

April 16, 2007

ITEM 14

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Via Email Only

Re: *California State Teachers' Retirement System (CalSTRS)*
Creditable Compensation/Service Credit - 01-TC-02, 02-TC-19
Lassen County Office of Education, San Luis Obispo County Office of Education, Grant
Joint Union High School District, and Santa Monica Community College District,
Claimants

Dear Paula:

I will be unable to attend the Commission's April 16 hearing due to an injury I sustained on Sunday, April 15. The claimant districts for the *California State Teachers' Retirement System (CalSTRS)* portion of the claim are not asking that the item be put over until the May hearing as the claimants agree with the Final Staff Analysis.

However, if additional testimony or evidence were presented before the Commission during this item that the claimants have not had an opportunity to respond to, we would at that time request the item be put over so that the claimants may comment. This request would be made pursuant to California Code of Regulations, section 1187.9. However, since this test claim was filed almost six years ago, the claimants find that all parties have had ample opportunity to present comments on the claimed statuses and no further evidence is necessary for a final determination.

Again, the claimants for the *California State Teachers' Retirement System (CalSTRS)* portion of this consolidated test claim support staff's final analysis and urge the Commission to adopt the analysis and statement of decision as currently drafted.

Sincerely,



David E. Scribner, Esq.
Claimant Representative

Return to Katherine

ITEM 14
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 22000, 22002, 22119.2, 22119.5, 22146, 22455.5, 22458,
22460, 22461, 22501, 22502, 22503, 22504, 22509, 22711, 22712.5, 22713, 22714,
22717, 22717.5, 22718, 22724, 22800, 22801, 22803, 22851, 22852, 22950 and 22951

Statutes 1993, Chapter 893
Statutes 1994, Chapters 507, 603 and 933
Statutes 1995, Chapters 390, 394 and 592
Statutes 1996, Chapters 383, 608, 634, 680 and 1165
Statutes 1997, Chapters 482 and 838
Statutes 1998, Chapters 1006, 1048 and 1076
Statutes 1999, Chapter 939 (SB 1074)
Statutes 2000, Chapters 402, 880, 1020, 1021 (SB 2700), 1025 and 1032
Statutes 2001, Chapters 77, 159, 802 and 803
Statutes 2002, Chapter 375

CalSTRS Creditable Compensation/Service Credit
(01-TC-02, 02-TC-19)

Lassen County Office of Education, San Luis Obispo County Office of Education,
Grant Joint Union High School District, and
Santa Monica Community College District, Claimants

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Statutes 2002, Chapter 375

California State Teachers' Retirement System (CalSTRS)
Creditable Compensation/Service Credit
(01-TC-02, 02-TC-19)

Lassen County Office of Education, San Luis Obispo County Office of Education,
Grant Joint Union High School District, and
Santa Monica Community College District, Claimants

EXECUTIVE SUMMARY

Background

This consolidated test claim addresses modifications to the statutory scheme for the State Teachers' Retirement System (Ed. Code, § 22000 et seq.) Specifically, the claimants are seeking reimbursement for increased costs of employer contributions to defined benefit retirement programs for their employees. Particularly at issue is the way in which "compensation" is defined for purposes of calculating employer contributions. Statutes 2000, chapter 1021 amended the Education Code provisions on what constitutes "creditable service."

The affected state agencies dispute the claimants' argument that any increased monthly contributions to the State Teachers' Retirement System are reimbursable, and cite case law to support their position, including *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

While school districts will likely incur increased costs for retirement contributions as a result of the test claim statutes (particularly when combined with the amended definition of creditable

compensation), a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has consistently ruled, beginning with the *County of Los Angeles* decision in 1987, and reaffirming in 2004 in *San Diego Unified School Dist. v. Commission on State Mandates* (33 Cal.4th 859, at pages 876-877), that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

Staff finds that the test claim statutes create a situation, as in *City of Anaheim*, where the employer is faced with "a higher cost of compensation to its employees." As held by the court, "[t]his is not the same as a higher cost of providing services to the public." Therefore, staff finds that increased costs resulting from the test claim statutes, without more, do not impose a program, or a new program or higher level of service in an existing program, subject to article XIII B, section 6.

However, a number of the test claim statutes do require that the school district employer engage in new reporting and notice activities. The state agencies argue that these should be rejected on the same rationale as the case law discussed above. Staff disagrees. Those cases did not include a situation where there were distinct administrative activities required by the test claim statutes, in addition to the higher contribution costs alleged. Therefore, staff finds that some of the test claim statutes impose a new program or higher level of service, and costs mandated by the state, by requiring new activities to be performed by school districts.

Conclusion

Staff concludes that Education Code sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852, subdivision (e), impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- 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 Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS. (Ed. Code, § 22455.5, subd. (b).)¹

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to

¹ As added and amended by Statutes 1994, chapter 603, Statutes 1996, chapter 634, and Statutes 1999, chapter 939.

All of the approved statutes and activities were pled in the test claim *CalSTRS Service Credit* (02-TC-19), filed on May 12, 2003, by Santa Monica CCD. Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

include the specific information specified in Education Code section 22460, subdivision (a)(1) – (3), regarding the Defined Benefit Supplement account. (Ed. Code, § 22460; one-time activity.)²

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. (Ed. Code, § 22509, subd. (a).)³
- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a). (Ed. Code, § 22718, subd. (a)(1)(A).)⁴
- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes. (Ed. Code, § 22724, subd. (b).)⁵
- The employer shall provide information to CalSTRS regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment. (Ed. Code, § 22852, subd. (e).)⁶

Staff concludes that Education Code sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950 and 22951, as amended and pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

² As repealed, reenacted and amended, by Statutes 2000, chapter 1021.

³ As repealed, reenacted and amended, by Statutes 1996, chapter 383, and Statutes 1997, chapter 838.

⁴ As amended by Statutes 1999, chapter 939.

⁵ As added by Statutes 1999, chapter 939.

⁶ As added and amended by Statutes 1996, chapter 680, and Statutes 1998, chapter 965.

STAFF ANALYSIS

Claimants

Lassen County Office of Education (Lassen COE), San Luis Obispo County Office of Education (San Luis Obispo COE), Grant Joint Union High School District (Grant District), and Santa Monica Community College District (Santa Monica CCD), Claimants

Chronology

- 09/19/01 Co-claimants, Lassen COE and San Luis Obispo COE, file a test claim, *CalSTRS Creditable Compensation* (01-TC-02), with the Commission on State Mandates (Commission)
- 09/26/01 Co-claimants submit missing authorizations and signature pages for 01-TC-02
- 09/28/01 Commission staff issues completeness letter on 01-TC-02
- 10/26/01 Department of Finance (DOF) requests an extension of time for comments
- 10/29/01 Commission staff grants extension of time for comments to November 29, 2001
- 12/05/01 DOF files comments on the test claim 01-TC-02
- 05/12/03 Santa Monica CCD files test claim, *CalSTRS Service Credit* (02-TC-19), with the Commission which includes the one Education Code section and two statutes pled in 01-TC-02, along with numerous other related statutes
- 05/27/03 Commission staff issues completeness letter on 02-TC-19
- 07/24/03 CalSTRS files comments on test claim 02-TC-19
- 07/25/03 DOF files comments on the test claim 02-TC-19
- 08/18/03 Claimant, Santa Monica CCD, files individual responses to comments by CalSTRS and DOF
- 08/18/04 Grant joins the first test claim (01-TC-02) as a co-claimant
- 11/17/05 Commission's Executive Director consolidates the two test claims based on common issues, allegations and statutes
- 01/09/07 Commission staff issues the draft staff analysis on the consolidated test claim
- 01/30/07 DOF requests an extension of time to file comments and a postponement of the hearing
- 01/30/07 CalSTRS files comments on the draft staff analysis
- 02/01/07 Commission staff grants the postponement to April 16, 2007 hearing, with comments now due March 1, 2007
- 02/28/07 DOF requests a second extension of time to file comments and a postponement of the hearing
- 03/02/07 Commission staff grants an extension of time to file comments to March 16, but maintains April 16, 2007 hearing date
- 03/15/07 DOF files comments on the draft staff analysis

Background

The California State Teachers' Retirement System, or CalSTRS, is a state agency operating a defined benefit retirement program for California public school teachers, and those holding other credentialed or certificated positions. According to the CalSTRS website, "CalSTRS' primary responsibility is to provide retirement related benefits and services to teachers in public schools from kindergarten through community college."⁷ The State Teachers' Retirement System, Education Code section 22000 et seq., was significantly amended in 1944, recodified in 1969, and again in 1994. The system has been funded by a mandatory combination of state, employer and member contributions for many decades.

In 2001, Lassen and San Luis Obispo COEs, later joined by the Grant District, filed the test claim *CalSTRS Creditable Compensation* (01-TC-02) on Statutes 1999, chapter 939 and Statutes 2000, chapter 1021, as they added and amended Education Code 22119.2. In 2003, Santa Monica CCD filed the test claim *CalSTRS Service Credit* (02-TC-19) on the same Education Code section and statutes, but also made test claim allegations regarding 28 additional Education Code sections.⁸

This consolidated test claim addresses modifications to the statutory scheme for the State Teachers' Retirement System [Ed. Code, § 22000 et seq.; references to the law will not be abbreviated. "CalSTRS" will refer to the state agency operating the retirement system.] Specifically, the claimants are seeking reimbursement for increased costs of employer contributions to defined benefit retirement programs for their employees. Particularly at issue is the way in which "creditable service" is defined for purposes of calculating employer contributions. Statutes 2000, chapter 1021 amended the Education Code provisions on what constitutes "creditable service." The Senate Bill Analysis, dated September 19, 2000, describes the change to the law as follows:

Under existing law, "creditable service" excludes service performed in excess of the full-time equivalent and money paid for overtime and summer school service. Under this bill, all compensation will be creditable and all contributions for service in excess of one year of service credit shall be placed into the Defined Benefit Supplement Program. The member will be able to access the balance in the supplemental account upon retirement or separation.

⁷ <<http://www.calstrs.com/About%20CalSTRS/atagance.aspx>> as of Dec. 21, 2006.

⁸ The two test claims share common issues, allegations, and statutes, therefore the claims were consolidated pursuant to California Code of Regulations, title 2, section 1183.06. However, because the 2002-03 test claim was not filed on behalf of the same claimants as the 2001-02 test claim, it is not an "amendment" pursuant to Government Code section 17557, subdivision (d). This could impact potential reimbursement periods where the test claim allegations vary.

Claimants' Positions

Test Claim Filing 01-TC-02

The test claim, *CalSTRS Creditable Compensation*, was filed on September 19, 2001,⁹ by co-claimants, Lassen COE and San Luis Obispo COE. (Grant District was added as a co-claimant by letters and declarations received on August 18, 2004.) The test claim filing is on Education Code section 22119.2, as it was amended by Statutes 1999, chapter 939, and Statutes 2000, chapter 1021. The claimants allege the following are reimbursable state-mandated activities:

- A. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting State Teachers' Retirement System costs to employees; (Ed. Code, § 22119.2)
- B. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
- C. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
- D. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

Test Claim Filing 02-TC-19

Claimant, Santa Monica CCD, filed the test claim, *CalSTRS Service Credit*, on May 12, 2003.¹⁰ The claim is for additions or amendments to 29 Education Code sections, including the code section and amendments claimed in *CalSTRS Creditable Compensation*. The vast majority of the claim seeks reimbursement for increased costs of employer contributions paid to CalSTRS due to various amendments to the State Teachers' Retirement System statutes. Specifically, Santa Monica CCD, beginning at page 90 of the test claim filing, alleges that:

The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities: ...

The allegations of activities include (pp. 90-107 of the test claim filing):

- (1) adopting and updating policies and procedures (Ed. Code, § 22000 et seq.);

⁹ Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2000.

¹⁰ Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

- (2) contributing "a percentage of the total creditable compensation on which member contributions are based" (Ed. Code, § 22002, subd. (b));
- (3) "make contributions for members ... subject to the Defined Benefit Program" (Ed. Code, § 22146);
- (4) "make available criteria for membership, including optional membership ... to all persons employed to perform creditable service;" inform part-time employees and substitutes of the option to elect membership in the Defined Benefit Program, and keep records of written acknowledgment in the employer files (Ed. Code, § 22455.5, subd. (b));
- (5) provide CalSTRS "with information regarding the compensation to be paid to employees subject to the Defined Benefit Program in that school year" (Ed. Code, § 22458);
- (6) provide specific notices to employees who terminate with less than five years of service credit (Ed. Code, § 22460);
- (7) provide advice to re-employed retired members of post-retirement earnings limitations, and maintain records and report to CalSTRS regarding those earnings on a monthly basis (Ed. Code, § 22461);
- (8) inform certain new employees of the right to make certain elections under the State Teachers' Retirement System and make available written material from the retirement systems (Ed. Code, § 22509); and
- (9) additional costs of employer contributions pursuant to a variety of statutes regarding creditable compensation and service credit.

In separate rebuttal letters, each dated August 15, 2003, the claimant disputes the arguments and assertions provided by DOF and CalSTRS in their comments on the test claim filing.¹¹ Claimant's substantive arguments, including an analysis distinguishing the case law cited by the state agencies, are addressed in the Discussion section below.

No comments were received on the draft staff analysis from any claimants or interested parties.

¹¹ In these rebuttals, the claimant argues that the state agency comments are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations (§ 1183.02, subd. (d).) That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that neither of the state agency responses "comply with this essential requirement." (Claimant's rebuttal letters, dated Aug. 15, 2003, p. 1.)

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

Department of Finance Position

Response to Test Claim Filing 01-TC-02

In a letter dated December 4, 2001, DOF responded to the allegations in the *CalSTRS Creditable Compensation* test claim. Specifically, at page 2, DOF identifies the claimants' argument that:

the requirement that public school employers provide increased monthly contributions to CalSTRS effective July 1, 2002, will result in their being required to engage in a new activity as defined in Article XIII B, Section 6 of the California Constitution. Claimant therefore alleges the cost of providing the increased monthly contributions are State-mandated, and reimbursable.

DOF responds:

However, California courts have ruled that the California Constitution does not require that local agencies be reimbursed for legislatively imposed new costs associated with the provision of contributions to State-administered retirement systems, as this activity does not fall within the parameters of a "new program or higher level of service" as those terms are used in Article XIII B, Section 6 of the California Constitution.

(The specific cases cited will be discussed in the analysis below.) DOF further asserts that this same legal rationale precludes the claimants from seeking reimbursement for modifications of policies and procedures, and for district personnel training costs, related to the statutory change in definition of "creditable compensation." Finally, they assert that the non-specific claim for "any additional activities" identified during parameters and guidelines is inappropriate, because "the purpose of the Parameters and Guidelines phase is to specify which activities the Commission identified as reimbursable in the Test Claim phase, to identify eligible claimants, to specify the date upon which the identified activities became reimbursable, and to provide guidance on preparing and submitting reimbursement claims."

Response to Test Claim Filing 02-TC-19

In a letter dated July 24, 2003, DOF responded to the *CalSTRS Service Credit* test claim filing. Generally, the letter makes the same legal arguments presented regarding the *CalSTRS Creditable Compensation* test claim, above: an increase in contributions to CalSTRS is not reimbursable under case law interpreting article XIII B, section 6. DOF also argues that other activities identified by the claimant, associated with the change in definition of creditable compensation or service credit, are non-reimbursable based on the same court decisions.

Comments on the Draft Staff Analysis for Consolidated Test Claim 01-TC-02, 02-TC-19

DOF filed comments dated March 13, 2007, on the draft staff analysis for the consolidated test claim, stating agreement that "the higher cost of compensation for district employees does not ... impose a reimbursable state-mandated program under the California Constitution." However, DOF also states that:

just as the increase in compensation is not a reimbursable state mandated cost, neither are the costs associated with the requirement that public school employers increase their CalSTRS contributions. These activities do not impose a program that provides a service to the public and therefore, do not impose a reimbursable state-mandated program.

California State Teachers' Retirement System Position

Response to Test Claim Filing 02-TC-19

CalSTRS filed comments on the *CalSTRS Service Credit* test claim on July 24, 2003.

CalSTRS believes the statutes listed in the test claim do not impose a new program or higher level of service within an existing program upon the claimant pursuant to Section 17514 of the Government Code because the provision of compensation and benefits to employees, and the method for paying such compensation and benefits can not be considered a 'program' or 'service.' The act of an employer providing compensation and benefits to its employees is not a unique function of local government or school employers, because it is a function common to all employers, whether public or private.

In addition, the CalSTRS response identifies several other reasons for denying reimbursement for specific statutes claimed: some "statutes establish optional programs;" two claimed statutes were in response to federal mandates, and therefore an exception under Government Code section 17556 applies; a large number of "statutes are administrative in nature, [and] considered part of the employer's responsibilities in offering a retirement program;" and several are non-substantive, code maintenance provisions.

