not part of the base <<-\* \* \*->> allowance, and shall be available only as appropriated annually in the <<-\* \* \*->>Budget Act.

(d) The adjustments authorized by this section shall not be included in the base allowance for purposes of calculating the 2-percent adjustment authorized by Section <<+22140+>>.

(e) It is the ultimate intent and purpose of the Legislature in amending this section by Chapters 323 and 780 of the Statutes of 1983, to achieve a common minimum purchasing power level equal to 75 percent of the purchasing power of the original <<-\* \* \*->>allowance. It is the present intent of the Legislature that until adequate funds are available to fulfill the ultimate intent, those persons whose <<-\* \* \*->>allowances have been most impacted by inflation shall be accorded first priority in receiving, pursuant to this section, supplemental cost-of-living adjustments from the Retirees' Purchasing Power Protection Account.

(f) This section shall not be operative in any fiscal year during which, as determined by the board, distributions provided for by Section 24415 are being made.

SEC. 254. Section 24412 of the Education Code is amended to read:

<< CA EDUC § 24412 >>

24412. (a) The annual revenues deposited to the Teachers' Retirement Fund pursuant to Section 6217.5 of the Public Resources Code are continuously appropriated without regard to fiscal year for the purposes of this section and shall be

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

distributed annually in quarterly supplemental payments commencing on September 1 of each year to <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries. The amount available for distribution in any year shall be the income for that year from the sale or use of school lands and lieu lands, as estimated by the State Lands Commission prior to the beginning of the fiscal year, adjusted by the difference between the estimated and actual income for the preceding fiscal year. The board shall deduct from the revenues an amount necessary for administrative expenses to implement this section.

(b) The net revenues to be distributed shall be allocated among those <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Section <<+22140+>> and the annual supplemental payment as defined in Section 24411, if any, are below 75 percent of original purchasing power. The purchasing power calculation for each individual allowance shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of the distribution. The allocation shall provide a pro rata share of the amount needed to restore the allowance payable, after sequential application of the current year annual improvement factor and the supplemental payment under Section 24411, to 75 percent of original purchasing power.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) In any year that the net revenues from school lands and lieu lands is greater than that needed to adjust the allowances of all <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries to 75 percent of original purchasing power, the net revenues in excess of that needed for distribution shall be used by the board to reduce the unfunded actuarial obligation of the fund.

(e) The board shall inform each recipient of supplemental payments under this section that the increases are not cumulative and are not part of the base <<-\* \* \*->>allowance.

SEC. 255. Section 24415 of the Education Code is amended to read:

<< CA EDUC § 24415 >>

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall, except as otherwise provided by Section 24414, be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 68.2 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412.

(b) The net revenues to be distributed shall be allocated among those <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections <<+22140+>> and <<+22141+>>, and the annual supplemental payment as defined in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all <<-\* \* \*->><<+retired members, disabled members+>>, and beneficiaries equals not less than 68.2 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, not part of the base <<-\* \* \*->>allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are not vested and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections <<+22140+>> and <<+22141+>>.

SEC. 256. Section 24500 of the Education Code is amended to read:

<< CA EDUC § 24500 >>

24500. Notwithstanding Sections 11042 and 11043 of the Government Code, if a disability retirement allowance, disability allowance, family allowance, or survivor benefit allowance is payable under this part due to the injury to or death of a member and the injury or death is the proximate consequence of the act of a third person or entity, other than the member's employer, the board may, upon adoption of a resolution, recover from that person or entity on behalf of the <<+plan+>>, an

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

amount equal to the actuarial equivalent of benefits paid <<-\* \* \*-><<under the plan+>> because of the injury to or death of the member less any amounts the system may be obligated to pay <<under the plan+>> without regard to the actions of the third party. This chapter shall be deemed to create a right of subrogation only to amounts paid as disability retirement allowances, disability allowances, family allowances, or survivor benefit allowances.

SEC. 257. Section 24501 of the Education Code is amended to read:

<< CA EDUC § 24501 >>

24501. The board may act on its own or contract with the State Compensation Insurance Fund or Attorney General for recovery on behalf of the <<+plan+>> of any amounts recoverable from third persons under this chapter, Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code, Section 11662 of the Insurance Code, or otherwise.

SEC. 258. Section 24504 of the Education Code is amended to read:

<< CA EDUC § 24504 >>

24504. Any amount recovered by way of subrogation by the board on behalf of the member, shall be applied first to the amount which the <<+plan+>> paid or is obligated to pay including court costs, attorney fees, and expenses.

SEC. 259. Section 24505 of the Education Code is amended to read:

<< CA EDUC § 24505 >>

24505. Actions brought by the board or its agent under contract pursuant to this chapter shall be commenced within three years after the liability of the system to pay benefits <<under the plan+>> is fixed. Liability of the <<+plan+>> is fixed at the time the board approves the payment of benefits under <<-\* \* \*-><<the plan+>>.

SEC. 260. Section 24603 of the Education Code is amended to read:

<< CA EDUC § 24603 >>

24603. If any estimated allowances are more or less than the correct amount due, the difference between the correct amount and the estimated allowance shall be adjusted in subsequent payments or the Controller may state an account with the <<-\* \* \*-><<retired member, disabled member+>>, or beneficiary, pursuant to Section 12419 of the Government Code.

SEC. 261. Section 24604 of the Education Code is amended to read:

<< CA EDUC § 24604 >>

24604. (a) A <<-\* \* \*-><<retired member, disabled member+>>, or beneficiary shall specify whether monthly benefit payments are to be disbursed by: (1) direct deposit (electronic funds transfer); (2) direct mail to a financial or other institution; or (3) mailing to a payment address provided by the <<-\* \* \*-><<retired member, disabled member+>>, or beneficiary.

(b) A member or beneficiary to whom a lump-sum payment or benefit is to be disbursed shall specify the address to which the payment shall be mailed.

(c)(1) The board shall send a copy of the benefit payment information to any <<-\* \* \*-><<retired member, disabled member+>>, or beneficiary who has payments transmitted directly by electronic funds transfer or by mail to a financial institution, unless the board has received a written request from that person not to send a copy of the information.

(2) The board shall notify the <<-\* \* \*-><<retired member, disabled member+>>, or beneficiary, in the monthly benefit payment notice, of <<-\* \* \*-><<the+>> right to request that no copy of the benefit payment information be mailed, pursuant to paragraph (1).

(d) A payment disbursed as specified by the member <<-\* \* \*->or beneficiary shall fully discharge the board<<-\* \* \*-><<+,+>> system<<+, and plan+>> from any claim resulting from actions taken under this section.

SEC. 262. Section 24605 of the Education Code is amended to read:

<< CA EDUC § 24605 >>

24605. Upon receipt of proof satisfactory to the board, that a warrant drawn in payment of a retirement allowance or in payment of any other account due from the <<+plan+>>, has been lost or that payment transmitted electronically cannot be

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

credited to an account, the Controller upon the request of the board shall issue a replacement warrant in payment of the same amount, without requiring a bond from the payee, and any loss incurred in connection therewith shall be charged against the fund from which the payment was derived.

SEC. 263. Section 24606 of the Education Code is amended to read:

<< CA EDUC § 24606 >>

24606. (a) Whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under this <<+plan+>> remains unclaimed or the legal claimant cannot be found, the board shall redeposit the proceeds of the warrant in the retirement fund, and shall hold the proceeds for the legal claimant without further accumulation of interest, and the redeposit shall not operate to <<+establish+>> the membership of the claimant in this <<+plan+>>.

(b) Subdivision (a) shall apply to warrants drawn and canceled by the Controller pursuant to Section 17070 of the Government Code, except that upon notice of cancellation, the proceeds revert to and become a part of the retirement fund, and shall be applied to meet the liabilities of the retirement fund.