Comments on the Draft Staff Analysis for Consolidated Test Claim 01-TC-02, 02-TC-19

CalSTRS filed comments on the draft staff analysis on January 30, 2007, continuing to maintain that no part of the test claim should be found to impose a reimbursable state-mandated program. CalSTRS asserts that the code sections at issue "are not separate and distinct from the underlying retirement program being offered by the local employers but, instead are part of and included in the retirement program being offered or in the case of Education Code section 22852 are required by or consistent with federal law." The arguments that are specific to particular provisions of the Education Code are discussed in the analysis below.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution¹² recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹³ "Its

¹² Article XIII B, section 6, subdivision (a), provides:

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

¹³ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."¹⁴ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁵ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.¹⁶

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁷ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁸ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."¹⁹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁰

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²¹ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²²

¹⁴ *County of San Diego, supra*, 15 Cal.4th 68, 81.

¹⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

¹⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

²⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

²¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

²² *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose, supra*, 45 Cal.App.4th 1802, 1817.

Issue 1: Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?

In order for a test claim statute or executive order to be subject to article XIII B, section 6 of the California Constitution, it must first constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.²³ The court has held that only one of these findings is necessary.²⁴

Staff finds that to the extent that the test claim statutes require school districts to engage in activities relating to the State Teachers' Retirement System, they impose a program within the meaning of article XIII B, section 6 of the California Constitution because they impose unique requirements on school districts that do not apply generally to all residents and entities in the state.

However, much of the statutory scheme on the State Teachers' Retirement System was in place prior to 1975, so the analysis must continue to determine if each of the statutes and code sections alleged mandates a new program or higher level of service upon eligible claimants within the meaning of the California Constitution, article XIII B, section 6, or merely restates prior law. In addition, many of the Education Code sections pled in the test claims do not require any mandatory activities on the part of the school districts, and are also not subject to article XIII B, section 6.

Renumbering, restatements, and reenactments of prior law are not subject to article XIII B, section 6.

Statutes 1993, chapter 893:

At the outset, staff notes that the substance of many of the code sections pled were in effect well before the enactment of the test claim statutes, but were either renumbered or restated in a "newly enacted" code section. In particular, the State Teachers' Retirement System law was repealed and reenacted by Statutes 1993, chapter 893 (the first test claim statute alleged), and previously, the entire Education Code was renumbered and recodified by Statutes 1976, chapter 1010. Education Code section 3 provides: "[t]he provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments."

This is in accordance with the California Supreme Court decision, which held that "[w]here there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time." (*In re Martin's Estate* (1908) 153 Cal. 225, 229.) Staff finds that a renumbering, reenactment or restatement of prior law does not impose a reimbursable state-mandated program to the extent that the provisions and associated activities remain unchanged. Staff specifically

²³ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

²⁴ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

makes a finding that Statutes 1993, chapter 893, the recodification of the State Teachers' Retirement System, is not subject to article XIII B, section 6.

Education Code Section 22458:

Education Code section 22458, as pled, requires specific reporting from school district employers to CalSTRS, "regarding the compensation to be paid to employees subject to the Defined Benefit Program 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."

However, this law was in effect prior to the statutes pled by claimant. Former Education Code section 22403.1, renumbered by Statutes 1993, chapter 893 as section 22458, read: "Each employing agency shall provide the system with copies of documents respecting the compensation to be paid to employees in that school year. The documents 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."

The 1996 and 1999 amendments made non-substantive changes, such as changing the term "employing agency" to "employer," the word "documents" to "information," and clarifying that the information sought is for those employees subject to CalSTRS, not *all* employees of the school district. Therefore staff finds that Education Code section 22458, as renumbered by Statutes 1993, chapter 893, and amended by Statutes 1996, chapter 634, and Statutes 1999, chapter 939, is not subject to article XIII B, section 6.

Education Code Section 22461:

Education Code section 22461 requires specific notices be provided to retired members who return to work for a school district as a direct employee, contracted employee, or independent contractor. Former Education Code section 23921, renumbered as section 22461 by Statutes 1993, chapter 893, provided, in pertinent part:

Upon retaining the services of a retirant as an employee under the provisions of Section 23918 or 23919, the school district, community college district, county superintendent of schools, California State University, or other employing agency shall do both of the following:

- (a) Advise the retirant of the earnings limitation set forth in Sections 23918 and 23919.
- (b) Maintain accurate records of the retirant's earnings and report those earnings monthly to the system and the retirant regardless of the method of payment or the fund from which the payments were made.

Other than changing the word "retirant" to "retired member," and correcting the references to the Education Code to reflect current numbering, the current section is identical to prior law. Therefore, staff finds that Education Code section 22461, as renumbered by Statutes 1993, chapter 893, and amended by Statutes 1996, chapter 634, is not subject to article XIII B, section 6.

Many of the test claim statutes do not mandate local agencies to do anything and, thus, are not subject to article XIII B, section 6.

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.²⁵ The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”²⁶ A statute or executive order mandates a reimbursable “higher level of service” when, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, it increases the actual level of governmental service to the public provided in the existing program.²⁷

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

As described below, there are a number of Education Code sections alleged in the test claim filing that are helpful in understanding the State Teachers’ Retirement System, but they do not require any mandatory activities of school districts.

Education Code Sections 22000, 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5:

Education Code section 22000 simply indicates the short title of the act and states that the part “may be cited as the State Teachers’ Retirement Law;” it does not mandate school districts to do anything, and is therefore not subject to article XIII B, section 6 of the California Constitution.

Nine of the claimed code sections provide definitions or describe member eligibility requirements relevant to CalSTRS, but do not require any mandatory activities to be performed by school district employers, and thus are not programs subject to article XIII B, section 6: including Education Code sections 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5. The substance of these sections will be briefly summarized below; the full text of each is included in the exhibits to the test claim filings.

Education Code section 22119.2 provides a definition of “creditable compensation” as “means remuneration that is payable in cash by an employer to all persons in the same class of employees and is paid to an employee for performing creditable service,” including salary. Prior law for the State Teachers’ Retirement System defined “‘compensation’ and ‘salary’” interchangeably under former Education Code section 22114, and the definition was similar, but

²⁵ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

²⁶ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

²⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

not identical, to the current definition of “creditable compensation.”²⁸ Education Code section 22119.5 defines “creditable service,” as any listed activity performed by an individual in a credentialed, certificated, or otherwise standardized position.

Education Code section 22146 defines “member” of the Defined Benefit Program, as one “who has performed creditable service... and has earned creditable compensation.” Prior law provided definitions of “member” for the retirement system, including teachers and other credentialed employees, librarians, counselors, superintendents and deputies.

Education Code section 22501 describes membership eligibility in the State Teachers’ Retirement System for full-time employees. Education Code sections 22502, 22503 and 22504 describe membership eligibility for various non-full-time employees: those at 50% or greater time-base; substitute employees who work 100 or more days in a school year for one district; and certain hourly and daily part-time employees.

Education Code section 22711 is a directive to CalSTRS to grant service credit for compensated leave time by an employee who is “an elected officer of an employee organization,” if both the member and member’s employer makes the appropriate contributions to the Teachers’ Retirement Fund as if the member were performing creditable service. Education Code section 22712.5 is a directive to CalSTRS to grant service credit for certain “community service teachers” who are serving in otherwise nonqualifying positions.

In summary, staff finds that Education Code sections 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5 define terms used in the code, are directives to CalSTRS, or otherwise do not require any mandatory activities to be performed by school district employers, and thus are not subject to article XIII B, section 6.

Education Code Sections 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, and 22851:

A number of the claimed code sections deal with “service credit,” but these describe optional programs or otherwise do not require any mandatory activities of school districts, or were established by prior law.

Education Code section 22713 provides an option for school districts to establish regulations to allow a full-time employee to reduce their workload, but still receive full-time service credit. The section provides that districts “*may* establish regulations,” and then if they do, those regulations must contain certain provisions, and the employer must follow other specific procedures to implement the optional “reduced workload program.” Such requirements are factually similar to the case in *Kern High School Dist., supra*, 30 Cal.4th 727, 743, where the California Supreme Court found that when school districts voluntarily establish school site councils, costs of activities required for school site councils are not reimbursable because “the proper focus under a legal compulsion inquiry is upon the nature of claimants’ participation in the underlying programs themselves.” Therefore, staff finds that Education Code section 22713 does not require any mandatory activities of school districts, and is not subject to article XIII B, section 6.

²⁸ For example, the earlier definition of “compensation” and “salary” excluded payments for summer school employment, which is included under the current definition of “creditable compensation.”

Education Code section 22714 provides that a governing board of a school district, county office of education, or community college district (all are 'school districts' under Gov. Code, § 17519) may encourage retirement by offering an additional two years of service credit. Staff finds that this is also an optional program and is not subject to article XIII B, section 6.²⁹

Education Code section 22717 provides for service credit for accumulated sick leave. The only part of the code section that requires action on the part of the school district employer is subdivision (c). Subdivision (c) requires that "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." Longstanding prior law (Ed. Code, § 22719, Stats. 1976, ch.1010, and previously Ed. Code § 14004, added by Stats. 1974, ch. 89) provided that "the school district or other employing agency shall certify to the Teachers' Retirement Board the number of days of accumulated and unused leave of absence for illness or injury to which the employee is entitled on his final day of employment." Therefore, staff finds that Education Code section 22717 does not require any activities of school districts that were not required under prior law, and thus is not subject to article XIII B, section 6.

Education Code section 22717.5 provides for service credit "for each unused day of educational leave credit." However, the code section only applies to members who are retiring as state employees but elected to remain members of CalSTRS, rather than join the Public Employees' Retirement System (PERS), when they entered state service. Staff finds that the reference to "employer" in this section is to the state employer – there is no local agency requirement subject to article XIII B, section 6.

Education Code section 22800 addresses corroborating statements needed by a member of the retirement system to substantiate claims of permissive and additional service credit. Prior versions of the code section (Ed. Code, § 22701, Stats. 1976, ch.1010, formerly Ed. Code § 13980.1, added by Stats. 1974, ch. 1153) have long provided that "[c]laims for creditable service shall be corroborated by a statement from the superintendent of schools or custodian of records of the employing agency or public school where the service was performed." Therefore, staff finds that Education Code section 22800 does not require any activities of school districts that were not required under prior law, and thus is not subject to article XIII B, section 6.

Education Code section 22801 and 22803 also address issues of additional service credit that may be elected by a member of CalSTRS. Under section 22801, the law provides the terms of payment of contributions by the member for such elected service credit, including interest. Subdivision (d) is the only portion of the law that addresses the school district employer, and states: "(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." Section 22803 lists ten possibilities for elective service credit, such as teaching performed in California public universities or colleges, or time spent on certain approved leaves or sabbaticals.

²⁹ Even if it is successfully argued that this is not an optional program, but one that must be undertaken if the district governing board determines it is in "the best interests of the district," the statute also requires that the school district must certify that the action "would result in a *net savings* to the district." Therefore a district cannot meet the requirement of showing that they have incurred increased costs mandated by the state.

There is no state-mandated requirement in these sections for the school district employer to engage in any administrative activities, or even to pay a share of costs, therefore staff finds that Education Code section 22801 and 22803 are not subject to article XIII B, section 6.

Education Code section 22851 provides for elective service credit for the period of time a member has an "eligible period of service in the uniformed services." This is subject to applicable federal law (38 U.S.C.A. § 4301 et seq., "Employment and Reemployment Rights of Members of the Uniformed Services"), and only applies if they return to work in the same school district that they were employed with prior to their military service. In order to qualify, the member must pay the contribution amount that they would have paid should they have been continuously employed by the district. Education Code section 22851 does not require any state-mandated administrative activities or share of costs by the school district employer; any activities or responsibilities described are for the member, CalSTRS, or are otherwise required by federal law. Therefore, staff finds that Education Code section 22851 is not subject to article XIII B, section 6.

Increased Costs for an Employers' Share of Retirement Contributions Are Not Reimbursable Under Mandates Law.

Education Code Sections 22002, 22950 and 22951:

Some of the code sections claimed discuss the employer's share of contribution towards the defined benefit program, and specify the percentages of compensation required. Claimants assert that any increased employer costs for retirement contributions, when compared to prior law, are reimbursable.

Education Code section 22002, subdivision (b) includes the Legislature's policy statement that "[e]mployers shall contribute a percentage of the total creditable compensation on which member contributions are based." This is derived from longstanding prior law, which has been amended to replace the term "salary" with "creditable compensation."³⁰ (Former Ed. Code, § 22002, Stats. 1976, ch.1010, and previously the 1959 Ed. Code, § 13804.)

Education Code section 22950 and 22951 establish the percentages of creditable compensation that the school district employer must pay. Education Code section 22950, subdivision (a) requires that "(a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based." Former Education Code section 14100³¹ provided that the school districts "shall contribute monthly the following percentages of the total salaries upon which members' contributions are based:"

- (a) For fiscal year ending June 30, 1973 3.2%
- (b) For fiscal year ending June 30, 1974 4%
- (c) For fiscal year ending June 30, 1975 4.8%
- (d) For fiscal year ending June 30, 1976 5.6%

³⁰ See the text regarding Education Code section 22119.2, at page 12.

³¹ The section was added by Statutes 1971, chapter 1305, and then renumbered as section 22950 by Statutes 1976, chapter 1010 (the 1976 reorganization of the Education Code).

- (e) For fiscal year ending June 30, 1977 6.4%
- (f) For fiscal year ending June 30, 1978 7.2%
- (g) For all fiscal years after June 30, 1978 8%

Article XIII B, section 6, subdivision (a)(3), provides that the Legislature need not fund “Legislative mandates enacted prior to January 1, 1975.” The law requiring an eight percent employer contribution after June 30, 1978, was enacted in 1971, therefore this is not subject to article XIII B, section 6. The law now requires that the eight percent contribution is based on “creditable compensation,” as defined by Education Code section 22119.2, instead of the old definition of “salaries,” under former Education Code section 22114. The definitions are similar, but there are differences that could result in increased costs to the school district employer. For example, under the amended law, a school district is responsible for the employers’ share of contribution for summer school salary earned by an employee. This was excluded under the old definition of “compensation” and “salary,” but is included in the definition of “creditable compensation.”

Education Code section 22951 provides that school district employers shall contribute an additional quarter percent (0.25%) over any other contribution required. This law was derived from former section 23400.1, which was first added to the Education Code by Statutes 1985, chapter 1597.³² Like Education Code section 22950, above, the percentage is now based on the statutory definition of creditable compensation, where it used to be based on “salaries.”

While school districts will likely incur increased costs for retirement contributions as a result of the test claim statutes (particularly when combined with the amended definition of creditable compensation), a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has repeatedly ruled that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6.³³ The Court also found in *Lucia Mar, supra*, 44 Cal.3d 830, 835:

We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.

Comments filed by the state agencies, DOF and CalSTRS, both assert that case law interpreting article XIII B, section 6, including *County of Los Angeles, supra*, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, results in a finding that “the provision by public school employers of monthly [State Teachers’ Retirement System] contributions on behalf of their employees is not a program that provides a service to the public or that is unique to local government.”³⁴

³² Statutes 1985, chapter 1597 was not included in the test claim allegations.

³³ *County of Los Angeles, supra*, 43 Cal.3d at page 54; see also, *Kern High School Dist., supra*, 30 Cal.4th 727, 735.

³⁴ DOF’s December 4, 2001 comments on test claim 01-TC-02, page 3, and the July 24, 2003 comments on test claim 02-TC-19, page 3.

Claimant, Santa Monica CCD, argues that the cases are distinguishable from the test claim at issue here. First, the CalSTRS statutes and teacher pensions are unique to local government, which, the claimant states, is distinct from the workers' compensation cases of *County of Los Angeles* and *City of Richmond*.

The claimant also argues that this claim is distinguishable from *City of Anaheim*, which dealt with higher local government employer costs for PERS. The claimant argues that in contrast to the *City of Anaheim* statute that resulted in higher costs to local agencies, but did not require action except on the part of the state agency, CalPERS, the instant test claim statutes require that the claimant "do something", i.e. it requires it to make contributions to CalSTRS in situations where none were required prior to that legislation."³⁵

Staff notes that making contributions to CalSTRS is not new – an employer share of contributions to CalSTRS has been continuously required under current and previous versions of Education Code section 22950.³⁶ Even before the test claim statutes, the amount contributed by the school district employer would change regularly depending on the number of employees eligible, and their current compensation. In order for the claimant's argument distinguishing the *Anaheim* case to succeed, they must still prove that the statutes in fact mandate a new program or higher level of service in an existing program.

In *County of Los Angeles, supra*, 43 Cal.3d 46, the Court addressed the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide to their employees. The Supreme Court recognized that workers' compensation is not a new program and, thus, the court determined whether the legislation imposed a higher level of service on local agencies.³⁷ The court defined a "higher level of service" as "state mandated increases in the services provided by local agencies in existing programs." (Emphasis added.)

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."

The Supreme Court in *County of Los Angeles* continued:

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.³⁸

³⁵ Claimant, Santa Monica CCD's rebuttal to DOF, dated August 15, 2003, pages 3-4.

³⁶ The actual mechanisms for making those payments is governed by Education Code section 23000 et seq., also longstanding prior law, which was not included in the test claim pleadings.

³⁷ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

³⁸ *Id.* at pages 56-57.

The court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required.

Section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers ... In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state ... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6. (*Id.* at pp. 57-58, fn. omitted.)

Although "[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those employees to the public." (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 875.) In this sense, the present consolidated test claim is indistinguishable from the analysis presented by the Court in *County of Los Angeles*.

City of Richmond, *supra*, 64 Cal.App.4th 1190, similarly held that requiring local governments to provide death benefits to local safety officers, under both PERS and the workers' compensation system, did not constitute a higher level of service to the public. The court stated:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.³⁹

The court also found that "[a]lthough a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate."⁴⁰

In *City of Anaheim*, *supra*, 189 Cal.App.3d 1478, the court determined that an increase in PERS benefits to retired employees, which resulted in a higher contribution rate by local governments, does not constitute a higher level of service to the public. In this case the court found that:

While focusing on the exceptions to reimbursement, City conveniently presumes that [the test claim statute] mandated a higher level of service on local government, a prerequisite to reimbursement when an existing program is modified.

City's claim for reimbursement must fail for the following reasons: (1) [the test claim statute] did not compel City to do anything, (2) any increase in cost to City

³⁹ *City of Richmond*, *supra*, 64 Cal.App. 1190, 1196.

⁴⁰ *Id.* at page 1197.

was only incidental to PERS' compliance with [the test claim statute], and (3) pension payments to retired employees do not constitute a "program" or "service" as that term is used in section 6.⁴¹

Here, Santa Monica CCD argues that "[t]he test claim legislation alleges that certain employees, previously required to be excluded in the retirement program, now be included in the program. The test claim legislation alleges that certain employees' activities, previously excluded from the retirement program, now be included in that program. Therefore, those portions of the mandated retirement program are a 'new program.'" (Aug. 15, 2002 rebuttal letters, pp. 4-5.) The court in *Anaheim* found that an increase in pension benefits to employees was not a "program" or "service" within the meaning of article XIII B, section 6.⁴²

Also, like the claimant here, the claimant in *City of Anaheim*:

argues that since [the test claim statute] specifically dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents or entities. [Footnote omitted; emphasis in original.]

However, the court continued:

Such an argument, while appealing on the surface, must fail. As noted above, [the statute] mandated increased costs to a state agency, not a local government. Also, PERS is not a program administered by local agencies.

Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending ... [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies. ... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) *Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public.* [Emphasis added, footnote omitted.]

Therefore, the court concluded that the test claim statute did "not fall within the scope of section 6."⁴³

In *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 876-877, the Court held:

Viewed together, these cases (*County of Los Angeles, supra*, 43 Cal.3d 46, *City of Sacramento, supra*, 50 Cal.3d 51, and *City of Richmond, supra*, 64 Cal.App.4th 1190) illustrate the circumstance that simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an *increased or higher level*

⁴¹ *City of Anaheim, supra*, 189 Cal.App.3d at page 1482.

⁴² *Ibid.*

⁴³ *Id.* at pages 1483-1484.

of the resulting "service to the public" under article XIII B, section 6, and Government Code section 17514. [Emphasis in original.]

The test claim statutes create a situation, as in *City of Anaheim*, where the employer may be faced with "a higher cost of compensation to its employees." As held by the court, "[t]his is not the same as a higher cost of providing services to the public." Therefore, staff finds that increased costs resulting from the test claim statutes, Education Code sections 22002, 22950, and 22951, without more, are not subject to article XIII B, section 6.

Issue 2: Do the remaining test claim statutes mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

Education Code Sections 22455.5, 22460, 22509, 22718, 22724 and 22852:

Finally, a number of the test claim statutes require that the school district employer engage in reporting and notice activities. The state agencies argue that these claims should be rejected on the same rationale as the case law discussed above. Staff disagrees. Those cases did not include facts where there were distinct administrative activities required by the test claim statutes, in addition to the higher contribution costs alleged.

Education Code section 22455.5, as added by Statutes 1994, chapter 603, and amended by Statutes 1996, chapter 634, and Statutes 1999, chapter 939 requires that employers provide information to new employees about the defined benefit plan. Staff finds that the following is a new activity required by Education Code section 22455.5, subdivision (b), resulting in a new program or higher level of service:

- o 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 Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS.

Education Code section 22460, repealed and reenacted by Statutes 2000, chapter 1021, requires specific notification to employees who terminate with less than five years of credited service. The law was derived from former Education Code section 23108, renumbered as section 22460 by Statutes 1993, chapter 893, which read as follows:

Employing school districts and other employing agencies 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 which will be earned, and actions which may be taken by the board if such contributions are not withdrawn. Employing school districts and other employing agents shall transmit such information to the member as part of the usual separation documents.

The information required for the notice is slightly different now, including references to the Defined Benefit Supplement account; therefore, staff finds that Education Code section 22460,

as repealed and reenacted, mandates a new program or higher level of service for the following one-time activity:

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision (a)(1) – (3), regarding the Defined Benefit Supplement account.

Education Code section 22509, as repealed and reenacted by Statutes 1996, chapter 383, and amended by Statutes 1997, chapter 838, requires that for new employees who may choose between membership in CalPERS or CalSTRS, the school district employer “shall inform the employee of the right to make an election and shall make available to the employee written information” provided by CalPERS and CalSTRS, to assist in the decision. Staff finds that this is a new notice requirement when compared to prior law, and Education Code section 22509, subdivision (a) mandates a new program or higher level of service for the following activity:

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election.

Education Code sections 22718 and 22724 address service credit authorized for “excess sick leave.” Excess sick leave is sick leave granted by an employer at a rate greater than “one day per pay period of at least four weeks.” If excess sick leave is granted by an employer and is not entirely used, it can increase a member’s service credit; at the retirement of the member, the employer will be billed for the present value of the service credit. Reimbursement for the costs of the service credit billed to the employer is denied on the same rationale regarding Education Code sections 22002, 22950 and 22951, above: an employer’s increased contribution costs to a pension plan is not a program, or a new program or higher level of service, pursuant to article XIII B, section 6.

However, Education Code section 22718, as amended by Statutes 1999, chapter 939, requires for the first time that “the employer shall also certify the number of unused excess sick leave days.” Education Code section 22724, as added by Statutes 1999, chapter 939, describes the method of calculation for the certification of excess sick leave. Staff finds that this certification requirement results in a new report to the state when compared to prior law, and therefore Education Code sections 22718, subdivision (a)(1)(A), and section 22724, mandate a new program or higher level of service for the following activities:

- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a).
- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes.⁴⁴

⁴⁴ CalSTRS January 30, 2007 comments, page 6, argue that the “record retention requirement” is not reimbursable because personnel records are required to be kept a minimum of two years

Education Code section 22852 provides for employer contributions for elective service credit for members of the armed services who are reemployed with a school district following a period of military service. Reimbursement for the costs of the service credit billed to the employer is denied on the same rationale regarding Education Code sections 22002, 22950 and 22951, above: an employer's increased contribution costs to a pension plan is not a program, or a new program or higher level of service, pursuant to article XIII B, section 6. However, Education Code section 22852, as added and amended by the test claim statutes, requires a reporting activity that was not required under prior law.

CalSTRS January 30, 2007 comments, page 7, maintain that "this provision is consistent with Federal Law...and could be considered a federal mandate." Staff finds no federal law requiring employers to provide information to the state regarding a returning employee in the manner required by Education Code section 22852. Thus, staff finds Education Code section 22852, subdivision (e) mandates a new program or higher level of service for the following activity:

- The employer shall provide information to CalSTRS regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment.

Finally, CalSTRS argues that all of the activities identified result in costs that are "modest, incidental, or de minimus,"⁴⁵ and are thus not reimbursable pursuant to the California Supreme Court's decision in *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 890. The *San Diego Unified School Dist.* decision must be examined in context. The portion of the decision cited addresses the mandate claim for providing due process in discretionary expulsion proceedings. The decision states that "challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimus—should be treated as part and parcel of the federal mandate." The Court recognized that it was unrealistic to expect the Commission to determine which statutory procedures were required for minimum federal standards of due process, versus any "excess" due-process standards only required by the state.

There is no evidence that the statutes creating or altering notice and reporting requirements presently before the Commission are "part and parcel" of a federal mandate, and they can easily be separated from the other costs of the retirement program. When a new program or higher level of service is identified, the cost threshold for proving a reimbursable state mandated program is very low; currently only \$1000 is required in order to file a reimbursement claim. CalSTRS argues that because they provide the school district employers with "the necessary forms and notice materials required to satisfy the notice and reporting requirements, any costs to the employer are shared by CalSTRS and would not solely be reimbursable to the local agency or school district."⁴⁶ Staff finds that for the activities identified, the claimant still has distribution, administrative and reporting responsibilities, regardless of who printed the forms or brochures.

under prior law. The new activity identified is to "submit sick leave records of past years," upon request. There is no evidence in the record that this activity was required by prior law.

⁴⁵ CalSTRS Comments, January 30, 2007, page 4.

⁴⁶ *Ibid.*

If a claimant has increased costs of \$1000 for the identified mandated activities, then they are eligible to make a claim for reimbursement.

Issue 3: Do the test claim statutes impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. Co-claimants, Lassen COE and San Luis Obispo COE, estimated mandated costs in excess of \$200, which was the statutory threshold for filing a test claim in 2001. Claimants, Grant and Santa Monica CCD, each alleged mandated costs in excess of \$1000, as did a declarant, San Diego County Office of Education.

All of the claimants also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, staff agrees and finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

Staff concludes that Education Code sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852, subdivision (e), impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- 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 Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS. (Ed. Code, § 22455.5, subd. (b).)⁴⁷

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision

⁴⁷ As added and amended by Statutes 1994, chapter 603, Statutes 1996, chapter 634, and Statutes 1999, chapter 939.

All of the approved statutes and activities were pled in the test claim *CalSTRS Service Credit* (02-TC-19), filed on May 12, 2003, by Santa Monica CCD. Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

(a)(1) – (3), regarding the Defined Benefit Supplement account. (Ed. Code, § 22460; one-time activity.)⁴⁸

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. (Ed. Code, § 22509, subd. (a).)⁴⁹
- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a). (Ed. Code, § 22718, subd. (a)(1)(A).)⁵⁰
- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes. (Ed. Code, § 22724, subd. (b).)⁵¹
- The employer shall provide information to CalSTRS regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment. (Ed. Code, § 22852, subd. (e).)⁵²

Staff concludes that Education Code sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950 and 22951, as amended and pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

⁴⁸ As repealed, reenacted and amended, by Statutes 2000, chapter 1021.

⁴⁹ As repealed, reenacted and amended, by Statutes 1996, chapter 383, and Statutes 1997, chapter 838.

⁵⁰ As amended by Statutes 1999, chapter 939.

⁵¹ As added by Statutes 1999, chapter 939.

⁵² As added and amended by Statutes 1996, chapter 680, and Statutes 1998, chapter 965.

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STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
30 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
(916) 323-3562

<p>FOR OFFICIAL USE ONLY RECEIVED SEP 19 2001 COMMISSION ON STATE MANDATES</p>
<p>TEST CLAIM NUMBER: 01-TC-02</p>

TEST CLAIM FORM

LOCAL AGENCY OR SCHOOL DISTRICT SUBMITTING CLAIM

Lassen County Office of Education and San Luis Obispo County Office of Education

CONTACT PERSON

TELEPHONE NO.

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Attorney for Mandated Cost Systems, Inc.

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ADDRESS

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REPRESENTATIVE ORGANIZATION TO BE NOTIFIED

Mandated Cost Systems, Inc.
Steve Smith
2275 Watt Avenue, Suite C
Sacramento, California 95825

THIS TEST CLAIM ALLEGES THE EXISTENCE OF A REIMBURSABLE STATE MANDATED PROGRAM WITHIN THE MEANING OF SECTION 17514 OF THE GOVERNMENT CODE AND SECTION 6, ARTICLE XIII B OF THE CALIFORNIA CONSTITUTION. THIS TEST CLAIM IS FILED PURSUANT TO SECTION 17551(A) OF THE GOVERNMENT CODE.

IDENTIFY SPECIFIC SECTION(S) OF THE CHARTERED BILL OR EXECUTIVE ORDER ALLEGED TO CONTAIN A MANDATE, INCLUDING THE PARTICULAR STATUTORY CODE SECTION(S) WITHIN THE CHARTERED BILL, IF APPLICABLE.

Statutes of 1999, Chapter 939 (SB 1074)
Statutes of 2000, Chapter 1021 (AB 2700)

Education Code Section 22119.2

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

TELEPHONE NO.

Paul C. Minney, Attorney

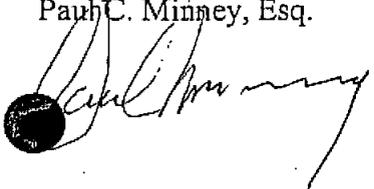
(916) 646-1400

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

Paul C. Minney, Esq.

September 19, 2001



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Attorney for Mandated Cost Systems, Inc. and
Authorized Representative of Co-Claimants,
Lassen County Office of Education and
San Luis Obispo County Office of Education

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM OF:

Lassen County Office of Education
and
San Luis Obispo County Office of Education

CSM NO. 01-TC-02

Statutes of 1999, Chapter 939 (SB 1074) and
Statutes of 2000, Chapter 1021 (AB 2700)

Education Code Section 22119.2

CalSTRS Credible Compensation

CalSTRS Credible Compensation

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I. TEST CLAIM EXECUTIVE SUMMARY

SUMMARY OF THE TEST CLAIM LEGISLATION

Statutes of 2000, Chapter 1021, enacted September 30, 2000 and operative January 1, 2001 (the test claim legislation), made several additions and amendments to the Education Code. Among other things, the test claim legislation makes all compensation for creditable service creditable to the California State Teachers' Retirement System (CalSTRS) effective July 1, 2002 or July 1, 2003, depending on increases in state funding for school districts in 2001-02. The test claim legislation also credits member and employer contributions on compensation earned for creditable service in excess of 1.000 years of service per school year to the Defined Benefit Supplement Program established in Statutes of 2000, Chapter 74. In addition, the test claim legislation contains numerous technical amendments and appropriates funds to implement that program. Finally, it reduces the General Fund appropriation to the Defined Benefit Program from the current 3.102 percent of creditable compensation in the prior calendar year to 2.5385 percent in 2000-01 and 1.975 percent in 2001-02.

OVERVIEW OF MANDATES LAW

For the Commission to find that the test claim legislation imposes a reimbursable state mandated program, the legislation: (1) must be subject to article XIII B, section 6 of the California Constitution, or in other words, the legislation must impose a "program" upon local governmental entities; (2) the "program" must be new, thus constituting a "new program," or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated within the meaning of Government Code section 17514.

QUESTIONS PRESENTED

1. **Does the Test Claim Legislation Impose a "Program" Upon County Offices of Education and School Districts Within the Meaning of the Article XIII B, Section 6 of the California Constitution by Amending the Definition of "Creditable Compensation?"**

Short Answer: YES. The test claim legislation amended the definition of "creditable compensation" requiring county offices of education and school districts to properly credit all creditable compensation when determining a CalSTRS member's benefits. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements upon county offices of education and school districts that do not apply generally to all residents and entities of the state. Therefore, the activities and costs associated with properly crediting all creditable compensation when determining a CalSTRS member's benefits constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. **Does the Test Claim Legislation's "Program" Represent a "New Program" or a "Higher Level of Service" Imposed Upon County Offices of Education and School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Amending the Definition of "Creditable Compensation?"**

Short Answer: YES. By comparing the requirements imposed upon county offices of education and school districts under prior law and those imposed by the test claim legislation, it becomes clear that county offices of education and school districts are engaging in *new* activities related to properly crediting all creditable compensation when determining a CalSTRS member's benefits. The test claim legislation broadened the definition of "creditable compensation" to include all compensation earned by a CalSTRS member. Prior law included several exclusions such as: (1) money paid for

creditable service in excess of the full-time equivalent for the position; (2) money paid for overtime, overload, summer school, and intercession; (3) stipends paid to department chairs when release time is not granted by the employer; (4) bonus payments, such as pay-for-performance; (5) allowances; (6) payments under a contract option; and (7) non-cash compensation.

Therefore, the activities and costs associated with properly crediting all creditable compensation when determining a CalSTRS member's benefits imposed a "new program" or "higher level of service" upon county offices of education and school districts by the test claim legislation within the meaning of article XIII B, section 6 of the California Constitution.

3. Does the Test Claim Legislation's "Program," Which Represents a "New Program" or "Higher Level of Service," Impose "Costs Mandated by the State" Upon County Offices of Education and School Districts Within the Meaning of Government Code Section 17514?