(c) The board may at any time, after reversion of proceeds as provided above to the retirement fund and upon receipt of proper information satisfactory to it, return from the retirement fund an amount equal to those proceeds to the credit of the legal claimant.

SEC. 264. Section 24607 of the Education Code is amended to read:

<< CA EDUC § 24607 >>

24607. Any warrant in an amount less than two thousand dollars (\$2,000) paid by the system, for the month in which a <<-\* \* \*->><<+retired member or disabled member+>> dies, shall not be invalidated by the system, except upon the request of the beneficiary of the <<-\* \* \*->><<+retired member or disabled member+>>.

SEC. 265. Section 24608 of the Education Code is amended to read:

<< CA EDUC § 24608 >>

24608. (a) Persons entitled to receive allowances under <<-\* \* \*->><<+ the plan+>> may authorize deductions to be made from those allowances, in accordance with procedures established by the board.

(b) The board shall determine the additional cost involved in making deductions under this section, and may require the public agency, association, insurance carrier, or unit thereof to pay the amount of the additional cost to the board for deposit in the retirement fund.

SEC. 266. Section 24609 of the Education Code is amended to read:

<< CA EDUC § 24609 >>

24609. Any <<-\* \* \*->>allowance payable to a <<-\* \* \*->><<+retired member+>>, that has accrued and remains unpaid at the time of his or her death, shall be paid to either of the following:

(a) The beneficiary entitled to payment in accordance with an optional settlement chosen by the member.

(b) The beneficiary entitled to receive the lump-sum death benefit provided upon death of a <<-\* \* \*->><<+retired member+>> if the member has not chosen an optional settlement.

SEC. 267. Section 24610 of the Education Code is amended to read:

<< CA EDUC § 24610 >>

24610. Any disability allowance that has accrued and remains unpaid to a <<-\* \* \*->><<+disabled member+>> at the time of death shall be paid to the person entitled to receive a family allowance or, if none, to the beneficiary entitled to receive the death payment.

SEC. 268. Section 24611 of the Education Code is amended to read:

<< CA EDUC § 24611 >>

24611. Part 5 (commencing with Section 220) of Division 2 of the Probate Code, when applicable, shall govern the distribution of the proceeds of any death benefit payable under this <<+part+>>. In applying Part 5 (commencing with Section 220) of Division 2 of the Probate Code with respect to proceeds payable to a beneficiary, membership <<-\* \* \*->>

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

\*->>shall be considered as having the same status as an insurance policy issued after December 31, 1984.

SEC. 269. Section 24612 of the Education Code is amended to read:

**<< CA EDUC § 24612 >>**

24612. (a) If any person entitled to a benefit from the <<+plan+>> is a minor who has no guardian of his or her estate, the benefit, not to exceed two thousand dollars (\$2,000), may be paid to the person entitled to the custody of the minor to hold for the minor, upon the written statement, duly acknowledged and verified, of the person that the total estate of the minor does not exceed two thousand five hundred dollars (\$2,500) in value.

(b) The payment shall constitute full discharge of any and all liabilities of the board<<+,+>> system<<+, and plan+>>.

(c) The person shall account to the minor for the money when the minor reaches the age of majority.

(d) Notwithstanding any other provision of this section, a natural parent or an adoptive parent having custody of the minor shall not be required to establish a guardianship for the purpose of collecting a survivor benefit, family benefit, or death benefit.

SEC. 270. Section 24613 of the Education Code is amended to read:

**<< CA EDUC § 24613 >>**

24613. (a) Payment pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the <<+board,+>> system<<+, and plan+>> from liability for that payment.

(b) Notwithstanding Sections 751 and 1100 of the Family Code relating to community property interests, whenever payment or refund is made by this system to a member, former member, or beneficiary of a member pursuant to this part, the payment shall fully discharge the <<+board,+>> system<<+, and plan+>> from all adverse claims thereto unless, before payment is made, <<-\* \* \*->>a written notice of adverse claim <<+is received at the system's office in Sacramento+>>.

SEC. 271. Section 24614 of the Education Code is amended to read:

**<< CA EDUC § 24614 >>**

24614. (a) This section shall only be applicable to a district retirement salary plan in a unified district presently having an average daily attendance of less than 200,000 pupils and which was discontinued by the governing board of the district.

(b) The district shall continue to pay monthly to teachers and other persons who were retired prior to the date of the discontinuance an amount equal to the amount by which the retirement allowance to which any of the retired teachers or other persons were entitled under the <<+district+>> plan exceeds the increase in the teacher's or other person's retirement allowance under <<-\* \* \*->><<+this part+>> resulting from the discontinuance. The arrangement under which those amounts are paid by the district shall not be considered to be a local retirement system for the purposes of this part, nor shall those amounts be taken into account in the calculation of retirement allowances under <<-\* \* \*->><<+this part+>>.

(c) The reserve fund created by the district from the assets delivered to it by the discontinued district retirement plan under subdivision (c) of former Section 14690 prior to its repeal is continued in existence and the amounts payable under subdivision (b) of this section shall be paid from that reserve fund.

SEC. 272. Section 24615 of the Education Code is amended to read:

**<< CA EDUC § 24615 >>**

24615. If the board determines that contributions are due the system from a <<-\* \* \*->><<+retired member, disabled member+>>, or a person who has died and the person is unable to pay the amount due, the board may withhold all or part of subsequent payments due the <<-\* \* \*->><<+retired member, disabled member+>>, or survivor, until the amounts withheld equal the contributions due plus regular interest to the date of payment. Total contributions plus regular interest due shall be recovered by the system within 18 months.

SEC. 273. Section 24616 of the Education Code is amended to read:

**<< CA EDUC § 24616 >>**

24616. Any overpayment made to or on behalf of any member, former member, <<+ or+>> beneficiary, <<-\* \* \*->>including but not limited to contributions, interest, benefits of any kind, federal or state tax, or insurance premiums, shall be deducted from any subsequent benefit that may be payable <<-\* \* \*->><<+under this part+>>. These deductions shall be

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of the recovery the extent of liability for restitution.

SEC. 274. Section 24617 of the Education Code is amended to read:

<< CA EDUC § 24617 >>

24617. (a) To recover an amount overpaid, the corrected monthly allowance may be reduced by no more than 5 percent if the overpayment was due to error by <<+the+>> system<<-\* \* \*->>, the county superintendent of schools, a school district, or a community college district, and by no more than 15 percent if the error was due to inaccurate information or nonsubmission of information by the recipient of the allowance.

(b) This section shall not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance.

SEC. 275. Section 24620 of the Education Code is amended to read:

<< CA EDUC § 24620 >>

24620. (a) The special reserve resulting from the discontinuance of a district retirement salary plan as provided in former Section 14690 prior to its repeal, and a part of which is used annually in the interest of the employees of the district at the discretion of the governing board, is continued in existence and shall continue to be used first as provided in this section.

(b) The district in which the district retirement plan was discontinued and that credited each teacher or other person employed by the district at the time of discontinuance, in a status requisite for membership in <<-\* \* \*->><<+this plan+>>, with an amount that bears the same ratio to the portion of the assets delivered to the district pursuant to former subdivision (c) of Section 14690 prior to its repeal, that remained after the creation of the reserve fund for payments under former subdivision

(d) of Section 14690 prior to its repeal, as required by former subdivision (e) of Section 14690 prior to its repeal, as the accumulated contributions credited to the member in his or her individual contribution account under the discontinued retirement plan at the time of discontinuance, bore to the total accumulated contributions so credited to all such teachers and persons, but this credit to any active member shall not exceed the amount of the member's accumulated contributions so credited at that time. The amount so credited to any person shall continue to be increased by interest at rates approved from time to time by the governing board of the district. The accumulated amount at the date upon which the person retires for service or disability under the system shall continue to be applied according to rates and tables adopted by the governing board and then in effect, to provide an annuity payable to the person throughout the balance of his or her life or a lump-sum payment of the total account balance on the date of retirement at the option of the governing board. If the person dies prior to retirement, the amount, with credited interest, shall be paid to his or her designated beneficiary, as it appears on the records of the district, if any, otherwise to the member's estate. If the person ceases to be employed by the district for any reason other than death, retirement, or attainment of the age at which his or her classification as a permanent employee ceases, he or she shall no longer be credited with or have any right to the accumulated amount, but the amount shall revert to and belong to the district. The arrangement under which annuities and death benefits are paid by a district under this subdivision shall not be considered to be a local retirement system for the purposes of this part, nor shall those payments be taken into account in the calculation of retirement allowances under <<-\* \* \*->><<+this plan+>>.