Short Answer: YES. None of the Government Code section 17556 "exceptions" apply and there is no federal law requiring county offices of education and school districts to engage in activities necessary to properly credit all creditable compensation when determining a CalSTRS member's benefits. Therefore, the test claim legislation does impose "costs mandated by the state" upon county offices of education and school districts within the meaning of Government Code section 17514.

CONCLUSION

The following activities represent reimbursable state-mandated activities imposed upon county offices of education and school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

- A. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting STRS costs to employees; (Ed. Code, § 22119.2.)
 - B. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
 - C. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
 - D. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.
-

II. TEST CLAIM ANALYSIS

OVERVIEW OF THE TEST CLAIM LEGISLATION

Statutes of 2000, Chapter 1021, enacted September 30, 2000 and operative January 1, 2001 (the test claim legislation), made several additions and amendments to the Education Code. Among other things, the test claim legislation makes all compensation for creditable service creditable to the California State Teachers' Retirement System (CalSTRS) effective July 1, 2002 or July 1, 2003, depending on increases in state funding for school districts in 2001-02. The test claim legislation also credits member and employer contributions on compensation earned for creditable service in excess of 1.000 years of service per school year to the Defined Benefit Supplement Program established in Statutes of 2000, Chapter 74. In addition, the test claim legislation contains numerous technical amendments and appropriates funds to implement that program. Finally, it reduces the General Fund appropriation to the Defined Benefit Program from the current 3.102 percent of creditable compensation in the prior calendar year to 2.5385 percent in 2000-01 and 1.975 percent in 2001-02.

ANALYSIS

In order for a statute or executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the language: (1) must impose a "program" upon local governmental entities; (2) the program must be new, thus constituting a "new program," or it must create an increased or "higher level of service" over the former required level of service; and (3) the newly required program or increased level of service must be state mandated.

The court has defined the term "program" to mean programs that carry out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts that do not apply

generally to all residents and entities in the state. To determine if a required program is "new" or imposes a "higher level of service," a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹ To determine if the new program or higher level of service is state mandated, a review of state and federal statutes, regulations, and case law must be undertaken.²

1. Does the Test Claim Legislation Impose a "Program" Upon County Offices of Education and School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Amending the Definition of "Creditable Compensation?"

The test claim legislation amends the definition of "creditable compensation," which in turn requires county offices of education and school districts to engage in numerous activities to apply additional compensation for creditable service to CalSTRS.³ The California Supreme Court in *County of Los Angeles v. State of California*, defined "program" as:

"Programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."⁴

The California Appellate Court in *Carmel Valley Fire Protection District v. State of California*, found the following regarding the *County of Los Angeles* "program" holding:

"The [Supreme] Court concluded that the term 'program' has two alternative meanings: 'programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and

¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

² *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594; Government Code sections 17513, 17556.

³ These additional activities will be defined in the Parameters and Guidelines phase of this test claim if it is successful. As discussed in detail below, the test claim legislation may not take effect until July 1, 2003. Therefore, it is difficult to accurately predict the activities county offices of education and school districts will engage in before that time.

⁴ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56.

entities in the state.' (Citation omitted.) [O]nly one of these findings is necessary to trigger reimbursement."⁵ (Emphasis added.)

The test claim legislation clearly passes both tests outlined by *County of Los Angeles* and reiterated in *Carmel Valley*. First, the test claim activities are deemed necessary to properly credit public educators' creditable compensation in response to the test claim legislation. The court has held that public education in California is a peculiarly governmental function administered by local agencies as a service to the public.⁶ Second, the test claim legislation only applies to public schools and as such imposes unique requirements upon county offices of education and school districts that do not apply generally to all residents and entities of the state. Therefore, engaging in activities to properly credit CalSTRS member compensation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

2. **Does the Test Claim Legislation's "Program" Represent a "New Program" or a "Higher Level of Service" Imposed Upon County Offices of Education and School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution by Amending the Definition of "Creditable Compensation?"**

To determine if a required program is "new" or imposes a "higher level of service," a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.⁷

⁵ *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537.

⁶ *Long Beach Unified School Dist.*, *supra* (1990) 225 Cal.App.3d 155, 172 (The court found that although numerous private schools exist, education in the state is considered a peculiarly governmental function and public education is administered by local agencies to provide a service to the public. Based on these findings, the court held that public education constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.)

⁷ *Lucia Mar Unified School Dist.*, *supra* (1988) 44 Cal.3d 830, 835 (The court found that legislation that shifts activities from the state to a local entity represents a new program especially when the local entity was not required to perform that activity at the time the legislation was enacted. The court concluded that, under these circumstances, the activity is "new" insofar as the local entity is concerned.)

Prior Law – Activities Required Until July 1, 2002 or July 1, 2003 Depending on Increases in State Funding for School Districts

Under prior law, the California State Teachers' Retirement System (CalSTRS) calculates a member's retirement benefit under the Defined Benefit (DB) Program using: (1) the member's credited service; (2) a factor based on the member's age at retirement; and (3) the member's final compensation.

The member's service credit is determined annually according to the creditable service performed by the member. The actual determination of service credit is based on the ratio of compensation earned by the member to the compensation that would be earnable by the member if service were performed on a full-time basis the entire school year. "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 to earn compensation earnable as defined in statutes and specified under a collective bargaining agreement. However, the employer's full-time requirement cannot be less than the statutory minimum standard for the related class of employees.

Creditable service includes activities performed for an employer in a position that requires a credential, certificate, or permit under the Education Code or under standards adopted by the Board of Governors of the California Community Colleges. Positions under which creditable service is performed include teacher, instructor, principal, superintendent, counselor, health professional, and librarian. "Creditable compensation" is money paid for creditable service, unless otherwise excluded by statutory provisions. In order to be creditable, compensation must be paid to everyone in a class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

Prior law excludes several types of payments from "creditable compensation," including:

- Money paid for creditable service in excess of the full-time equivalent for the position;
- Money paid for overtime, overload, summer school and intercession;
- Stipends paid to department chairs when release time is not granted by the employer;
- Bonus payments, such as pay-for-performance;
- Allowances;
- Payments under a contract option; and
- Non-cash compensation.

Test Claim Requirements: Determination of Creditable Compensation as of July 1, 2002 or July 1, 2003

Although current law requires county offices of education and school districts to make certain determinations related to what represents "credible compensation" for purposes of CalSTRS calculations, the test claim legislation changed the definition of "creditable compensation" and therefore imposes additional activities.

In the early 1970's, when the current retirement plan was designed, K-12 education generally was provided for nine months a year and community college instruction used full-time faculty to a greater degree. The current method of determining what compensation is creditable reflects the means by which education was provided *at that time*. As a result, summer school and intercession service is not creditable, and the plan assumes that members largely work only one job, and on a full-time basis.

Since then, a number of changes have occurred in the provision of education, including more year-round schools, summer school, and the shift in community colleges to more part-time based instruction. In addition, administrators are increasingly being compensated based in part on their performance. The test claim legislation makes all compensation for creditable service creditable for purposes of determining a CalSTRS retirement benefit and reflects the changes in education. By changing the current definition of "creditable compensation," the test claim

legislation allows compensation that currently is not creditable to be counted in determining a member's retirement benefit.

The test claim legislation also changed the definition of "creditable compensation" to include not only compensation that is *paid* to everyone in a class but also compensation that is *payable* to everyone in the class. The purpose of this change was to permit members to receive benefits based on full compensation, without the retirement system being subjected to inadequate funding when compensation is restructured late in a member's career. The test claim legislation also provides a basis for increasing total compensation earnable so that all members in a similar class could benefit from additional types of compensation, including pay for performance services.

Therefore, the test claim legislation requires county offices of education and school districts to engage in additional activities to properly credit all creditable compensation when determining a CalSTRS member's benefits. The claimant has not provided an exhaustive list of activities that must be performed in order to meet the test claim legislation requirements. Rather, the claimant contends that there are numerous activities that will be performed once the test claim legislation becomes operative.

It could be argued that since the test claim legislation is not operative, that this test claim is premature since, at the latest, county offices of education and school districts would perform the test claim activities after July 1, 2003. While it may be argued that filing a test claim before county offices of education and school districts are required to engage in the test claim activities is premature, there are several reasons why this test claim filing is appropriate.

First, it is clear from the test claim legislation that *all* creditable time be considered "creditable compensation" for purposes of the CalSTRS program. Therefore, the claimant and

state agencies can provide meaningful arguments on the reimbursability of the broad activities related to the test claim legislation. While the specific activities cannot be fully addressed at this stage, this fact is not detrimental since such activities can be addressed at the Parameters and Guidelines phase.

Second, the Commission's current workload makes it necessary to file this claim early. Assuming that the Commission produces two test claims a month beginning July 2001, the Commission's current workload of approximately 60 test claims would mean that the analysis for this claim would be prepared sometime late 2003 or early 2004 – after the time in which county offices of education and school districts would be engaging in the test claim activities. Therefore, to avoid potential delay in obtaining reimbursement for the activities outlined in the test claim legislation, the claimant submits this claim before county offices of education and school districts are required to engage in the activities.

Based on the foregoing, the claimant contends that the test claim legislation has imposed a "new program" or "higher level of service" upon county offices of education and school districts related to the activities and costs associated with properly crediting all creditable compensation when determining a CalSTRS member's benefits. Therefore, these activities represent a "higher level of service" imposed upon county offices of education and school districts within the meaning of article XIII B, section 6 of the California Constitution.

3. Does the Test Claim Legislation's "Program," Which Represents a "New Program" or "Higher Level of Service," Impose "Costs Mandated by the State" Upon County Offices of Education and School Districts Within the Meaning of Government Code Section 17514?

None of the Government Code section 17556 "exceptions" apply and there is no federal law requiring county offices of education and school districts to engage in activities necessary to properly credit all creditable compensation when determining a CalSTRS member's benefits.

Therefore, the test claim legislation does impose "costs mandated by the state" upon county offices of education and school districts within the meaning of Government Code section 17514.

CONCLUSION

The following activities represent reimbursable state-mandated activities imposed upon county offices of education and school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

- A. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting STRS costs to employees; (Ed. Code, § 22119.2.)
- B. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
- C. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
- D. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

III. CLAIM REQUIREMENTS

AUTHORITY FOR THE TEST CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551, subdivision (a), to hear and decide a claim by a local agency or school district that the local agency or school district is entitled to reimbursement by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. Both Lassen and San Luis Obispo County Offices of Education fall under the definition of "school districts" outlined in Government Code section 17519. This test claim is filed pursuant to Title 2, California Code of Regulations, section 1183.

ESTIMATED COSTS RESULTING FROM THE MANDATE

It is estimated that Lassen County Office of Education and San Luis Obispo County Office of Education will incur costs in excess of \$200.00 to comply with the requirements outlined in the *CalSTRS Credible Compensation* Test Claim.

APPROPRIATIONS

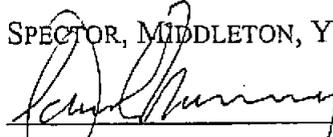
No funds are appropriated by the test claim legislation for reimbursement of these new costs mandated by the state and there is no other provision of law for recovery of costs for these activities.

CLAIM CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my knowledge, and as to all other matters, I believe them to be true and correct based on information or belief.

Executed on September 19, 2001, at Sacramento, California, by:

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP



PAUL C. MINNEY, ESQ.

Attorney for Mandated/Cost Systems, Inc.
and Authorized Representative of Lassen
County Office of Education and San Luis
Obispo County Office of Education

AUTHORIZATION TO ACT AS REPRESENTATIVE
FOR LASSEN COUNTY OFFICE OF EDUCATION'S TEST CLAIM

CalSTRS CREDIBLE COMPENSATION

I, Gene Sies, Assistance Superintendent, Business Services, hereby authorize Paul C. Minney (or designee) of the Law Office of SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP to act as the representative and sole contact of Lassen County Office of Education in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

Paul C. Minney, Esq.
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP
7 Park Center Drive
Sacramento, California 95825
Telephone: (916) 646-1400
Facsimile: (916) 646-1300

Dated: September __, 2001

GENE SIES
Assistant Superintendent, Business Services

AUTHORIZATION TO ACT AS REPRESENTATIVE
FOR SAN LUIS OBISPO COUNTY OFFICE OF EDUCATION'S TEST CLAIM

CalSTRS CREDIBLE COMPENSATION

I, Eric Smith, Deputy Superintendent, hereby authorize Paul C. Minney (or designee) of the Law Office of SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP to act as the representative and sole contact of San Luis Obispo County Office of Education in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

Paul C. Minney, Esq.
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP
7 Park Center Drive
Sacramento, California 95825
Telephone: (916) 646-1400
Facsimile: (916) 646-1300

Dated: September 11, 2001



ERIC SMITH
Deputy Superintendent

Lassen County Office of Education
472-013 Johnstonville Road North
Susanville, California 96130
Telephone: (530) 257-2196
Facsimile: (530) 257-2518

San Luis Obispo County Office of Education
P.O. Box 8105
Education Drive at Highway One
San Luis Obispo, California 93403
Telephone: (805) 782-7211
Facsimile: (805) 544-0136

Paul C. Minney, Esq.
SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP
7 Park Center Drive
Sacramento, California 95825
Telephone: (916) 646-1400
Facsimile: (916) 646-1300

Attorney for Mandated Cost Systems, Inc. and
Authorized Representative of Co-Claimants,
Lassen County Office of Education and
San Luis Obispo County Office of Education

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM OF:

Lassen County Office of Education

and

San Luis Obispo County Office of Education

CSM NO. 01-TC-02

DECLARATION OF GENE SIES,
ASSISTANT SUPERINTENDENT,
BUSINESS SERVICES

CalSTRS Credible Compensation

I, Gene Sies, make the following declaration and statement. As Lassen County Office of Education's (claimant's) Assistant Superintendent of Business Services, I have knowledge of its policies and procedures related to the payment of creditable compensation for CalSTRS

members. I am familiar with the provisions and requirements of Statutes of 2000, Chapter 1021, which require the claimant to engage in the following activities:

1. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting STRS costs to employees;
2. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
3. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
4. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

I am informed and believe that before the test claim legislation, there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$200.00 to implement these new activities mandated by the state for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

Executed on September __, 2001, at Susanville, California, by:

GENE SIES
Assistant Superintendent, Business Services

Lassen County Office of Education
472-013 Johnstonville Road North
Susanville, California 96130
Telephone: (530) 257-2196
Facsimile: (530) 257-2518

San Luis Obispo County Office of Education
P.O. Box 8105
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San Luis Obispo, California 93403
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7 Park Center Drive
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Telephone: (916) 646-1400
Facsimile: (916) 646-1300

Attorney for Mandated Cost Systems, Inc. and
Authorized Representative of Co-Claimants,
Lassen County Office of Education and
San Luis Obispo County Office of Education

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM OF:

Lassen County Office of Education

and

San Luis Obispo County Office of Education

CSM NO. 01-TC-02

DECLARATION OF ERIC SMITH, DEPUTY
SUPERINTENDENT

CalSTRS Credible Compensation

I, Eric Smith, make the following declaration and statement. As San Luis Obispo County Office of Education's (claimant's) Deputy Superintendent, I have knowledge of its policies and procedures related to the payment of creditable compensation for CalSTRS members. I am

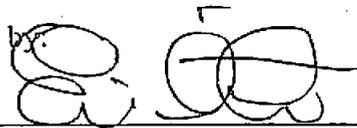
familiar with the provisions and requirements of Statutes of 2000, Chapter 1021, which require the claimant to engage in the following activities:

1. Properly crediting all creditable compensation when determining a CalSTRS member's benefits;
2. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
3. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
4. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

I am informed and believe that before the test claim legislation, there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$200.00 to implement these new activities mandated by the state for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

Executed on September 17, 2001, at San Luis Obispo, California, by:



ERIC SMITH,
Deputy Superintendent

Senate Bill No. 1074

CHAPTER 939

An act to amend Sections 22000, 22007, 22008, 22119.2, 22128, 22134, 22135, 22136, 22138.5, 22147.5, 22148, 22161, 22163, 22306, 22327, 22360, 22400, 22455.5, 22457, 22458, 22459, 22502, 22503, 22504, 22508, 22508.5, 22514, 22516, 22601.5, 22602, 22604, 22664, 22713, 22714, 22717, 22718, 22801, 22803, 22805, 22820, 22823, 22826, 22955, 23003, 23004, 23006, 23201, 23702, 23851, 24101.5, 24201, 24203.5, 24211, 24212, 24213, 24300, 24305.5, 24306, 24307, 24600, 24615, 26135, 26202, 26215, 26301, 26303, 26401.5, 26504, 26603, 26604, 27410, 44494, and 47611 of, to add Sections 22104.5, 22106.1, 22106.2, 22109.5, 22115.2, 22115.5, 22156.1, 22156.2, 22156.5, 22170.5, 22360.5, 22724, and 23805.5 to, to repeal and add Section 24205 of, the Education Code, and to amend Section 20639 of the Government Code, relating to the State Teachers' Retirement System.