(c) The reserve fund created by the district from the assets delivered to it pursuant to subdivision (c) of former Section 14690 prior to its repeal is continued in existence and in the amount equal in amount to the total contributions credited to employees of the district, under former subdivision (b) of former Section 14691 prior to its repeal, and the annuities and death benefits payable under subdivision (b) of former Section 14691 prior to its repeal shall continue to be paid from this reserve fund. If the reserve fund as first created proves insufficient to make the payments required under subdivision (b) of former Section 14691, the district shall continue to make any additions to the reserve fund necessary to provide for those payments.

(d)(1) In addition to any other investments authorized by law for the investment of those funds, the funds of any specialized reserve or reserve fund established pursuant to former Section 14690 or former Section 14691 prior to their repeal may continue to be invested as authorized by Section 31595 of the Government Code for the investment of the funds of a county employees' retirement system.

(2) The governing board may employ investment advisers to advise it on these investments and the fees for these services may be paid from the special reserve or reserve funds.

(e) The governing board may make additional cost-of-living adjustments in the payments to persons who retired prior to January 1, 1953.

SEC. 276. Section 24700 of the Education Code is amended to read:

<< CA EDUC § 24700 >>

24700. (a) The special reserve resulting from the discontinuance of a district retirement salary plan as provided in former Section 14690 prior to its repeal, and a part of which is used annually in the interest of the employees of the district at the discretion of the governing board, is continued in existence and shall continue to be used first as provided in this section.

(b) The district in which the district retirement plan was discontinued and that credited each teacher or other person employed by the district at the time of discontinuance, in a status requisite for membership in <<-\* \* \*->><<+this plan+>>, with an amount that bears the same ratio to the portion of the assets delivered to the district pursuant to former subdivision (c) of Section 14690 prior to its repeal, that remained after the creation of the reserve fund for payments under former subdivision

(d) of Section 14690 prior to its repeal, as required by former subdivision (e) of Section 14690 prior to its repeal, as the accumulated contributions credited to the member in his or her individual contribution account under the discontinued retirement plan at the time of discontinuance, bore to the total accumulated contributions so credited to all such teachers and persons, but this credit to any active member shall not exceed the amount of the member's accumulated contributions so credited at that time. The amount so credited to any person shall continue to be increased by interest at rates approved from time to time by the governing board of the district. The accumulated amount at the date upon which the person retires for service or disability under the system shall continue to be applied according to rates and tables adopted by the governing board and then in effect, to provide an annuity payable to the person throughout the balance of his or her life or a lump-sum payment of the total account balance on the date of retirement at the option of the governing board. If the person dies prior to retirement, the amount, with credited interest, shall be paid to his or her designated beneficiary, as it appears on the records of the district, if any, otherwise to the member's estate. If the person ceases to be employed by the district for any reason other than death, retirement, or attainment of the age at which his or her classification as a permanent employee ceases, he or she shall no longer be credited with or have any right to the accumulated amount, but the amount shall revert to and belong to the district. The arrangement under which annuities and death benefits are paid by a district under this subdivision shall not be considered to be a local retirement system for the purposes of this part, nor shall those payments be taken into account in the calculation of retirement allowances under <<-\* \* \*->><<+this plan+>>.

(c) The reserve fund created by the district from the assets delivered to it pursuant to subdivision (c) of former Section 14690 prior to its repeal is continued in existence and in the amount equal in amount to the total contributions credited to employees of the district, under former subdivision (b) of former Section 14691 prior to its repeal, and the annuities and death benefits payable under subdivision (b) of former Section 14691 prior to its repeal shall continue to be paid from this reserve fund. If the reserve fund as first created proves insufficient to make the payments required under subdivision (b) of former Section 14691, the district shall continue to make any additions to the reserve fund necessary to provide for those payments.

(d)(1) In addition to any other investments authorized by law for the investment of those funds, the funds of any specialized reserve or reserve fund established pursuant to former Section 14690 or former Section 14691 prior to their repeal may continue to be invested as authorized by Section 31595 of the Government Code for the investment of the funds of a county employees' retirement system.

(2) The governing board may employ investment advisers to advise it on these investments and the fees for these services may be paid from the special reserve or reserve funds.

(e) The governing board may make additional cost-of-living adjustments in the payments to persons who retired prior to January 1, 1953.

SEC. 277. Section 24700 of the Education Code is amended to read:

<< CA EDUC § 24700 >>

24700. (a) The special reserve resulting from the discontinuance of a district retirement salary plan as provided in former Section 14690 prior to its repeal, and a part of which is used annually in the interest of the employees of the district at the discretion of the governing board, is continued in existence and shall continue to be used first as provided in this section.

(b) The district in which the district retirement plan was discontinued and that credited each teacher or other person employed by the district at the time of discontinuance, in a status requisite for membership in <<-\* \* \*->><<+this plan+>>, with an amount that bears the same ratio to the portion of the assets delivered to the district pursuant to former subdivision (c) of Section 14690 prior to its repeal, that remained after the creation of the reserve fund for payments under former subdivision

(d) of Section 14690 prior to its repeal, as required by former subdivision (e) of Section 14690 prior to its repeal, as the accumulated contributions credited to the member in his or her individual contribution account under the discontinued retirement plan at the time of discontinuance, bore to the total accumulated contributions so credited to all such teachers and persons, but this credit to any active member shall not exceed the amount of the member's accumulated contributions so credited at that time. The amount so credited to any person shall continue to be increased by interest at rates approved from time to time by the governing board of the district. The accumulated amount at the date upon which the person retires for service or disability under the system shall continue to be applied according to rates and tables adopted by the governing board and then in effect, to provide an annuity payable to the person throughout the balance of his or her life or a lump-sum payment of the total account balance on the date of retirement at the option of the governing board. If the person dies prior to retirement, the amount, with credited interest, shall be paid to his or her designated beneficiary, as it appears on the records of the district, if any, otherwise to the member's estate. If the person ceases to be employed by the district for any reason other than death, retirement, or attainment of the age at which his or her classification as a permanent employee ceases, he or she shall no longer be credited with or have any right to the accumulated amount, but the amount shall revert to and belong to the district. The arrangement under which annuities and death benefits are paid by a district under this subdivision shall not be considered to be a local retirement system for the purposes of this part, nor shall those payments be taken into account in the calculation of retirement allowances under <<-\* \* \*->><<+this plan+>>.

(c) The reserve fund created by the district from the assets delivered to it pursuant to subdivision (c) of former Section 14690 prior to its repeal is continued in existence and in the amount equal in amount to the total contributions credited to employees of the district, under former subdivision (b) of former Section 14691 prior to its repeal, and the annuities and death benefits payable under subdivision (b) of former Section 14691 prior to its repeal shall continue to be paid from this reserve fund. If the reserve fund as first created proves insufficient to make the payments required under subdivision (b) of former Section 14691, the district shall continue to make any additions to the reserve fund necessary to provide for those payments.

(d)(1) In addition to any other investments authorized by law for the investment of those funds, the funds of any specialized reserve or reserve fund established pursuant to former Section 14690 or former Section 14691 prior to their repeal may continue to be invested as authorized by Section 31595 of the Government Code for the investment of the funds of a county employees' retirement system.