[Approved by Governor October 10, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1074, Committee on Public Employment and Retirement. State Teachers' Retirement System.

The State Teachers' Retirement Law prescribes the retirement benefits of eligible teachers in the public schools who are participants in the Defined Benefit Program and the Cash Balance Benefit Program. Those programs were separately administered by the Teachers' Retirement Board until they were merged by Chapter 1048 of the Statutes of 1998.

This bill would revise various provisions to reflect that merger, make related technical changes, update various provisions, and codify various existing regulations. The bill would define various terms for purposes of benefit computations.

The State Teachers' Retirement Law prescribes retirement benefits for a nonmember spouse who is awarded a separate account upon legal separation or dissolution of marriage.

This bill would incrementally increase the maximum benefit factor for calculation of benefits for a nonmember spouse whose retirement is effective on or after January 1, 1999, and at an age greater than normal retirement age, as specified.

The State Teachers' Retirement Law provides increased benefits for members who have 30 or more years of credited service, subject to certain conditions.

The bill would specify types of credited service that are excluded from or included in the calculation of credited service for

determining eligibility for those increased benefits and provide that nonmember spouses are eligible for those increased benefits if the member had 30 or more years of credited service on the date the parties separated. The bill would state that certain of these provisions are declaratory of existing law.

Existing law, known as the Dave Eider State Teachers' Retirement System Home Loan Program Act, establishes a member home loan financing program and requires the Teachers' Retirement Board to adopt regulations governing the program.

This bill would modify the terms and conditions of that program and add an authorization for personal loans, secured by a portion of a member's accumulated retirement contributions, to be used to finance a portion of the purchase price of the member's home, subject to specified terms.

The bill would provide that any other act enacted by the Legislature during 1999, that affects any section of the bill shall prevail over the provisions of the bill.

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

SECTION 1. Section 22000 of the Education Code is amended to read:

22000. This part may be known and cited as the E. Richard Barnes Act and together with Part 14 (commencing with Section 26000) shall be known as the Teachers' Retirement Law.

SEC. 2. Section 22007 of the Education Code is amended to read:

22007. The obligations of any member, or the member's beneficiaries, to this system and the Defined Benefit Program continue throughout membership, and thereafter until all of the obligations of this system and the Defined Benefit Program to or in respect to the member or the member's beneficiaries have been discharged.

SEC. 3. Section 22008 of the Education Code is amended to read:

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions with respect to the Defined Benefit Program, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, or beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, or beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former

member, or beneficiary to receive benefits under the plan, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, or other party in relation to or on behalf of a member or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

SEC. 4. Section 22104.5 is added to the Education Code, to read:

22104.5. "Actuary" means a person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields who has been appointed by the board for the purpose of actuarial services required under this part.

SEC. 5. Section 22106.1 is added to the Education Code, to read:

22106.1. "Base days" means the number of days of creditable service required to earn one year of service credit.

SEC. 6. Section 22106.2 is added to the Education Code, to read:

22106.2. "Base hours" means the number of hours of creditable service required to earn one year of service credit.

SEC. 7. Section 22109.5 is added to the Education Code, to read:

22109.5. "Break in service," for purposes of determining a member's final compensation, means:

(a) With respect to service of a member employed as a full-time employee and service performed by a member employed as a part-time employee, any period of time covering a pay period during which a member is on an unpaid leave or absence or a pay period in which a member has not performed any creditable service.

(b) For a member who has been employed in a substitute position:

(1) And has a change in assignment during a school year to a full-time or part-time position, a break in service is determined on the same basis as for the full-time or part-time employment during the same school year.

(2) For less than 50 percent of their teaching career for which service is credited, a break in service is determined on the same basis as full-time employment.

(3) For more than 50 percent of their teaching career for which service is credited, a break in service is any period of time within a school year for which compensation is not paid and service is not credited.

(c) If a member commenced performing service at the beginning of a school term, July and August of the school year are not a break in service; however, if the member commenced performing service after the school term begins, the previous July and August are a break in service.

(d) Earnable salaries for a full pay period, but not beyond the effective date of retirement, shall be used in determining final compensation when the member performed service within that pay period.

SEC. 8. Section 22115.2 is added to the Education Code, to read:

22115.2. "Concurrent membership" means membership in the Defined Benefit Program by an individual who is credited with service that is not used as a basis for benefits under any other public retirement system and is also a member of the California Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco City and County Employees' Retirement System. A member with concurrent membership shall have the right to the following:

(a) Have final compensation determined pursuant to subdivision (c) of Section 22134.

(b) Redeposit accumulated retirement contributions pursuant to Section 23201.

(c) Apply for retirement pursuant to paragraph (2) of subdivision (a) of Section 24201.

SEC. 9. Section 22115.5 is added to the Education Code, to read:

22115.5. (a) "Concurrent retirement" entitles a member of the Defined Benefit Program to retire for service from the State Teachers' Retirement System and from at least one of the retirement systems with which the member has concurrent membership, as defined in Section 22115.2, on the same date or on different dates provided that the member does not perform creditable service subject to coverage under the other system or the Defined Benefit Program between the two retirement dates.

(b) A retired member who is subsequently employed in a position subject to membership in a public retirement system, specified in Section 22115.2, shall not be eligible for concurrent retirement.

SEC. 10. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the

United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program: An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

SEC. 11. Section 22128 of the Education Code is amended to read:

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

SEC. 12. Section 22134 of the Education Code is amended to read:

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last

three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 13. Section 22135 of the Education Code is amended to read:

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, "final compensation" means the highest annual compensation earnable by an active member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the plan's Defined Benefit Program. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

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

(c) As used in this section, "classroom teacher" means any of the following:

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

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

(d) As used in this section, "classroom teacher" does not include any of the following:

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

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

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

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

(5) Classified employees.

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

(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in allowances provided by this section and related administrative costs; and a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the plan's Defined Benefit Program, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is a member of the Public Employees' Retirement System pursuant to Section 22508, that he or she may, within 60 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this plan's Defined Benefit Program. However, only service credited under the Defined Benefit Program subsequent to the date of that election shall be subject to this section.

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the applicability of this section to a member pursuant to the criteria set forth in this section when a retirement, disability, or family allowance becomes payable.

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

system, shall reimburse the retirement fund pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payments not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

SEC. 14. Section 22136 of the Education Code is amended to read:

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 Defined Benefit Program 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. 15. Section 22138.5 of the Education Code is amended to read:

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 paragraphs (2) and (3).

(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 employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

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

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(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 employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per year for all instructors employed on a part-time basis. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per year for all adult education instructors. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) 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. 16. Section 22147.5 of the Education Code is amended to read:

22147.5. "Nonqualified service" means time during which creditable service subject to coverage by the Defined Benefit Program is not performed, excluding time a member is eligible to purchase as permissive or additional service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), and Chapter 14.5 (commencing with Section 22850).

SEC. 17. Section 22148 of the Education Code is amended to read:

22148. "Normal retirement" and "normal retirement age" mean the age of 60 years, which is the age upon attainment of which the member becomes eligible for a service retirement allowance without reduction because of age and without special qualifications.

SEC. 18. Section 22156.1 is added to the Education Code, to read:

22156.1. "Present value," for purposes of Section 22723, means the amount of money needed on the effective date of retirement to reimburse the system for the actuarially determined cost of the portion of a member's retirement allowance attributable to unused excess sick leave days. The present value on the effective date of retirement shall equal the number of unused excess sick leave days divided by the number of base days, multiplied by the prior year's compensation earnable multiplied by the present value factor.

SEC. 19. Section 22156.2 is added to the Education Code, to read:

22156.2. "Present value factor," for purposes of Section 22156.1, means an overall average rate based upon the demographics of members who recently retired under the Defined Benefit Program and regular interest that shall determine present value on the effective date of retirement.

SEC. 20. Section 22156.5 is added to the Education Code, to read:

22156.5. "Prior year's compensation earnable" means the compensation earnable for the most recent school year in which the member earned service credit that precedes the last school year in which the member earned service credit.

SEC. 21. Section 22161 of the Education Code is amended to read:

22161. "Public school" means any day or evening elementary school, any day or evening secondary school, community college, technical school, kindergarten school, and prekindergarten school established by the Legislature, or by municipal or district authority.

SEC. 22. Section 22163 of the Education Code is amended to read:

22163. "Reinstatement" means the change in status with respect to the Defined Benefit Program under this part from a disabled or retired member to an active or inactive member and termination of one of the following:

(a) A service retirement allowance pursuant to Section 24208.

(b) A disability retirement allowance pursuant to Section 24117.

(c) A disability allowance pursuant to Section 24004 or 24015.

(d) A service retirement allowance or disability retirement allowance pursuant to Section 23404.

SEC. 23. Section 22170.5 is added to the Education Code, to read:

22170.5. (a) "Sick leave days" means the number of days of accumulated and unused leave of absence for illness or injury.

(b) "Basic sick leave day" means the equivalent of one day's paid leave of absence per pay period due to illness or injury.

(c) "Excess sick leave days" means the day or total number of days, granted by an employer in a pay period as defined in Section 22154 after June 30, 1986, for paid leave of absence due to illness or injury, in excess of a basic sick leave day.

SEC. 24. Section 22306 of the Education Code is amended to read:

22306. (a) Information filed with the system by a member, participant, or beneficiary of the plan 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, participant, or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the member, participant, or beneficiary to whom the information relates.

(2) To the authorized representative of the member, participant, or beneficiary.

(3) To the governing board of the member's or participant'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.

(6) Pursuant to subpoena.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the member or participant 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. 25. Section 22327 of the Education Code is amended to read:

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 under the Defined Benefit Program. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving disability benefits under the Defined Benefit Program. 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 shall be obtained from the Employment Development Department upon request by the board. 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. 26. Section 22360 of the Education Code is amended to read:

22360. (a) Notwithstanding any other provision of law, the board may pursuant to Section 22203 and in conformance with its fiduciary duty set forth in Section 22250, enter into correspondent agreements with private lending institutions in this state to utilize the retirement fund to invest in residential mortgages, including assisting borrowers, through financing, to obtain homes in this state.

(b) The program shall, among other things, provide:

(1) That home loans be made available to borrowers 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 recipients of the loans occupy the homes as their principal residences in accordance with policies established by the board.

(3) That the home loans shall be available only for the purchase or refinance of homes in this state.

(4) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan of up to 100 percent of the appraised value. In no event shall the loan amount exceed three hundred fifty thousand dollars (\$350,000). 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.

(5) That there may be prepayment penalties assessed on the loans in accordance with policies established by the board.

(6) That the criteria and terms for its loans shall be consistent with the financial integrity of the program and the sound investment of the retirement fund.

(7) Any other terms and conditions as the board shall deem appropriate.

(c) It is the intent of the Legislature that the provisions of this section be used to establish an investment program for residential mortgages, including assisting borrowers in purchasing homes in this state, or refinancing a mortgage loan. The Legislature intends that home loans made pursuant to this section shall be secured primarily by the property purchased or refinanced and shall not exceed the appraised value of that property.

(d) Appropriate administrative costs of implementing this section and Section 22360.5 shall be paid by the participating borrowers. Those costs may be included in the loan amount.

(e) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to borrowers consistent with the financial integrity of the home loan program and the sound and prudent investment of the retirement fund. Under no circumstances, however, shall the interest rates offered to borrowers be below current market rate.

(f) The board shall administer this section and Section 22360.5 under other terms and conditions it deems appropriate and in keeping with the investment standard. The board may adopt policies as necessary for its administration of this section and Section 22360.5 and to assure compliance with applicable state and federal laws.

(g) This section and Section 22360.5 shall be known as, and may be cited as, the Dave Elder State Teachers' Retirement System Home Loan Program Act.

SEC. 27. Section 22360.5 is added to the Education Code, to read:

22360.5. (a) The board may include in any investment program established pursuant to Section 22360 a procedure whereby a

member may obtain 100 percent financing for the purchase for a single-family dwelling unit in accordance with the following criteria:

(1) The member shall obtain one loan secured by the purchased home, pursuant to Section 22360, and a second personal loan secured by a portion of the accumulated retirement contributions in the member's individual account. The personal loan shall only be used for the purchase of the member's principal residence and not for a loan to refinance the member's existing mortgage.

(2) The loan secured by the purchased home shall be consistent with the requirements imposed by Section 22360.

(3) In no event may the personal loan secured by the accumulated retirement contributions in the member's individual account exceed the lesser of 50 percent of the current value amount of the accumulated retirement contributions or fifty thousand dollars (\$50,000).

(4) If two members are married, the personal loan secured by the sum total of accumulated retirement contributions in both members' accounts shall not exceed 5 percent of the loan.

(5) The pledge of security under this section shall remain in effect until the personal loan is paid in full.

(b) The pledge of security under this section shall take binding effect. In the event of a default on the personal loan secured by the member's retirement contributions as authorized by this section, the board shall deduct an amount from the member's accumulated retirement contributions on deposit and adjust the member's accumulated retirement contributions as necessary to recover any outstanding loan balance prior to making any disbursement of a refund or a lump-sum distribution.

(c) In the event of a default on the personal loan by a member, the board shall deduct the monthly principal plus appropriate interest from the member's benefit, when the member begins receiving a benefit, until the loan is paid in full.

(d) In the event of a default on the personal loan by a member receiving a benefit, the board shall deduct the monthly principal and interest from the member's benefit until the personal loan is paid in full.

(e) The secured personal loan permitted under this section shall be made available only to members who meet eligibility criteria as determined by the board.

(f) In the event of a refund or lump-sum distribution of the accumulated retirement contributions, the member's account shall be adjusted as necessary to recover any outstanding loan balance.

(g) If the member is married at the time the home is purchased with a personal loan secured by the member's accumulated retirement contributions as authorized by this section, then the member's spouse shall agree in writing to the pledge of security, as

to his or her community interest in the amount pledged, regardless of whether title to the home is held in joint tenancy.

(h) For purposes of the section only, "member" means any person who is entitled to receive an allowance funded by the system pursuant to this part or Part 14, notwithstanding any vesting requirement and without regard to present eligibility to retire, and who is not retired or disabled.

SEC. 28. Section 22400 of the Education Code is amended to read:

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 and Part 14. 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.

(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. 29. Section 22455.5 of the Education Code is amended to read:

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 Defined Benefit Program, 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's Defined Benefit Program 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 with respect to the Defined Benefit Program 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. 30. Section 22457 of the Education Code is amended to read:

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 Defined Benefit Program.

(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 Defined Benefit Program.

SEC. 31. Section 22458 of the Education Code is amended to read:

22458. Each employer shall provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program 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. 32. Section 22459 of the Education Code is amended to read:

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 Defined Benefit Program, or to pay amounts due from the members to the fund with respect to the Defined Benefit Program.

(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. 33. Section 22502 of the Education Code is amended to read:

22502. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of subsequent employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 34. Section 22503 of the Education Code is amended to read:

22503. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 35. Section 22504 of the Education Code is amended to read:

22504. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 36. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district, community college district, or a county superintendent to perform service that requires membership in a different public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) A member of the Public Employees' Retirement System who is employed by a school district, community college district, or a county superintendent and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that service subject to coverage by the Public Employees' Retirement System and

excluded from coverage by the Defined Benefit Program. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire to perform creditable service. If that election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

(c) An election made by a member pursuant to this section shall be irrevocable.

SEC. 37. Section 22508.5 of the Education Code is amended to read:

22508.5. (a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement Plan employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that are subject to membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the Defined Benefit Program. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the program.

(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage under the Defined Benefit Program, may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage under the Defined Benefit Program pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998.

SEC. 38. Section 22514 of the Education Code is amended to read:

22514. Members who have not achieved plan vesting shall become eligible for benefits under the Defined Benefit Program when total service under the Defined Benefit Program 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 under the Public Employees' Retirement System.

SEC. 39. Section 22516 of the Education Code is amended to read:

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in the Defined Benefit Program any person employed to perform creditable service at a level that requires mandatory membership in the program for which he or she has the right to elect membership in the program 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 the Defined Benefit Program.

(b) Service performed after becoming a member of another retirement system shall not be credited to the member under this part, nor shall contributions or benefits under this part 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 22134.

SEC. 40. Section 22601.5 of the Education Code is amended to read:

22601.5. (a) Any person employed to perform creditable service who is not already a member in the Defined Benefit Program and whose basis of employment is less than 50 percent of the full-time equivalent for the position is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 41. Section 22602 of the Education Code is amended to read:

22602. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member in the Defined Benefit Program and who performs less than 100 complete days of creditable service in one school district, community college district, or county superintendent's office during the school year is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who perform service for employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 42. Section 22604 of the Education Code is amended to read:

22604. (a) Any person employed to perform creditable service on a part-time basis who is not already a member in the Defined Benefit Program and who performs less than 60 hours of creditable service in a 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, during the school year in one school district, community college district, or county superintendent's office is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 43. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited 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. 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, out-of-state service, and permissive service credit that 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 under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that 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 or court order pursuant to Section 22652 was entered.