(2) The governing board may employ investment advisers to advise it on these investments and the fees for these services may be paid from the special reserve or reserve funds.

(e) The governing board may make additional cost-of-living adjustments in the payments to persons who retired prior to January 1, 1953.

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 24700 >>

24700. On July 1, 1972, and thereafter all persons who first enter employment in the San Francisco Unified School District and the San Francisco Community College District << \* \* \* >> << to perform creditable service subject to coverage by the plan >> are members of the system in accordance with Section 22501. These new members are excluded from coverage under Subchapter II (commencing with Section 401) of Chapter 7 of Title 42 of the United States Code, for service performed as a member of the << plan >>.

SEC. 277. Section 24701 of the Education Code is amended to read:

<< CA EDUC § 24701 >>

24701. Those credentialed members of the San Francisco City and County Employees' Retirement System on June 30, 1972, who make an irrevocable election to be covered only by the State Teachers' Retirement System << Defined Benefit Plan >> for prior and future service performed in San Francisco, shall be allowed to be covered for other certificated service concurrently, where the provisions of the city and county charter permit. This shall not include any credited service, as defined in Section 22120.

SEC. 278. Section 24702 of the Education Code is amended to read:

<< CA EDUC § 24702 >>

24702. (a) All persons on the San Francisco system retired rolls on June 30, 1972, shall remain on the local rolls. The State Teachers' Retirement System shall continue the subvention in Section 24706 for those persons, shall apply the percentage update and annual improvement factor to payments being made by the << \* \* \* >> << from ' the Defined Benefit Plan >> directly to << \* \* \* >> << those persons >>, and shall pay the retired death payment upon their death.

(b) The allowance that would have been payable had the member retired solely under the << \* \* \* >> << Defined Benefit Plan >>, including the percentage update calculated under Sections 14332, 14333, and 14334 << \* \* \* >>, as enacted by Chapter 2 of the Statutes of 1959, as those sections read on December 31, 1974, shall be taken into account in computing the amount of increase for the ten dollar (\$10) a month per year of service minimum benefit.

SEC. 279. Section 24703 of the Education Code is amended to read:

<< CA EDUC § 24703 >>

24703. Persons who select to be covered only by the << \* \* \* >> << Defined Benefit Plan >> and already have credit for classified or other noncertificated service in the San Francisco local system shall not have that credit transferred to the << \* \* \* >> << Defined Benefit Plan >>.

SEC. 280. Section 24704 of the Education Code is amended to read:

<< CA EDUC § 24704 >>

24704. The San Francisco City and County Employees' Retirement System shall provide concurrent retirement benefits for classified and other noncertificated service in the San Francisco system according to the provisions applicable to miscellaneous employees of the time of the concurrent retirement for:

(a) Members of that system who transfer to the << \* \* \* >> << Defined Benefit Plan >> after June 30, 1972.

(b) Persons who were members of both << \* \* \* >> << the San Francisco system and the Defined Benefit Plan >> on June 30, 1972.

(c) Any person who could have qualified under subdivision (b) if he or she had not taken a refund from either << the San Francisco System or the Defined Benefit Plan, >> but not both << \* \* \* >>, provided << \* \* \* >> << the person >> qualifies for and redeposits prior to retirement.

SEC. 281. Section 24706 of the Education Code is amended to read:

<< CA EDUC § 24706 >>

24706. The system shall pay << from the fund >> to the San Francisco Unified School District and the San Francisco Community College District the amounts due for subventions required prior to July 1, 1972, on account of persons who retired or died prior to that date.

SEC. 282. Section 24751 of the Education Code is amended to read:



**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

<< CA EDUC § 24751 >>

24751. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who also took a refund of their Permanent Fund contributions from the State Teachers' Retirement System <<+Defined Benefit Plan+>>, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System <<+Defined Benefit Plan+>>, shall redeposit the contributions required to bring the account into full balance with regular interest from the date of refund to the date of payment. The redeposit may be made immediately upon notification by the system and shall be made prior to retirement. The redeposit shall be made in a lump sum or by installment payments as specified by the chief executive officer.

SEC. 283. Section 24950 of the Education Code is amended to read:

<< CA EDUC § 24950 >>

24950. An annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986 shall be offered to all employees of any state agency who are members of the <<+plan+>> or any employee of a local public agency or political subdivision of this state that employs persons <<-\* \* \*->><<+to perform creditable service subject to coverage by the plan+>>. The following criteria shall apply to that annuity contract and custodial account:

- (a) The annuity contract and custodial account shall be offered for <<-\* \* \*->><<+at least+>> five years.
- (b) The annuity contract and custodial account may be administered by a qualified third-party administrator that shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination thereof. The third-party administrator shall not provide investment options.
- (c) The investment options offered shall be determined by the board consistent with those annuity contract and custodial accounts described in Section 403(b) of the Internal Revenue Code of 1986.
- (d) The system's investment staff shall make recommendations to the board as to the appropriate investment options. At a minimum, the board shall offer at least three investment options. The board shall have sole responsibility for the selection of service providers.
- (e) All contributions made <<-\* \* \*->><<+in accordance with the provisions of Section 403(b) of the Internal Revenue Code of 1986 and this section+>> shall be remitted directly to the administrator and held by the administrator <<-\* \* \*->><<+in a custodial account on behalf of the employee+>>. Any investment gains or losses shall be credited to <<+ those+>> accounts. The forms of payment and disbursement procedure shall be consistent with those generally offered by similar annuity contracts and custodial accounts and applicable federal and state statutes governing those contracts and accounts.
- (f) Any employer, other than the state, may elect to make contributions to the employee's annuity contract and custodial account on behalf of the employee. The employer shall take whatever action is necessary to implement this section, including the adoption of an annuity contract and custodial account, or provide the appropriate authorization in accordance with the provision of Section 403(b) of the Internal Revenue Code of 1986. Contributions made by an employer under this section are excluded from the definition of "compensation" and "salary" as provided in Section 22114.
- (g) The design and administration of the annuity contract and custodial account shall comply with the applicable provisions of the Internal Revenue Code of 1986 and the Revenue and Taxation Code. Section 770.3 of the Insurance Code shall not be applicable.

SEC. 284. Section 24951 of the Education Code is amended to read:

<< CA EDUC § 24951 >>

24951. If the rate of participation in the annuity contract and custodial account is less than 2 percent of the <<+plan's+>> active <<+members+>> upon the completion of the initial five years of administration, the board may elect to terminate the offering of the annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986. The board shall provide two years' notice to the annuity contract and custodial account participants of its intention to terminate.

SEC. 285. Section 25000 of the Education Code is amended to read:

<< CA EDUC § 25000 >>

25000. (a) The board may develop one or more deferred compensation plans under Section 457 of the Internal Revenue Code

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

which an employer may choose to establish and offer to its employees who are members of the <<-\* \* \*->><<+Defined Benefit Plan or participants of the Cash Balance Plan+>>.

(b) In the event that an employer adopts a deferred compensation plan described in subdivision (a):

(1) The employer shall enter into a written contractual arrangement with the system under which the system, or a third-party administrator acting on behalf of the system, shall provide investment, recordkeeping, and administrative services <<-\* \* \*->><<+for the deferred compensation+>> plan.

(2) The initial period of the contractual arrangement described in paragraph (1) shall be for a term of five years.

(3) The <<+deferred compensation+>> plan shall continue to constitute a separate plan established and maintained by the adopting employer.

(4) The system shall be treated as acting on behalf of the employer in administering the <<+deferred compensation+>> plan.

(5) The terms and administration of the <<+deferred compensation+>> plan shall be in accordance with the applicable provisions of Section 457 of the Internal Revenue Code.

(6) The interest of an employee, or his or her beneficiary, participating in the <<+deferred compensation+>> plan in the assets, including amounts deferred under the plan and paid over to the Teachers' Deferred Compensation Fund described in Section 25001, of the employer sponsoring the <<+deferred compensation+>> plan shall not be senior to that of the general creditors of the employer.

(7) In administering the <<+deferred compensation+>> plan on behalf of the employer, the board shall have the same investment authority and discretion and be subject to the same fiduciary standards pursuant to Chapter 4 (commencing with Section 22250), with respect to amounts deferred under the <<+deferred compensation+>> plan as applied by the system with respect to the Teachers' Retirement Fund.

(c) In the event that an employer establishes and maintains a deferred compensation plan described in subdivision (a), the <<+deferred compensation+>> plan shall be offered to all of its employees who are members of the <<-\* \* \*->><<+Defined Benefit Plan or participants of the Cash Balance Plan+>>.

(d) An employee participating in a deferred compensation plan established by an employer under this section shall enter into a written agreement with the employer for the deferral of compensation prior to the performance of the services to which that compensation relates.

(e) In the event that an employer chooses to establish and maintain a deferred compensation plan described in subdivision (a) that is to be administered by the system, the employer shall take all necessary or appropriate action to implement this section in cooperation with the system.

SEC. 286. Section 25001 of the Education Code is amended to read:

<< CA EDUC § 25001 >>

25001. (a) The Teachers' Deferred Compensation Fund is hereby established to serve as the repository of funds <<-\* \* \*->><<+for+>> the deferred compensation plans administered by the system pursuant to this chapter. Notwithstanding any other provision of law, the system may retain a bank or trust company to serve as custodian of the moneys of the Teachers' Deferred Compensation Fund and to provide for safekeeping, recordkeeping, delivery, securities valuation, or investment performance reporting services, or services in connection with investment of the <<-\* \* \*->><<+Teachers' Deferred Compensation Fund+>>und.

(b) The Teachers' Deferred Compensation Fund shall consist of the following sources and receipts, and disbursements shall be accounted for as set forth below:

(1) Premiums determined by the system and paid by participating employers and employees for the cost of administering the deferred compensation plan.

(2) Asset management fees as determined by the system assessed against investment earnings of investment option or of other investment funds. These fees shall be disclosed to employees participating in the <<+deferred compensation+>> plan.

(3) Compensation deferrals to be paid in monthly installments by employers sponsoring deferred compensation plans described in Section 25000 for investment by the system. The moneys shall be deposited in the investment corpus account within the Teachers' Deferred Compensation Fund and invested in accordance with the investment options selected by the participating employee.

(4) All moneys in the Teachers' Deferred Compensation Fund for disbursement to participating employees shall be continuously appropriated without regard to fiscal year. Disbursements to participating employees shall be paid from a disbursement account within the Teachers' Deferred Compensation Fund in accordance with applicable federal law pertaining to deferred compensation plans.

(5) Income, of whatever nature, earned on the Teachers' Deferred Compensation Fund shall be credited to the appropriate account. The accounts of participating employees of the employer shall be individually posted to reflect amounts of

**TEACHERS—RETIREMENT, 1996 Cal. Legis. Serv. Ch. 634 (S.B. 2041) (WEST)**

---

compensation deferred and investment gains and losses. A periodic statement shall be given to each <<-\* \*  
\*->><<+participating employee+>>.

(6) The system shall have exclusive control of the administration and investment of the Teachers' Deferred Compensation Fund.

(7) All of the system's costs of administering the deferred compensation plans shall be recovered from the employees who participate in the plans or assets of the Teachers' Deferred Compensation Fund in a manner acceptable to the board.

<sup>1</sup> Section numbered so in enrolled bill.

<sup>2</sup> So in enrolled bill.

<sup>3</sup> So in enrolled bill.

<sup>4</sup> Enrolled bill contains no subd. (a) designation.

<sup>5</sup> Enrolled bill contains no Option 1 designation.

<sup>6</sup> So in enrolled bill.

CA LEGIS 634 (1996)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

# **Exhibit 11**

# **PROCEDURES MANUAL**

---

## **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**



**2010 EDITION  
EMPLOYER SERVICES DIVISION**

# TABLE OF CONTENTS

<b>GENERAL INFORMATION TABLE OF CONTENTS .....</b>	<b>1</b>
General Information .....	3
Regional Office Locations .....	5
<b>CONTRACT COVERAGE PROCEDURES TABLE OF CONTENTS.....</b>	<b>7</b>
Annual Employer Statement .....	8
County School Coverage .....	9
Optional Contract Provisions for County Schools.....	11
Public Agency Contract Information.....	14
<b>MEMBERSHIP PROCEDURES TABLE OF CONTENTS .....</b>	<b>16</b>
Determining Membership Eligibility .....	18
Positions Excluded by Retirement Law (PERL) from CalPERS Coverage .....	19
Optional Members of CalPERS .....	21
CalPERS Membership Eligibility .....	24
School Employment: CalPERS or CalSTRS?.....	29
Membership Categories .....	33
Electronic Enrollment — Automated Communications Exchange System (ACES).....	43
CalPERS Member Action Request Form (PERS-AESD-1) Downloading Instructions.....	44
Election of "Optional" Membership (PERS-AESD-59) .....	46
Instructions to Complete the PERS-AESD-59 .....	48
Election of "Optional" Membership.....	48
(PERS-AESD-59) Sample Form.....	49
Overtime Positions .....	50
Birth Date Discrepancy .....	51
Notice of Change PERS-MEM-155 (CalPERS-Initiated Form).....	52
Full Reciprocity.....	54
Reciprocity Requirements .....	55
Rights and Benefits with Full Reciprocity.....	56
CalPERS Benefits for Non-Qualifying Individuals.....	57
CalPERS Benefits Arising from Movement to Reciprocal and Certain Non-Reciprocal Public Retirement Systems.....	58
How to Notify CalPERS when the Member Changes Retirement Systems .....	59
Employer Certification of Service Credit Purchase Options.....	60
Authorization for Contribution and/or Rate Adjustment PERS-MEM-823A (CalPERS-Initiated Form) .....	66
<b>COMPENSATION REVIEW TABLE OF CONTENTS .....</b>	<b>69</b>
General Information for All Reporting Methods.....	70
<b>PAYROLL REPORTING PROCEDURES TABLE OF CONTENTS.....</b>	<b>97</b>
Payroll Reporting Elements.....	98
Payroll Reporting Element Relationships.....	103
Selecting and Reporting Contribution Codes.....	104
Contribution Reporting Procedures.....	113
Schools Payroll Reporting.....	116
Prior to AB 2177 (Service prior to January 1, 2001) .....	117
AB 2177 Implemented (Service on or after January 1, 2001).....	116
Basic Contribution Calculation .....	117

Contribution Reporting Procedures.....	118
Pay Rate/Earnings Relationship .....	123
Payroll Reporting System — Personal Computer Method + ACES.....	135
Payroll Reporting System — Diskette/Magnetic Tape Methods.....	137
Payroll Reporting System — Diskette/Magnetic Tape Methods Two Digit Service Period Year.....	142
Payroll Reporting System — Diskette/Magnetic Tape Methods Four Digit Service Period Year.....	144
Pre-List (PERS-AESD-625A).....	146
Payroll Listing.....	149
All Computerized Reporting Methods.....	149
Supplemental Payroll Reporting Form.....	150
All Computerized Reporting Methods (PERS-AESD-624).....	150
Supplemental Payroll Reporting Form (PERS-AESD-624) .....	151
Reporting Deadlines, Penalties, Waivers and Extensions.....	154
Summary Report Member and Employer Contributions (PERS-AESD-626) All Reporting Methods.....	155
Summary Report (PERS-AESD-626) .....	156
Example: Advance Payment PERS-AESD-626.....	159
Example: Summary Submitted After an Advance Payment PERS-AESD-626 .....	160
Notice of Adjustment, Employer Contributions (PERS-ACC-344) CalPERS- Initiated Form .....	161
PERS-ACC-344 .....	162
Notice of Adjustment (PERS-ACC-1520) CalPERS-Initiated Form.....	163
PERS-ACC-1520 .....	164
Payment of Contributions Using Electronic Funds Transfer (EFT).....	165
Electronic Payment Services .....	167
Payroll Discrepancies.....	1711