(c) (1) Upon service retirement at normal retirement age under this part, 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.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part 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.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

Age at Retirement	Percentage
60 $\frac{1}{4}$	2.033
60 $\frac{1}{2}$	2.067
60 $\frac{3}{4}$	2.10
61	2.133
61 $\frac{1}{4}$	2.167
61 $\frac{1}{2}$	2.20
61 $\frac{3}{4}$	2.233
62	2.267
62 $\frac{1}{4}$	2.30
62 $\frac{1}{2}$	2.333
62 $\frac{3}{4}$	2.367
63 and over	2.40

(4) 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.

(5) 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 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable 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 under this part 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 under the Defined Benefit Program 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 under the Defined Benefit Program, 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 under this part. 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 under this part, 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. 44. Section 22713 of the Education Code is amended to read:

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 of the Defined Benefit Program 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, in part, on final compensation determined from the compensation earnable the member would have been entitled to 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 under the Defined Benefit Program 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, time 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 reduced workload shall be performed for a period of time, as specified in the regulations. The period of time specified in the regulations shall not exceed 10 years.

(6) The reduced workload shall be equal to at least 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 creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced 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 make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member

had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 45. Section 22714 of the Education Code is amended to read:

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 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 credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) 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.

(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 pursuant to 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 service credit pursuant to this section and the amount the member would have received without the 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 Section 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 subparagraph (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 costs to 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 subparagraph (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 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 of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates 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. 46. Section 22717 of the Education Code is amended to read:

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 Defined Benefit Program.

(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 Defined Benefit Program, which shall not be less than the minimum standard specified in Section 22138.5. The number of days shall not include school and legal holidays. In no event shall the divisor be less than 175. For members employed less than full time, the standards identified in Section 22138.5 shall be considered as the minimum full-time equivalent. For those standards identified in Section 22138.5 that are applicable to teachers or instructors and that are expressed only in terms of hours

or instructional hours, the number of hours or instructional hours shall be divided by six to determine the number of days.

(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 be applicable to any person who retires on or after January 1, 1999.

SEC. 47. Section 22718 of the Education Code is amended to read:

22718. (a) The Teachers' Retirement Board shall bill school employers for service credit granted for unused excess sick leave under this part, subject to the following provisions:

(1) (A) In addition to the certification of sick leave days, the employer shall also certify the number of unused excess sick leave days.

(B) Excess sick leave days granted by an employer other than the member's last employer shall be deemed to be granted by the last employer and shall be included in the certification if the member was eligible to use those excess sick leave days while he or she was employed by the last employer.

(2) 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 Defined Benefit Program.

(3) The employer shall be billed only for the present value of the unused excess sick leave days and any subsequent adjustments to the billing shall be billed or refunded, as appropriate, to the employer.

(4) (A) The employer shall remit the amount billed to the system with the certification required by Section 22717 within 30 days after the effective date of the member's retirement or within 30 days after the date the system has notified the employer that a certification must be made, whichever is later.

(B) If payment is not received within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(C) If the system has billed the employer for an additional amount, the employer shall remit the additional amount within 30 days after the date of the billing. If payment is not received for the additional amount within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(b) If a school employer fails to pay a bill charged according 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. 48. Section 22724 is added to the Education Code, to read:

22724. (a) To determine the number of excess sick leave days to which a member is entitled when he or she retires, the employer shall deduct the days of sick leave used by the member from the member's accumulated and unused sick leave balance according to the following method:

(1) Sick leave usage shall first be deducted from the accumulated and unused sick leave balance existing on July 1, 1986.

(2) Sick leave usage shall next be deducted from basic sick leave days granted to the member by an employer after June 30, 1986.

(3) Sick leave usage shall then be deducted from any excess sick leave days granted to the member by an employer after June 30, 1986.

(b) Upon request from the board, the employer shall submit sick leave records of past years for audit purposes.

SEC. 49. Section 22801 of the Education Code is amended to read:

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, adopted by the board as a plan amendment, in effect at the time of election. If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(b) If the member is employed to perform creditable service subject to coverage by the Defined Benefit Program 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 Defined Benefit Program 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) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) 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.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments. Regular interest shall not be charged or be payable for the period of a delay caused by the system's inability or failure to determine and inform the member or beneficiary of the amount of contributions and interest that is payable. The period of delay shall commence on the 20th day following the day on which the member or beneficiary who wishes to make payment evidences in writing to the system that he or she is ready, willing, and able to make payment to the system. The period of delay shall cease on the first day of the month following the mailing of notification of contributions and interest payable.

SEC. 50. Section 22803 of the Education Code is amended to read:

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 under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program 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.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), 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 Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 51. Section 22805 of the Education Code is amended to read:

22805. (a) A member may elect to receive credit under this part 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 Congress or the 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 under the Defined Benefit Program 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 was absent without compensation for other cause, on leave, or otherwise, shall not be included.

SEC. 52. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service

in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit under the Defined Benefit Program pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under the Defined Benefit Program pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Contributions made to a plan qualified under Section 403(b) of the Internal Revenue Code may not be used to purchase credit for out-of-state service.

(e) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(f) The service credit purchased under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 53. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall pay all contributions with respect to that service at the contribution rate for additional service credit adopted by the board as a plan amendment, in effect at the time of election.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service pursuant to this chapter shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member or beneficiary of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member or beneficiary may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 54. Section 22826 of the Education Code is amended to read:

22826. (a) A member may elect to receive up to five years of credit for nonqualified service provided the member is vested in the Defined Benefit Program as provided in Section 22156.

(b) A member who elects to receive credit for nonqualified service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan with respect to the Defined Benefit Program.

(1) Payment that a member may make to the system to obtain credit for nonqualified service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase nonqualified service prior to the effective date of the applicable allowance, the member may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for nonqualified service credit shall be made in a lump sum or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 55. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 3.102 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the

creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section 22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The amendments to this section during the 1991-92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

SEC. 56. Section 23003 of the Education Code is amended to read:

23003. (a) If a county superintendent of schools or employing agency or school district or community college district that reports directly to the system fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions under this part.

SEC. 57. Section 23004 of the Education Code is amended to read:

23004. The county superintendent of schools or employing agency shall, or a school district or community college district may, with approval of the board, submit a report monthly to the system containing such information as the board may require in the administration of the plan.

SEC. 58. Section 23006 of the Education Code is amended to read:

23006. (a) If a county superintendent of schools or employing agency or school district or community college district that reports directly to the system, submits monthly reports late or in unacceptable form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required under this part by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars (\$500), whichever is greater.

SEC. 59. Section 23201 of the Education Code is amended to read:

23201. Any person whose accumulated retirement contributions were refunded, who wishes to establish concurrent membership, and who has received, or will qualify to receive, a retirement allowance from one or more of the retirement systems defined in Section 22115.2, 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 under the Defined Benefit Program.

SEC. 60. Section 23702 of the Education Code is amended to read:

23702. (a) All members in the Defined Benefit Program 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 Defined Benefit Program on October 15, 1992, only, and not on prior or subsequent events.

SEC. 61. Section 23805.5 is added to the Education Code, to read:

23805.5. (a) A parent claiming a benefit under Section 23805 is dependent if all of the following apply:

(1) The parent was receiving one-half or more of his or her support from the member for the tax year preceding the member's death.

(2) The parent was declared as a dependent on the income tax return of the member for at least one of the two tax years preceding the member's death.

(3) No one else has assumed at least one-half of the parent's support in the tax year of the member's death.

(4) The parent has net assets of not more than twenty-five thousand dollars (\$25,000), excluding his or her personal residence and personal property therein.

(b) A person claiming a benefit under Section 23805 or his or her guardian shall furnish the board a state or federal income tax return and any other evidence regarding his or her financial status as the board may require.

SEC. 62. Section 23851 of the Education Code is amended to read:

23851. (a) A death payment of not less than 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 creditable compensation is paid.

(2) Within four months after termination of creditable service or termination of employment, whichever occurs first.

(3) Within 12 months of the last day for which creditable compensation was paid, if the member was on an approved leave of absence without creditable 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 and adopt as a plan amendment with respect to the Defined Benefit Program any adjusted amount.

(d) A designated beneficiary may waive the right to the death payment in accordance with the requirements established by the system.

SEC. 63. Section 24101.5 of the Education Code is amended to read:

24101.5. A member shall not be eligible for disability retirement under the Defined Benefit Program while on a leave of absence to serve as a full-time, elected officer of an employee organization, even if the member receives service credit under Section 22711.

SEC. 64. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service under this part upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained the age of 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820. The number of years of credited service performed in California shall not be less than the number of years necessary to determine final compensation pursuant to Section 22134 or 22135, whichever is applicable to the member.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if the member has attained the age of 55 years or older and retires concurrently under one or more of the retirement systems with which the member has concurrent membership as defined in Section 22115.2.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made even if the member has not earned five years of service.

SEC. 65. Section 24203.5 of the Education Code is amended to read:

24203.5. (a) The percentage of final compensation used to compute the allowance pursuant to Section 24202.5, 24203, or 24205 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, excluding service credited pursuant to Section 22714, 22715, or 22717, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5, 24203, or 24205, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent. For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall include credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. A nonmember spouse shall also be eligible for the increased allowance pursuant to this section if the member had 30 or more years of credited service on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(b) Nonqualified service credit for which contributions pursuant to Section 22826 were made in a lump sum on or after January 1, 2000,

or for which the first installment was made on or after January 1, 2000, shall not be included in determining the eligibility for an increased allowance pursuant to this section.

(c) The amendments made to subdivision (a) in the first year of the 1999-2000 Regular Session are declaratory of existing law.

SEC. 66. Section 24205 of the Education Code is repealed.

SEC. 67. Section 24205 is added to the Education Code, to read:

24205. Any member retiring prior to the age of 60 years, and who has attained the age of 55 years, may elect to receive one-half of the service retirement allowance for normal retirement age for a limited time and then revert to the full retirement allowance for normal retirement age.

(a) The retirement allowance shall be based on service credit and final compensation as of the date of retirement for service and shall be calculated with the factor for normal retirement age.

(b) If the member elects a joint and survivor option under Section 24300, the actuarial reduction shall be based on the member's and beneficiary's ages as of the effective date of the early retirement. If the member elected a preretirement option under Section 24307, the actuarial reduction shall be based on the member's and beneficiary's ages as determined by provisions of that section.

(c) One-half of the retirement allowance as of the age of 60 years shall be paid for a period of time equal to twice the elapsed time between the effective date of retirement and the date of the retired member's 60th birthday.

(d) The full retirement allowance as calculated under subdivision (a) or (b) shall begin to accrue as of the first of the month following the reduction period as specified in subdivision (c). The full retirement allowance shall not begin to accrue prior to this time under any circumstances, including, but not limited to, divorce or death of the named beneficiary.

(e) The annual improvement factor provided for in Sections 22140 and 22141 shall be based upon the retirement allowance as calculated under subdivision (a) or (b). The improvement factor shall begin to accrue on September 1 following the retired member's 60th birthday. These increases shall be accumulated and shall become payable when the full retirement allowance for normal retirement age first becomes payable.

(f) Any ad hoc benefit increase with an effective date prior to the retired member's 60th birthday shall not affect any allowance payable under this section. Only those ad hoc improvements with effective dates on or after the retired member's 60th birthday shall be accrued and accumulated and shall first become payable when the full retirement allowance for normal retirement age becomes payable.

(g) The cancellation of an option election in accordance with Section 24305 shall not cancel the election under this section. Upon

cancellation of the joint and survivor option, one-half of the retired member's retirement allowance as calculated under subdivision (a) shall become payable for the balance of the reduction period specified in subdivision (c).

(h) If a retired member who has elected a joint and survivor option dies during the period when the reduced allowance is payable, the beneficiary shall receive one-half of the allowance payable to the beneficiary until the date when the retired member would have received the full retirement allowance for normal retirement age. At that time, the beneficiary's allowance shall be increased to the full amount payable to the beneficiary plus the appropriate annual improvement factor increases and ad hoc increases.

SEC. 68. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 69. Section 24212 of the Education Code is amended to read:

24212. (a) If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage under the Defined Benefit Program, the member's service retirement allowance, when payable, shall be based on projected service, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

(b) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 70. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820). The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance. The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and projected final compensation to normal retirement age.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 71. Section 24300 of the Education Code is amended to read:

24300. (a) Any member prior to the effective date of the member's retirement under this part may elect an option that would provide an actuarially modified retirement allowance payable throughout the life of the member and the member's option beneficiary as follows:

(1) Option 2. 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.

(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.

(7) Option 8. (A) Any member prior to the effective date of the member's retirement may designate multiple option beneficiaries. The member who has designated more than one option beneficiary

shall select an option for each beneficiary designated that would provide an actuarially modified retirement allowance payable throughout the lives of the member and the member's option beneficiaries.

(B) The modified retirement allowance shall be paid to the retired member as long as the retired member and at least one of the option beneficiaries are living. Upon the retired member's death, an allowance shall be paid to each surviving option beneficiary in accordance with the option elected respective to that beneficiary. However, if one or more of the option beneficiaries predeceases the retired member, the retired member's allowance shall be adjusted in accordance with the option elected for the deceased beneficiary. The member shall determine the percentage of the unmodified allowance that will be modified by the election of Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 under this option, the aggregate of which shall be no greater than 100 percent of the member's unmodified allowance. The election of this option is subject to approval by the board.

(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 under this part.

(d) This section shall become operative on January 1, 2000.

SEC. 72. Section 24305.5 of the Education Code is amended to read:

24305.5. (a) An option elected under Section 24300 may be canceled by a retired member if the option beneficiary is not the retired member's spouse or former spouse. A retired member may cancel the option before or after issuance of the first retirement allowance payment and shall designate his or her spouse as the new option beneficiary and the same or a different joint and survivor option described in Section 24300.

(b) The retired member shall notify the board, in writing on a form provided by the system, of the designation of the new option beneficiary. Notification shall include a certified copy of the marriage certificate and a properly executed form for the change.

(c) The effective date of the new election shall be six months following the date notification is received by the board, provided both the retired member and the new designated option beneficiary are then living.

(d) The selection of the new option beneficiary and the new option under this section and Section 24300 shall be subject to a further actuarial modification of the modified retirement allowance. In no event may a retired member elect a joint and survivor option

that would result in any additional liability to the fund. Modification of the retirement allowance because of the new option beneficiary and the new option shall be based on the ages of the retired member and the new option beneficiary as of the effective date of the new election.

SEC. 73. Section 24306 of the Education Code is amended to read:

24306. (a) (1) If an option beneficiary designated in the election of an Option 2, Option 3, Option 4, or Option 5, or in the election of Option 2, Option 3, Option 4, or Option 5 under Option 8, predeceases the retired member, the retired member 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 six months following the date notification is received by the board, provided both the retired member and the designated option beneficiary are then living. Notification 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 a further actuarial modification of the modified retirement allowance. In no event may a retired member elect a joint and survivor option that would result in any additional liability to the fund.

(b) If an option beneficiary designated in the election of an Option 6 or Option 7 or in the election of Option 6 or Option 7 under Option 8, pursuant to Section 24300 or 24307 predeceases the retired member, that portion of the retirement allowance attributable to Option 6 or Option 7 without modification for the option shall be payable to the 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.

(c) This section shall become operative on January 1, 2000.

SEC. 74. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 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 a properly executed form prescribed by the system is signed, providing the election is received in the system's office in Sacramento within 30 days after the date of signature.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary

as named in the prior preretirement election, as an option under Option 8.

(c) 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, under 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.

(d) 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.

(e) 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.

(f) 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.

(g) The system shall inform members who are qualified to make a preretirement election of an option, through the annual statements of account, that the election of an option can be made.

(h) This section shall become operative on January 1, 2000.

SEC. 75. Section 24600 of the Education Code is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $\frac{1}{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $\frac{1}{2}$

years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the Defined Benefit Program or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 76. Section 24615 of the Education Code is amended to read:

24615. (a) If the board determines that contributions are due the system under this part 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.

(b) Any payment of contributions that a member or beneficiary is required by law to make to the system shall be paid upon receipt of written notice from the system. Payment may be made either in a lump sum or installments as permitted by the system. Payment of contributions due the system not discovered or unpaid, for whatever reason, prior to the time of retirement, disability, or death shall be paid prior to granting an allowance or benefit to the member or beneficiary unless, in the opinion of the board, the making of the payment prior to receipt of an allowance or benefit would impose an undue hardship, in which case payment may be made by the system withholding not more than 18 consecutive monthly installments from payments due from the system. Those installments shall not be less than twenty-five dollars (\$25) per month except for the last installment, that may be less.

SEC. 77. Section 26135 of the Education Code is amended to read:

26135. "Plan year" means the calendar, policy, or fiscal year on which the records of the plan are kept, with respect to the Cash Balance Benefit Program. The board by means of plan amendment shall determine the plan year.

SEC. 78. Section 26202 of the Education Code is amended to read:

26202. (a) The board shall establish a Gain and Loss Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Gain and Loss Reserve to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the

minimum interest rate during years in which the investment earnings of the plan with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and, where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

(b) The board shall establish and periodically review goals regarding the sufficiency of the Gain and Loss Reserve based on the recommendation of the actuary.

(c) In the event that the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for any plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate for the plan year plus the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, the board shall determine the amount, if any, that is to be credited to the Gain and Loss Reserve for the plan year. That determination shall be made upon recommendation of the actuary following the adoption by the board of the actuarial valuation undertaken following the plan year pursuant to Section 26202, but no later than June 30 following the end of the plan year. In determining whether an amount is to be credited to the Gain and Loss Reserve, the board shall consider the sufficiency of the reserve in light of the goal established for the sufficiency and the recommendations of the actuary.

SEC. 79. Section 26215 of the Education Code is amended to read:

26215. (a) Information filed with the system by a participant 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 participant or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the participant or beneficiary to whom the information relates.

(2) To the authorized representative of the participant or beneficiary.

(3) To the governing board of the participant'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.

(6) Pursuant to subpoena.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the participant 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 statute to make inspections.

SEC. 80. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay period, along with all other information required by the system no later than 10 working days following the last day of the pay period in which the salary was earned, and the report shall be delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 81. Section 26303 of the Education Code is amended to read:

26303. (a) Employers shall transmit to the plan the employee contributions and employer contributions with respect to the Cash Balance Benefit Program for salary paid to each participant during the pay period no later than 10 working days following the last day of the pay period in which the salary was earned.

(b) Payments shall be delinquent on the 11th working day thereafter, and interest shall begin to accrue at the minimum interest rate from that day until payment for the contribution report is received in full by the system. The board may collect interest for late payment from the employer under this subdivision.

SEC. 82. Section 26401.5 of the Education Code is amended to read:

26401.5. (a) A member of the Defined Benefit Program who is employed by more than one employer to perform creditable service for less than 50 percent of the full-time equivalent for the position with each employer shall not be eligible to make an election as provided in Section 26401 unless and until all employers by which the member is employed to perform creditable service provide the benefits of this part for their employees.

(b) If a member of the Defined Benefit Program who pursuant to subdivision (a) has made an election as provided in Section 26401 is subsequently employed to perform creditable service for an employer that does not provide the benefits of this part for its employees, contributions shall no longer be made to the Cash Balance Benefit Program on his or her behalf and creditable service performed for all employers shall be subject to coverage under the Defined Benefit Program, with no subsequent right of election pursuant to Section 26401 or subdivision (a).

SEC. 83. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate may exceed the employer contribution rate but in no event shall the employer contribution rate be less than 4 percent.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notification to the system and shall remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is so provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions, if any, that would have been required if the contribution rates had been in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month after the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 84. Section 26603 of the Education Code is amended to read:

26603. All employee contributions shall be credited to employee accounts and all employer contributions shall be credited to employer accounts as of the first working day following the date all contributions to fully satisfy the contribution report as submitted by the employer are received by the system.

SEC. 85. Section 26604 of the Education Code is amended to read:

26604. (a) Beginning June 1, 1996, prior to the Cash Balance Plan becoming effective, and prior to the beginning of each plan year thereafter, the board, by plan amendment with respect to the Cash Balance Benefit Program, shall declare the minimum interest rate for crediting employee accounts and employer accounts with respect to the Cash Balance Benefit Program during the following plan year.

(b) All interest shall be computed at the minimum interest rate on the balance of the employee account and the employer account and shall be compounded daily.

(c) Interest for contributions credited during that month to the respective account shall accrue at the minimum interest rate from

the first working day following the date contributions are received in full by the system pursuant to Section 26603.

(d) Interest shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity.

SEC. 86. Section 27410 of the Education Code is amended to read:

27410. (a) The nonparticipant spouse who is awarded separate nominal accounts shall have the right to designate, pursuant to Sections 27100 to 27102, inclusive, a beneficiary or beneficiaries to receive the amounts credited to the separate nominal accounts of the nonparticipant spouse on his or her date of death, and any annuity attributable to the separate nominal accounts which is unpaid on the date of the death of the nonparticipant spouse.

(b) This section shall not be construed to provide the nonparticipant spouse with any right to elect a joint and survivor annuity pursuant to paragraphs (3) and (4) of subdivision (b) of Section 26807.

SEC. 87. Section 44494 of the Education Code is amended to read:

44494. (a) On or before September 1 of each year, participating school districts that receive funding pursuant to subdivision (a) of Section 44492 shall allocate no less than four thousand dollars (\$4,000) to provide each qualified mentor with an additional annual stipend over and above the regular salary to which he or she is entitled. The amount of the annual stipend shall be four thousand dollars (\$4,000) for a full school year of service as a mentor, or a pro rata share of that amount for less than a full school year of service as a mentor, except that participating school districts that receive funding pursuant to subdivision (b) of Section 44492 shall allocate the full amount so received to provide a qualified mentor with an additional annual stipend over and above the regular salary to which he or she is entitled. This stipend shall not be counted as salary or wages for purposes of calculating employer and employee contributions or employee benefits under the Defined Benefit Program of the State Teachers' Retirement Plan.

(b) A mentor may propose that the district allocate all or part of the stipend for his or her professional growth or release time.

(c) The governing board may designate certificated employees as mentor teachers pursuant to Section 44491 and pay these persons the additional annual stipend authorized under subdivision (a) for a period not to exceed three consecutive school years. Upon completing three years as a mentor teacher, an individual may be reviewed and renominated.

(d) The subject of participation by a school district or an individual certificated classroom teacher in a mentor teacher program shall not be included within the scope of representation in collective bargaining among a public school employer and eligible employee organizations.

SEC. 88. Section 20639 of the Government Code is amended to read:

20639. The compensation earnable during any period of service as a member of the Judges' Retirement System, the Legislators' Retirement System, or the Defined Benefit Program of the State Teachers' Retirement Plan shall be considered compensation earnable as a member of this system for purposes of computing final compensation for the member, if he or she retires concurrently under both systems.

A member shall be deemed to have retired concurrently under this system and under the Defined Benefit Program of the State Teachers' Retirement Plan, if the member is enrolled as a disabled member under the Defined Benefit Program of the State Teachers' Retirement Plan and for retirement under this system on the same effective date.

SEC. 89. Section 47611 of the Education Code is amended to read:

47611. If a charter school chooses to make the State Teacher's Retirement Plan available, all employees of the charter school who perform creditable service shall be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as the provisions apply to other public schools in the school district that granted the charter.

SEC. 90. Any section of any act enacted by the Legislature during the 1999 calendar year that takes effect on or before January 1, 2000, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section or any other act that is enacted by the Legislature during the 1999 calendar year and takes effect on or before January 1, 2000, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

O

Assembly Bill No. 2700

CHAPTER 1021

An act to amend Sections 22102, 22115, 22161.5, 22170, 22206, 22453, 22651, 22652, 22655, 22656, 22659, 22660, 22661, 22662, 22664, 22703, 22706, 22901.5, 24616, 24617, 25000, 25000.5, 25001, 25002, 25006, 25008, 25009, 25010, 25011, 25012, 25014, 25015, 25016, 25017, 25018, 25019, 25020, 25021, 25023, and 25024 of, to amend and renumber Section 22302 of, to amend, repeal, and add Sections 22119.2, 22905, 22954, 22955, and 24600 of, to add Sections 22101.5, 22144.5, 22146.7, 22177, 22311.5, 22955.5, and 24305.3 to, and to repeal and add Sections 22158, 22460, and 22906 of, the Education Code, relating to retirement, and making an appropriation therefor.

[Approved by Governor September 30, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2700, Lempert. State teachers' retirement: Defined Benefit Supplement Program.

(1) Existing law establishes the Defined Benefit Program in the Teachers' Retirement Plan that provides retirement and disability benefits to members of the program. If Chapter 74 of the Statutes of 2000 becomes effective, it will establish the Defined Benefit Supplement Program for members of the Defined Benefit Program, pursuant to which members and employers will receive supplemental retirement, disability, final, or termination benefits, payable in a lump-sum or annuity, as specified.

This bill would make technical and conforming changes relating to the Defined Benefit Supplement Program and would make an appropriation of \$600,000 from the Teachers' Retirement Fund to the Teachers' Retirement Board for the administrative costs of implementing the program. These provisions would become operative only if Chapter 74 of the Statutes of 2000 becomes effective on January 1, 2001.

(2) Existing law authorizes the Teachers' Retirement Board to audit the records of any public agency as the board determines necessary.

This bill would authorize the board to excuse certain adverse audit findings occurring prior to January 1, 2002, and relating to changes in the law that will become operative on that date. The bill would make other technical changes that would become operative on specified dates subject to certain increases in school funding.

(3) The bill would incorporate additional changes to Sections 22652 and 22662 of the Education Code proposed by AB 820 to take

effect if this bill and that bill are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

(4) The bill would reappropriate to the board, for specified administrative costs, unexpended funds previously appropriated to the board in 1999.

Appropriation: yes.

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

SECTION 1. Section 22101.5 is added to the Education Code, to read:

22101.5. "Accumulated Defined Benefit Supplement account balance" means credits equal to the sum of member contributions, the member contributions picked up by an employer, employer contributions, interest credited pursuant to Section 25005 and additional earnings credited pursuant to Section 25006.

SEC. 2. Section 22102 of the Education Code is amended to read:

22102. "Accumulated retirement contributions" means the sum of the member contributions, the member contributions picked up by an employer pursuant to Sections 22903 and 22904, and credited interest on those contributions. Accumulated retirement contributions shall not include accumulated annuity deposit contributions, accumulated tax-sheltered annuity contributions, accumulated Defined Benefit Supplement account balance, or additional earnings credit.

SEC. 3. Section 22115 of the Education Code is amended to read:

22115. (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) When service credit for a school year is less than 1.000, compensation earnable shall be the product obtained when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least .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. When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than .900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) The amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2003.

SEC. 4. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the

career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 22119.2 is added to the Education Code, to read:

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

(1) Salary paid in accordance with a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary, providing it is payable to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).

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

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

(6) Any other payments the board determines to be "creditable compensation."

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

contrary, a presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing the member's benefits under the plan may be reversed.

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

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

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

(3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

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

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

(6) Fringe benefits provided by an employer.

(7) Job-related expenses paid or reimbursed by an employer.

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

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

(d) An employer or individual who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (c) shall reimburse the plan for benefit overpayments that occur because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it would be paid to any person who meets the qualifications or requirements specified in a collective bargaining agreement or an employment agreement as a condition of receiving the remuneration.

(f) This definition of "creditable compensation" reflects sound principles that support the integrity of the retirement fund. Those principles include, but are not limited to, consistent treatment of compensation throughout a member's career, consistent treatment of compensation among an entire class of employees, preventing adverse selection, and excluding from compensation earnable remuneration that is paid for the principal purpose of enhancing a member's benefits under the plan. The board shall determine the appropriate crediting of contributions between the Defined Benefit

Program and the Defined Benefit Supplement Program according to these principles, to the extent not otherwise specified pursuant to this part.

(g) The section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

SEC. 6. Section 22144.5 is added to the Education Code, to read:

22144.5. "Liability gains and losses" means the difference between actual noninvestment related experience and the experience expected based upon a set of noninvestment related actuarial assumptions during the period between two actuarial valuation dates, as determined in accordance with assumptions adopted by the board pursuant to Section 22311.5.

SEC. 7. Section 22146.7 is added to the Education Code, to read:

22146.7. "Minimum interest rate" means the annual interest rate determined by the board by plan amendment at which interest shall be credited to Defined Benefit Supplement accounts for a plan year.

SEC. 8. Section 22158 of the Education Code is repealed.

SEC. 9. Section 22158 is added to the Education Code, to read:

22158. (a) "Projected service" means the sum of credited service plus the credited service that would have been earned for the school years during which a disability allowance was payable if the member had performed creditable service during that time.

(b) Projected service for a school year shall be determined on the basis of the highest credited service earned by the member during any one of the three school years immediately preceding the member's death or the date the disability allowance began to accrue.

(c) Projected service shall not include credited service for which contributions have been credited to the Defined Benefit Supplement Program.

SEC. 10. Section 22161.5 of the Education Code is amended to read:

22161.5. "Refund" means the lump-sum return of a member's accumulated retirement contributions under the Defined Benefit Program and does not include the balance of credits in the member's Defined Benefit Supplement account.

SEC. 11. Section 22170 of the Education Code is amended to read:

22170. "Service" means work performed for compensation in a position subject to coverage under the Defined Benefit Program, except as otherwise specifically provided in this part, providing the contributions on compensation for that work are not credited to the Defined Benefit Supplement Program.

SEC. 12. Section 22177 is added to the Education Code, to read:

22177. (a) "Unfunded actuarial obligation," with respect to the Defined Benefit Program, means that portion of the actuarial present

value of benefits that is not provided for by future, normal costs or covered by the actuarial value of assets attributable to the Defined Benefit Program, based on assumptions adopted by the board pursuant to Section 22311.5.

(b) "Unfunded actuarial obligation," with respect to the Defined Benefit Supplement Program, means that portion of the actuarial present value of benefits that is not provided for by future, normal costs or covered by the actuarial value of assets attributable to the Defined Benefit Supplement Program, based on assumptions adopted by the board pursuant to Section 22311.5.

SEC. 13. Section 22206 of the Education Code is amended to read:

22206. (a) As often as the board determines necessary, it may audit or cause to be audited the records of any public agency.

(b) The board may excuse any audit finding provided all of the following conditions are met:

(1) The audit finding relates to a period of time prior to July 1, 2002.

(2) The audit finding identifies an issue that is not in compliance with the provisions of this part with respect to creditable service or creditable compensation.

(3) The noncompliance would not have existed if the service and compensation crediting changes that shall become operative on July 1, 2002, as a result of legislation enacted during the second year of the 1999-2000 Regular Session, had been operative during the period of time investigated in the audit.

(4) The audit finding was included in an audit report issued on or after January 1, 2001.

(5) Excusing the audit finding will not have an adverse effect on the integrity of the retirement fund.

(c) The board's authority pursuant to subdivision (b) shall extend to service and compensation issues identified through activities outside the audit function that address compliance with the provisions of this part.

SEC. 13.5. Section 22302 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended and renumbered to read:

22302.5. The board may contract with a qualified third-party administrator for custodial, record keeping, or other administrative services necessary to carry into effect the provisions of Chapter 38 (commencing with Section 25000) of this part or Part 14.

SEC. 14. Section 22311.5 is added to the Education Code, to read:

22311.5. The board shall acquire the services of an actuary to do all of the following:

(a) Make recommendations to the board for the adoption of actuarial assumptions that, in the aggregate, are reasonably related to the past experience of the plan and reflect the actuary's informed estimate of the future experience.

(b) Make an actuarial investigation of the demographic and economic experience, including the mortality, service, and other experience, of the plan with respect to members and beneficiaries of the Defined Benefit Program; members, beneficiaries, and annuity beneficiaries of the Defined Benefit Supplement Program; and participants and beneficiaries of the Cash Balance Benefit Program.

(c) Make an annual actuarial review of the goals regarding the sufficiency of the Gain and Loss Reserves with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program and make recommendations to the board for maintaining a sufficient Gain and Loss Reserves for the Defined Benefit Supplement Program and the Cash Balance Benefit Program.

(d) Recommend to the board the amount, if any, to be transferred to the separate Gain and Loss Reserves from the investment earnings of the plan with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program.

(e) At least once every six years with respect to the Defined Benefit Program and annually with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program, using actuarial assumptions adopted by the board, perform an actuarial valuation of each program that identifies the assets and liabilities, and report the findings to the board. The report of the actuary on the results of each actuarial valuation shall identify and include the components of normal cost, if applicable, and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on each actuarial valuation shall be transmitted to the Governor and the Legislature.

(f) Recommend to the board all rates and factors necessary to administer the plan, including, but not limited to, mortality tables, annuity factors, interest rates, and additional earnings credits.

(g) Recommend to the board a strategy for amortizing any unfunded actuarial obligation.

(h) As requested by the board, perform any other actuarial services that may be required for administration of the plan.

SEC. 15. Section 22453 of the Education Code is amended to read:

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member shall be required under the Defined Benefit Program on any application for, or cancellation of, an unmodified allowance; the election, change, or cancellation of an option; or any request for a refund of the member's accumulated retirement contributions or accumulated annuity deposit contributions; and under the Defined Benefit Supplement Program on any application for, or cancellation of, a retirement benefit, disability benefit, or termination benefit; and under either the Defined Benefit Program or the Defined Benefit Supplement Program on any 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 is not married.