**BENEFITS PROCEDURES TABLE OF CONTENTS..... 173**

Beneficiary Designation Form (PERS-BSD-241) (Prior to Retirement).....	175
Instructions to Complete the PERS-BSD-241.....	176
Reporting an Imminent Death or Terminal Illness Power of Attorney.....	181
Death of an Active Member.....	182
Information for Family of Deceased .....	184
Retirement — General .....	186
Service Retirement.....	189
Deductions after Retirement .....	197
Disability Retirement and Industrial Disability Retirement .....	199
Employment of a Retiree.....	219
Request For Re-Employment Government Code Section 21228.....	224
Reinstatement from Retirement .....	225
Beneficiary Designation (After Retirement).....	227
Death of a Retiree .....	231
Tax and Income Reporting Information.....	232
Refund of Member Contributions .....	233

**CALPERS PROGRAMS, CLASSES, AND WORKSHOPS TABLE OF CONTENTS..... 235**

CalPERS Automated Communications Exchange System (ACES) .....	236
CalPERS Deferred Compensation Program.....	238
CalPERS Long-Term Care.....	240
California Employers' Retiree Benefit Trust (CERBT) Fund.....	241
CalPERS Member Home Loan Program .....	243
CalPERS Health Benefits (PEMHCA).....	244
CalPERS Education and Events.....	245

<b>CALPERS WEB SERVICES, FORMS, AND PUBLICATIONS TABLE OF CONTENTS .....</b>	<b>247</b>
<b>CalPERS Web Services.....</b>	<b>248</b>
<b>Ordering Forms and Publications .....</b>	<b>249</b>
<b>List of CalPERS Publications.....</b>	<b>250</b>
<b>CalPERS Forms Referenced in Manual .....</b>	<b>251</b>
<b>APPENDIX.....</b>	<b>293</b>

*The information provided in this publication is for your convenience and reference as a general guide only and cannot be relied upon as an authoritative source for the law, practices, or policies of CalPERS. While CalPERS tries to include only accurate, timely and complete information in its publications, summaries, guidelines and other advisory printed materials, sometimes information provided in printed materials may be or become inaccurate, untimely, incomplete, unclear or misleading. In all instances, the law then in effect, not this publication, controls the application of the Public Employees' Retirement Law. It is the reader's responsibility to independently verify the accuracy of the information contained in this publication before engaging in a course of action.*



## OVERTIME POSITIONS

Overtime compensation may not be reported in membership to CalPERS, either as compensation, or as employment which will result in service credit being given. G.C. section 20635 defines overtime as follows:

"(T)he aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid."

CalPERS considers full-time employment to be between 34 and 60 hours per week. Employers generally have the ability to determine what constitutes full-time for an employee provided that the employee works between 34 and 60 hours per week (the exception is non-certificated school employers which is discussed below). Once the full-time weekly hours are determined the additional hours worked during the week by the employee will constitute overtime under G.C. section 20635.

G.C. section 20635.1 defines overtime as follows for school members:

"For the purposes of this part, overtime for school members is the aggregate service performed by an employee as a member for all school employers and in all categories of employment in excess of 40 hours of work per week, and for which monetary compensation is paid."

G.C. section 20636.1 states that for all non-certificated school members full-time employment is considered 40 hours per week. This means that all hours up to 40 per week must be reported to CalPERS for non-certificated school members at the straight time rate and only those hours above 40 are considered overtime.

If overtime compensation has been erroneously reported, CalPERS will instruct an employer to retroactively reverse out payroll entries. If overtime compensation was included in a retiree's final compensation period, it will be adjusted as well.

In order to prevent overtime situations from occurring, it is recommended that you check with your employees to see if they are working with any other CalPERS-covered employer. If unsure, contact the Employer Contact Center at 888 CalPERS (or 888-225-7377).

Some situations that may arise in this connection are as follows:

1. The member currently holds one full-time position subject to CalPERS, and accepts a second concurrent part-time position either with the same employer, or with a different employer.

**RESULT:**

The part-time position is deemed to be "overtime", and may not be reported to CalPERS.

2. The member works more than one full-time position, either with the same employer (including different school districts in the same county), or with more than one CalPERS covered employer.

**RESULT:**

For service worked after July 1, 1994, only the position with the highest pay rate or base pay should be reported to CalPERS. (For service prior to July 1, 1994, contact CalPERS for instructions.)

3. The member holds more than one part-time position with the same CalPERS covered employer.

**RESULT:**

All part-time positions are reportable to CalPERS, as the law does not specifically provide for the exclusion of such positions.

# **Exhibit 12**



**California Public Employees' Retirement System**  
P.O. Box 942709  
Sacramento, CA 94229-2709  
(888) CalPERS (or 888-225-7377)  
TTY: (877) 249-7442  
www.calpers.ca.gov

Reference No.:  
Circular Letter No.: 200-050-12  
Distribution: IV, V, VI, X, XII, XVI  
Special:

## Circular Letter

October 25, 2012

**TO: ALL CALPERS EMPLOYERS**

**SUBJECT: STATUTORY AND REGULATORY REQUIREMENTS FOR PUBLICLY AVAILABLE PAY SCHEDULES**

The purpose of this Circular Letter is to remind CalPERS employers that only those pay amounts that meet the definition of compensation earnable can be used when calculating retirement benefits.

Compensation earnable is defined in statute and further clarified by California Code of Regulations (CCR) Section 570.5. Specifically, this Circular Letter seeks to address the requirements related to publicly available pay schedules.

### **Compensation Earnable & The Requirement For Publicly Available Pay Schedules**

The Public Employees' Retirement Law (PERL) Government Code Sections 20636 and 20636.1 define compensation earnable for State, School, and Public Agency members. In order to meet the definition of compensation earnable, an amount of pay must either constitute payrate or special compensation as defined in the statutes. Section 20636(d) further requires that payrate and special compensation schedules, ordinances, or similar documents be public records available for public scrutiny.

Section 20636(b)(1) (applicable to Public Agency members) and 20636.1(b)(1) (applicable to School members) require pay amounts to be paid pursuant to publicly available pay schedules. For example, section 20636 (b)(1) states:

"Payrate means the normal monthly rate or pay or 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 base pay of the members, 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)." (Emphasis added.)

CCR 570.5 was adopted April 13, 2011, with an effective date of August 10, 2011. CCR 570.5 sought to clarify the requirement of publicly available pay schedules.

**Circular Letter No.: 200-050-12**  
**October 25, 2012**  
**Page 2**

After CCR 570.5 was adopted, CalPERS sent Circular Letter #200-056-11 dated August 19, 2011, notifying all employers of the requirements of CCR 570.5.

**Importance of Correct Reporting**

Due to the importance of correct payroll reporting in administering the PERL and member benefits, CalPERS is sending this additional Circular Letter to remind all employers of the criteria for reporting compensation earnable.

CCR 570.5 outlines the required elements necessary to meet the definition for a publicly available pay schedule as follows:

- (a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:
- (1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
  - (2) Identifies the position title for every employee position;
  - (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
  - (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
  - (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
  - (6) Indicates an effective date and date of any revisions;
  - (7) Is retained by the employer and available for public inspection for not less than five years; and
  - (8) Does not reference another document in lieu of disclosing the payrate.

All eight (8) requirements must be met in one salary schedule for each member's pay, in order for CalPERS to approve the pay amount as payrate and reportable compensation earnable.

**No Applicable Pay Schedule**

If an agency cannot provide a document meeting the requirements for a publicly available pay schedule, then CalPERS must determine that the pay amount fails to meet the definition of payrate. CCR 570.5 (b)(1)-(4) outlines the process by which

**Circular Letter No.: 200-050-12**  
**October 25, 2012**  
**Page 3**

**CalPERS may determine a member's payrate when there is no publicly available pay schedule provided.**

**CCR 570.5 (b) states:**

- (b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:**
- (1) Documents approved by the employer's governing body in accordance with requirements of public meeting laws and maintained by the employer;**
  - (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;**
  - (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;**
  - (4) Last payrate for the member in a position that was held by the member that is listed on a pay schedule that conforms to the requirements of subdivision (a) of a former CalPERS employer.**

**It is important that all employers comply with the compensation earnable provisions and corresponding regulations of the PERL. Where employers fail to comply, pay amounts will be determined to not constitute payrate and accordingly CalPERS will be unable to use such pay amounts when calculating members' retirement benefits.**

**It is therefore critical that employers review their pay schedules to verify that all members' pay amounts are included within a publicly available pay schedule. For assistance or questions related to the development of a publicly available pay schedule, please direct your inquiries to the CalPERS Compensation and Employer Review Unit.**

**If you have any questions, please contact the CalPERS Customer Contact Center at 888 CalPERS (or 888-225-7377).**

**KAREN DeFRANK, Chief**  
**Customer Account Services Division**

# **Exhibit 13**



**California Public Employees' Retirement System**  
P.O. Box 942709  
Sacramento, CA 94229-2709  
(888) CalPERS (or 888-225-7377)  
TTY: (877) 249-7442  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

Reference No.:  
Circular Letter No.: 200-064-14  
Distribution: IV, V, VI, X, XII, XVI  
Special:

## **Circular Letter**

October 27, 2014

**TO: ALL CALPERS EMPLOYERS**

**SUBJECT: COMMON MISREPORTED ITEMS OF COMPENSATION**

The purpose of this Circular Letter is to proactively provide information on the most common misreported items of compensation in an effort to mitigate employer errors and provide guidance on how to correctly report special pay items on behalf of a CalPERS member.

Special compensation, a component of compensation earnable, is applicable for classic members and is defined by Government Code (GC) sections 20636 and 20636.1 and California Code of Regulations (CCR) 571. Pensionable compensation is applicable for new members, those typically hired on or after January 1, 2013, and must meet the requirements defined by GC section 7522.34(a). More information regarding these requirements can be found in Circular Letter No.: 200-062-12.

The following are some of the most common special compensation reporting errors found during reviews of classic and new member accounts.

### **Longevity Pay**

The most common misreporting of Longevity Pay is when agencies combine this item with other criteria, such as employee performance. Longevity Pay, as defined in CCR 571(a), should not specify additional requirements other than the length of service with an employer or the length of time worked in a specified job classification that exceeds a minimum period of five years. In cases where additional criteria is required by an agency, the item would not meet the definition of special compensation as outlined in CCR 571(a) and will be excluded when calculating retirement benefits.

### **Holiday Pay**

The most common misreporting of Holiday Pay is when agencies report this special compensation item for employees that are not scheduled to work without regard to holidays. Holiday Pay, as defined by CCR 571(a)(5), is a statutory item and reportable to CalPERS for the purpose of calculating retirement benefits.

Circular Letter No.: 200-064-14  
October 27, 2014  
Page 2

CCR 571(5) defines Holiday Pay, in relevant part, as the following:

**“Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require staffing without regard to holidays. . . . For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. . . . If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation. If the cash out option is also utilized near his/her final compensation period, it may still be excluded. . . .”**

Additionally, floating holidays and holiday pay that is paid to an employee that volunteers to work, bids for the option to work, or elects to work on a holiday does not meet the definition of Holiday Pay and therefore is not reportable to CalPERS. This item of compensation will be excluded when calculating retirement benefits.

### **Uniform Allowance**

There are two common situations of misreporting Uniform Allowance. The first common reporting error is when agencies do not report the monetary value of uniforms provided. The monetary value of uniforms meets the definition of Uniform Allowance as outlined in CCR 571(a), and should therefore be reported to CalPERS. Additionally, the agency's written labor policy or agreement must indicate the conditions for payment and the monetary value of the uniform. The second common reporting error regarding Uniform Allowance is when agencies report this special compensation for unqualified items. As stated in CCR 571(a), Uniform Allowance “excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes.” If an item is found to be used solely for personal health or safety, that portion of compensation will be excluded from calculating any retirement benefits.

\* This item is not reportable for new members as defined by GC 7522.04(f).

### **Bonus**

The most common misreporting of a Bonus is when agencies provide a bonus that is not available to a member's group or class or is based on criteria other than superior performance. Bonus, as defined by CCR 571(a)(1) is “compensation awarded to employees for ‘superior performance’ or ‘merit pay’”. Additionally, “a program or system must be in place to plan and identify performance goals and objectives”. If there is no clear plan in place, the compensation item would not meet the definition of Bonus and would be excluded in calculating a retirement benefit. If this pay is provided only during a member's final compensation period, it will be considered Final Settlement Pay, and excluded from the member's final compensation calculation.

\* This item is not reportable for new members as defined by GC 7522.04(f).



**Circular Letter No.: 200-064-14**  
**October 27, 2014**  
**Page 3**

### **Temporary Upgrade Pay**

The most common misreporting of Temporary Upgrade Pay is when agencies report this item for employees who are only taking on a portion of an upgraded position while continuing to do their current duties. Temporary Upgrade Pay, as defined by CCR 571(a)(3) is "compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration." When an employee maintains their current duties and takes on additional duties of an upgraded position, the additional duties meet the definition of overtime as outlined in GC 20635, and are not be reportable to CalPERS.

### **Final Settlement Pay**

A common misreporting of compensation is when agencies report amounts in the form of severance packages or 'golden parachutes' that are typically paid in the member's final year of service prior to retirement. This compensation meets the definition of Final Settlement Pay. Final Settlement Pay in any form is not considered reportable to CalPERS in either pay rate or special compensation. Additionally, even if an employer's MOU specifically states that the compensation is not Final Settlement Pay, the compensation will still be excluded in calculating a retirement benefit.

### **Compensation Paid for Items not Listed in CCR 571**

A common mistake is when agencies report items of compensation that are not included in the exclusive list of special compensation as outlined in CCR 571. Special compensation items listed in CCR 571(a) must meet all requirements listed in subsection (b), in order for the compensation to be reportable. Furthermore, CCR 571(c) states "Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b)." Any items reported to CalPERS that are not contained in the "exclusive list of specifically defined items of special compensation" do not meet the definition of compensation earnable and should therefore not be reported to CalPERS.

### **Publicly Available Pay Schedules**

The California Code of Regulations (CCR) 570.5 as contained in the California Public Employees' Retirement Law (PERL) , provides the Requirement for a Publicly Available Pay Schedule. (a) For purposes of determining the amount of "compensation earnable" pursuant to GC sections 20630, 20636, and 20631.1, pay rate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- "(1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;

**Circular Letter No.: 200-064-14**  
**October 27, 2014**  
**Page 4**

- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the pay rate."

Whenever an agency does not provide a Publicly Available Pay Schedule as defined in CCR 570.5, CalPERS will determine that the pay amount reported fails to meet the definition of pay rate as provided in GC sections 20636 (b)(1), 20636.1(b)(1) and 7522.34(a), and will therefore be excluded when calculating a member's retirement benefit.

**Impact on Final Compensation**

Any compensation in question will not be used in a member's retirement calculation until all issues regarding that reported item of compensation have been resolved.

GC section 20160 requires CalPERS to correct errors made by an employer or by the system. Once an error is discovered, CalPERS must take action to correct it and pay only those benefits authorized under the PERL.

The Public Agency & Schools Reference Guide, which is located on **CalPERS On-Line**, contains additional information. If you have any questions, please call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

**RENEE OSTRANDER**  
Acting Division Chief  
Customer Account Services Division

# **Exhibit 14**



Secretary of State Main Website    **Business Programs**    Notary & Authentications    Elections    Campaign & Lobbying

**Business Entities (BE)**

Online Services

- **E-File Statements of Information for Corporations**
- **Business Search**
- **Processing Times**
- **Disclosure Search**

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information  
(annual/biennial reports)

Filing Tips

Information Requests  
(certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- **Business Resources**
- **Tax Information**
- **Starting A Business**

Customer Alerts

- **Business Identity Theft**
- **Misleading Business Solicitations**

## Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, May 19, 2015. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	VERNON INDUSTRIAL DEVELOPMENT ASSOCIATION
Entity Number:	C0126831
Date Filed:	12/29/1927
Status:	DISSOLVED
Jurisdiction:	CALIFORNIA
Entity Address:	*
Entity City, State, Zip:	*
Agent for Service of Process:	*
Agent Address:	*
Agent City, State, Zip:	*

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Field Descriptions and Status Definitions**.

[Modify Search](#)    [New Search](#)    [Printer Friendly](#)    [Back to Search Results](#)

[Privacy Statement](#) | [Free Document Readers](#)

Copyright © 2015 California Secretary of State



Secretary of State Main Website    **Business Programs**    Notary & Authentications    Elections    Campaign & Lobbying

**Business Entities (BE)**

Online Services

- **E-File Statements of Information for Corporations**
- **Business Search**
- **Processing Times**
- **Disclosure Search**

Main Page

Service Options

Name Availability

Forms, Samples & Fees

Statements of Information  
(annual/biennial reports)

Filing Tips

Information Requests  
(certificates, copies & status reports)

Service of Process

FAQs

Contact Information

Resources

- **Business Resources**
- **Tax Information**
- **Starting A Business**

Customer Alerts

- **Business Identity Theft**
- **Misleading Business Solicitations**

## Business Search - Results

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, May 19, 2015. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity,

- *Select an entity name below to view additional information.* Results are listed alphabetically in ascending order by entity name.
- For information on checking or reserving a name, refer to **Name Availability**.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Field Descriptions and Status Definitions**.

Results of search for " VERNON INDUSTRIAL DEVELOPMENT " returned 1 entity record.

Entity Number	Date Filed	Status	Entity Name	Agent for Service of Process
C0126831	12/29/1927	DISSOLVED	<b>VERNON INDUSTRIAL DEVELOPMENT ASSOCIATION</b>	

[Modify Search](#)    [New Search](#)

[Privacy Statement](#) | [Free Document Readers](#)

Copyright © 2015 California Secretary of State

# **Exhibit 15**

**California Public Records Act ("PRA"):** In compliance with the PRA, the documents pertaining to agenda items, including attachments, which are presented to the Board of Directors in open session are available for public inspection. They may be inspected during regular business hours in the City Clerk's Office at Vernon City Hall, 4305 Santa Fe Avenue; Vernon, California 90058, and on the City's website at [www.cityofvernon.org](http://www.cityofvernon.org). No prior appointment is required.

**Americans with Disabilities Act ("ADA"):** In compliance with the ADA, if you need special assistance to participate in a city meeting, please contact the City Clerk's office at (323) 583-8811. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

**AGENDA**  
**CITY OF VERNON**  
**REGULAR MEETING OF THE INDUSTRIAL DEVELOPMENT AUTHORITY**  
**TUESDAY, DECEMBER 3, 2013, 9:00 A.M., OR AS SOON**  
**THEREAFTER AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY**  
**ADJOURN ITS MEETING**  
**COUNCIL CHAMBER**  
**4305 SANTA FE AVENUE**  
**VERNON, CALIFORNIA**


*W. Michael McCormick, Chairperson*  
*William J. Davis, Chairperson Pro-Tem*  
*Richard J. Maisano, Director*  
*Michael Ybarra, Director*  
*Luz Martinez, Director*

**CALL TO ORDER**

**CHANGES TO THE AGENDA**

**PUBLIC COMMENT** - At this time the public is encouraged to address the Board of Directors on any matter that is within the subject matter jurisdiction of the Board of Directors. The public will also be given a chance to comment on matters which are on the posted agenda during deliberation on those specific matters.

**MINUTES**

1. Minutes of the Regular Industrial Development Authority Meeting held December 4, 2012, to be received and filed. 

Industrial Development Authority  
Regular Meeting Agenda  
December 3, 2013

**ORAL REPORTS**

1. Brief reports on activities, other brief announcements, and directives to staff.

**ADJOURNMENT**

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing agenda was posted on the bulletin board at the main entrance of the City of Vernon City Hall, located at 4305 Santa Fe Avenue, Vernon, California, and on the City's website, not less than 72 hours prior to the meeting set forth on this agenda. Dated this 27<sup>th</sup> day of November 2013.

By: \_\_\_\_\_  
Ana Barcia  
Deputy City Clerk



# **Exhibit 16**

MINUTES OF THE REGULAR MEETING OF THE  
VERNON HISTORIC PRESERVATION SOCIETY OF THE  
CITY OF VERNON HELD DECEMBER 4, 2012, IN THE  
COUNCIL CHAMBER OF THE CITY HALL LOCATED AT  
4305 SANTA FE AVENUE VERNON, CALIFORNIA

---

MEMBERS PRESENT: Davis, McCormick, Maisano, Ybarra, Martinez

MEMBERS ABSENT: None

The meeting was called to order at 11:06 a.m. by Chairperson Pro Tem McCormick.

The Interim Secretary advised that there are no changes to the agenda.

The Secretary announced that this was the time allotted for public comments. Chairperson Pro Tem McCormick inquired whether there was anyone in the audience that wished to address the Directors. No one responded.

**MINUTES**

The Interim City Clerk clarified that unless there are any changes, the Minutes of the Vernon Historic Preservation Society Meeting held December 6, 2011 will be received and filed.

**ELECTIONS**

In accordance with Resolution No. VHPS-0017, Article VI, Section 2, of the Second Amended and Restated Bylaws of the Vernon Historic Preservation Society, election of the following officers to serve for the annual term of December, 2012 through December, 2013, was held.

It was moved by McCormick and seconded by Maisano to appoint the following:

1. President - William Davis.
2. Chief Financial Officer - Finance Director
3. Secretary - City Clerk

Motion carried, 5-0.

**Vernon Historic Preservation Society  
Regular Meeting Minutes  
December 4, 2012**

**ORAL REPORTS**

There were no reports.

With no further business, at 11:06 a.m., it was moved by McCormick and seconded by Martinez to adjourn the meeting. Motion carried.

---

**William J. Davis  
President**

**ATTEST:**

---

**Ana Barcia  
Deputy Secretary**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Law Offices of John Michael Jensen, 11500 West Olympic Blvd, Suite 550, Los Angeles, CA 90064-1524.

On May 22, 2015, I served the following document (s) by the method indicated below:

**BRUCE V. MALKENHORST, SR.'S REQUEST FOR OFFICIAL AND JUDICIAL NOTICE**

By placing the document (s) listed above in a sealed envelope (s) and consigning it First Class Mail through the U.S. Postal Service to the address (es) set forth below:

Edward Gregory  
Jason Levin  
Steptoe & Johnson LLP  
633 W. Fifth Street, Suite 700  
Los Angeles, CA 90071

Joung Yim  
Liebert Cassidy and Whitmore  
6033 West Century Blvd, 5<sup>th</sup> Floor  
Los Angeles CA 90045

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 22, 2015, at Los Angeles, California

  
\_\_\_\_\_  
Griselda Montes De Oca