(2) The current spouse has no identifiable community property interest in the benefit.

(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 spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(5) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(b) This section shall not be applicable to an application for a disability allowance under the Defined Benefit Program.

(c) The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member.

SEC. 16. Section 22460 of the Education Code is repealed.

SEC. 17. Section 22460 is added to the Education Code, to read:

22460. (a) If a member terminates employment with less than five years of credited service, the employer shall notify the member of the following:

(1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement pursuant to paragraph (2) of subdivision (a) of Section 24201, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the member's accumulated Defined Benefit Supplement account balance.

(2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.

(3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

(b) Employers shall transmit to a member who terminates employment with less than five years of credited service the information specified in subdivision (a) as part of the usual separation documents.

SEC. 18. Section 22651 of the Education Code is amended to read:

22651. For purposes of this chapter and Section 23300, "nonmember spouse" means a member's spouse or former spouse who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part. A nonmember spouse shall

not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation or dissolution of marriage: a separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member's retirement allowance under the Defined Benefit Program; or a separate account based on the member's Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member's retirement benefit under the Defined Benefit Supplement Program.

SEC. 19. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program or the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member under the Defined Benefit Program or the Defined Benefit Supplement Program, whichever is applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse under this part, including, but not limited to, the following:

(1) The right to a retirement allowance under the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit accumulated retirement contributions previously refunded to the member which the member is eligible to redeposit pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse.

(4) The right to purchase additional service credit that the member is eligible to purchase pursuant to Sections 22800 to 22810, inclusive, and shall specify the shares of the additional service credit awarded to the member and the nonmember spouse.

SEC. 19.5. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program, or the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member under the Defined Benefit Program or the Defined Benefit Supplement Program, as applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse under this part, including, but not limited to, the following:

(1) The right to a retirement allowance under the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit all or a portion of accumulated retirement contributions previously refunded to the member which the member is eligible to redeposit pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse.

(4) The right to purchase additional service credit that the member is eligible to purchase pursuant to Sections 22800 to 22810, inclusive, and shall specify the shares of the additional service credit awarded to the member and the nonmember spouse.

SEC. 20. Section 22655 of the Education Code is amended to read:

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 retired member's retirement allowance and, if applicable, retirement benefit under this part 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 retirement allowance or retirement benefit, or both, of a retired member shall be consistent with this section.

(b) If the court does not award the entire retirement allowance or retirement annuity under this part to the retired member and the retired member is receiving a retirement allowance that has not been modified pursuant to Section 24300, or a single life annuity pursuant to Section 25011 or 25018, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retired member's retirement allowance or retirement benefit, or both, under this part.

(c) If the court does not award the entire retirement allowance or retirement benefit under this part to the retired member and the retired member is receiving an allowance that has been actuarially modified pursuant to Section 24300, or a joint and survivor retirement benefit pursuant to Section 25011 or 25018, the court shall order only one of the following:

(1) The retired member shall maintain the retirement allowance or retirement benefit, or both, under this part without change.

(2) The retired member shall cancel the option that modified the retirement allowance under this part 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, his or her community property share of the retirement allowance under this part of the retired member, the option beneficiary, or both.

(3) The retired member shall cancel the joint and survivor annuity under which the annuity is being paid pursuant to Section 24305.3, and select a new joint and survivor annuity or a new annuity beneficiary or both, based on the actuarial equivalent of the member's canceled annuity, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement annuity payable to the retired member, the annuity beneficiary, or both.

(4) The retired member shall take the action specified in both paragraphs (2) and (3).

(5) The retired member shall cancel the option that modified the retirement allowance under this part pursuant to Section 24305 and select an unmodified retirement allowance and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retired member's retirement allowance under this part.

(6) The retired member shall cancel, pursuant to Section 24305.3, the joint and survivor annuity under which the retirement benefit is being paid, and select a single life annuity, and the system shall pay the nonmember spouse, by separate warrant, his or her community

property share of the retirement benefit payable benefit to the retired member.

(7) The retired member shall take the action specified in both paragraphs (5) and (6).

(d) If the option beneficiary or annuity beneficiary or both under this part, 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, or a new annuity beneficiary pursuant to Section 24305.3 and shall order the system to pay the nonmember spouse, by separate warrant, his or her share of the community property interest in the retirement allowance or retirement benefit or both under this part of the retired member or the new option beneficiary or annuity beneficiary or each of them.

(e) The right of the nonmember spouse to receive his or her community property share of the retired member's retirement allowance or retirement benefit or both under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary under the Defined Benefit Program and a payee under the Defined Benefit Supplement Program to receive his or her community property share of the retired member's accumulated retirement contributions and accumulated Defined Benefit Supplement account balance under this part in the event that there are remaining accumulated retirement contributions and a balance of credits in the member's Defined Benefit Supplement account to be paid upon the death of the nonmember spouse.

SEC. 21. Section 22656 of the Education Code is amended to read:

22656. No judgment or court order issued pursuant to this chapter is binding on the system with respect to the Defined Benefit Program or the Defined Benefit Supplement Program until the system has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

SEC. 22. Section 22659 of the Education Code is amended to read:

22659. Upon being awarded a separate account or an interest in the retirement allowance or retirement benefit of a retired member under this part, 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. 23. Section 22660 of the Education Code is amended to read:

22660. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions under the Defined Benefit Program and to designate a payee to receive the accumulated Defined Benefit Supplement account balance under the Defined Benefit Supplement Program remaining in the separate

account of the nonmember spouse on his or her date of death, and any accrued allowance or accrued benefit under the Defined Benefit Supplement that is attributable to the separate account of the nonmember spouse and that is unpaid on the date of the death of the nonmember spouse.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance under Section 24300 or to elect a joint and survivor annuity under the Defined Benefit Supplement Program.

SEC. 24. Section 22661 of the Education Code is amended to read:

22661. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to a refund of the accumulated retirement contributions in the account under the Defined Benefit Program, and a return of the Defined Benefit Supplement account balance, of the nonmember spouse under this part.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain a refund or lump-sum payment.

(c) The refund of accumulated retirement contributions and the return of the accumulated Defined Benefit Supplement account balance under this part are 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 with 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 retirement contributions or accumulated Defined Benefit Supplement account balance 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 refund of the nonmember spouse's accumulated retirement contributions or accumulated Defined Benefit Supplement account balance.

(d) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit, accumulated retirement contributions, and accumulated Defined Benefit Supplement account balance under this part when the refund and lump-sum payment become effective.

(e) The nonmember spouse may not cancel a refund or lump-sum payment under this part after it is effective.

(f) The nonmember spouse shall not have a right to elect to redeposit the refunded accumulated retirement contributions under this part after the refund is effective, to redeposit under Section 22662 or purchase additional service credit under Section 22663 after the refund becomes effective, or to redeposit the accumulated Defined Benefit Supplement account balance after the lump-sum payment becomes effective.

(g) If the total service credit in the separate account of the nonmember spouse under the Defined Benefit Program, 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. 25. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under the Defined Benefit Program 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 under the Defined Benefit Program 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 that specifies the redeposit rights of the nonmember spouse is entered. The nonmember spouse's election to redeposit shall be made 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 under the Defined Benefit Program, he or she shall repay the portion of the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse and shall pay regular interest from the date of the refund to the date payment of the redeposit is completed.

(d) An election to redeposit shall be considered an election to repay all accumulated retirement contributions previously refunded under this part in which the nonmember spouse has a community property interest. All payments shall be received by the system before the effective date of the nonmember spouse's retirement under this part. 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.

(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 under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 25.5. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under the Defined Benefit Program 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 under the Defined Benefit Program 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 that specifies the redeposit rights of the nonmember spouse is entered. The nonmember spouses' election to redeposit shall be made 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 under the Defined Benefit Program, he or she shall repay all or a portion of the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse and shall pay regular interest from the date of the refund to the date payment of the redeposit is completed.

(d) All payments shall be received by the system before the effective date of the nonmember spouse's retirement under this part. 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.

(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 under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 26. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance and, if applicable, a retirement benefit under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited 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. 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, out-of-state service, and permissive service credit that 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 under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that 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 or court order pursuant to Section 22652 was entered.

(c) (1) Upon service retirement at normal retirement age under this part, 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.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part 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.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

Age at Retirement	Percentage
60 ¹ / ₄	2.033
60 ¹ / ₂	2.067
60 ³ / ₄	2.10

61	2.133
61 1/4	2.167
61 1/2	2.20
61 3/4	2.233
62	2.267
62 1/4	2.30
62 1/2	2.333
62 3/4	2.367
63 and over	2.40

(4) 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.

(5) 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 22134, 22135, or 22136, whichever is applicable, and shall be based on the member's compensation earnable 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 under this part 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 under the Defined Benefit Program 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 under the Defined Benefit Program, 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 portion 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 portion 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 under this part. 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 under this part, 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. 27. Section 22703 of the Education Code is amended to read:

22703. (a) Service shall be credited to the Defined Benefit Program, except as provided in subdivision (b).

(b) A member's creditable service that exceeds 1.000 in a school year shall not be credited to the Defined Benefit Program. Commencing July 1, 2002, contributions by the employer that are deposited in the Teachers' Retirement Fund and the member on creditable compensation paid to the member for that service, exclusive of contributions pursuant to Section 22951, shall be credited to the Defined Benefit Supplement Program.

(c) 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 that the member would have received for that service under the provisions of this part as they existed on June 30, 1956. This subdivision shall not apply to service that is credited in the San Francisco City and County Employees Retirement System.

(d) The amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is

equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2003.

SEC. 28. Section 22706 of the Education Code is amended to read:

22706. A member shall not receive credit for service performed while receiving a retirement or disability allowance under the Defined Benefit Program or while receiving a retirement or disability benefit under the Defined Benefit Supplement Program.

SEC. 29. Section 22901.5 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

22901.5. (a) Notwithstanding Section 22905, 25 percent of the amount contributed by a member pursuant to Section 22901 (2 percent of creditable compensation) shall be credited to the member's Defined Benefit Supplement account pursuant to Section 25004.

(b) Any member contributions for service performed during the 2000-01 school year with a service period ending after December 31, 2000, shall be subject to subdivision (a).

(c) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 30. Section 22905 of the Education Code is amended to read:

22905. (a) Contributions made by a member and member contributions made by an employer pursuant to Section 22903 and 22904 shall be credited by the board to the individual account of the member.

(b) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003. As of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 31. Section 22905 is added to the Education Code, to read:

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

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

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

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

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

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

(d) Member and employer contributions under the Defined Benefit Supplement Program shall be credited to the accounts of members as of June 30 each year following a determination by the system under the provisions of this part that those contributions should be credited to the Defined Benefit Supplement Program. Contributions to a member's Defined Benefit Supplement account shall be identified separately from the member's contributions credited under the Defined Benefit Program.

(e) The provisions of this section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

SEC. 32. Section 22906 of the Education Code is repealed.

SEC. 33. Section 22906 is added to the Education Code, to read:

22906. A member's contributions that were made with respect to service that was erroneously credited under the Defined Benefit Program shall be returned to the member if the contributions for that service cannot be credited under the Defined Benefit Supplement Program pursuant to this part.

SEC. 34. Section 22954 of the Education Code is amended to read:

22954. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415.

(b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

(c) It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers'

Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415.

(d) This section shall become inoperative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2004. As of January 1, 2005, this section is repealed unless a later enacted statute, that becomes effective on or before January 1, 2005, deleted or extends the date on which it becomes inoperative and is repealed.

SEC. 35. Section 22954 is added to the Education Code, to read:

22954. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 2003, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415.

(b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

(c) It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415.

(d) This section shall become operative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2004.

SEC. 36. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 2001, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 1.975 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and

shall be divided into four equal quarterly payments. For the 2000-01 fiscal year only, the total amount of the appropriation pursuant to this subdivision shall be equal to 2.5385 percent of the total of the creditable compensation of calendar year 1999.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section 22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair,

the contractual obligations determined by the court in *California Teachers' Association v. Cory*, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The amendments to this section during the 1991-92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in *California Teachers' Association v. Cory*, 155 Cal.App.3d 494.

(h) This section shall become inoperative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2004. As of January 1, 2005, this section is repealed unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 37. Section 22955 is added to the Education Code, to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 2003, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.017 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 2003, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the fiscal year ending in the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero. The funds transferred pursuant to this

subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section 22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The provisions of this section shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(h) This section shall become operative on July 1, 2003, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2004.

SEC. 38. Section 22955.5 is added to the Education Code, to read:

22955.5. For purposes of Sections 22954 and 22955, "creditable compensation" shall include only creditable compensation for which member contributions are credited under the Defined Benefit Program.

SEC. 39. Section 24305.3 is added to the Education Code, to read:

24305.3. (a) A member who is receiving a joint and survivor annuity under the Defined Benefit Supplement Program may change the annuity or the annuity beneficiary elected pursuant to Section 25011 or 25018 provided all of the following conditions are met:

(1) The annuity beneficiary is the member's spouse or former spouse.

(2) A final decree of dissolution of marriage is granted, or a judgment of nullity is entered, or an order of separate maintenance is made by a court of competent jurisdiction with respect to the member and the spouse or former spouse on or after the beginning of the initial plan year designated by the board pursuant to Section 22156.05.

(3) The change is consistent with the final decree of dissolution, judgment of nullity, or order of separate maintenance.

(b) A member may change the annuity pursuant to subdivision (a) before or after the first annuity payment is issued.

(c) The member shall notify the system in writing of the change in the annuity. The notification shall not be earlier than the effective date of the final decree of dissolution, judgment of nullity, or order of separate maintenance and shall include a certified copy of the final decree of dissolution, judgment of nullity, or order of separate maintenance, and any property settlement agreement.

(d) A change in the annuity or annuity beneficiary or both shall become effective on the date the notification of change is received by the system. The annuity amount payable to the member upon the change elected by the member shall be determined as of the effective date of the change and shall be the actuarial equivalent of the lump sum that would otherwise be payable to the member as of the date of the change. If the member elects a joint and survivor annuity, the amount payable under the annuity shall be modified consistent with the annuity elected by the member.

SEC. 40. Section 24600 of the Education Code, as amended by Chapter 965 of the Statutes 1998, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance, payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(1) Until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is eligible as a full-time student to receive a child's portion of an allowance shall continue to be eligible for a child's portion until the person attains 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age.

(2) Notwithstanding subdivision (e) of Section 22123, until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is not eligible as a full-time student to receive a child's portion of an allowance, may return to school on a full-time basis on or after January 1, 1997, and become eligible for a child's portion from the date of return to full-time student status until 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age. No benefits shall be payable under this paragraph for a person who does not return to school as a full-time student prior to attaining 22 years of age.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations. The required beginning date of benefit payments that represent the entire interest

of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of both of the following:

(A) The calendar year in which the member attains age 70½ years.

(B) The calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains age 70½ years; or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of:

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

(j) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 41. Section 24600 of the Education Code, as amended by Chapter 74 of the Statutes of 2000, is repealed.

SEC. 42. Section 24600 is added to the Education Code, to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended, and related regulations. The required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part, and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70¹/₂ years of age or (B)

the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70½ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of:

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

(j) This section shall become operative on January 1, 2002.

SEC. 43. Section 24616 of the Education Code is amended to read:

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 either the Defined Benefit Program or the Defined Benefit Supplement Program. These deductions shall be 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. 44. Section 24617 of the Education Code is amended to read:

24617. (a) To recover an amount overpaid under this part, the corrected monthly allowance payable under the Defined Benefit Program or benefit payable under the Defined Benefit Supplement Program 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 or benefit.

(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 or benefit.

SEC. 45. Section 25000 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25000. The Defined Benefit Supplement Program is hereby established to provide supplemental benefits for members of the Defined Benefit Program. The Teachers' Retirement Board shall administer the Defined Benefit Supplement Program in accordance with the provisions of this part.

SEC. 46. Section 25000.5 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25000.5. The design and administration of the Defined Benefit Supplement Program shall comply with the applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code. The board may amend the plan with respect to the Defined Benefit Supplement Program to do any of the following:

(a) Comply with applicable federal law and regulations to the extent permitted by law.

(b) Adopt or amend actuarial assumptions.

(c) Designate the initial plan year.

(d) Declare the annual the minimum interest rate.

(e) Declare an additional earnings credit.

(f) Declare an additional annuity credit.

SEC. 47. Section 25001 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25001. (a) The board shall establish a segregated account within the retirement fund to be known as the Gain and Loss Reserve, and the board shall have sole authority over the reserve. The Gain and Loss Reserve shall be maintained for the Defined Benefit Supplement Program and may be used to credit interest at the minimum interest rate for plan years in which the board determines that the obligation cannot be met from investment earnings. The Gain and Loss Reserve may also be used to provide additions to the Annuitant Reserve for monthly annuities payable under the Defined Benefit Supplement Program.

(b) The board shall establish a goal for the balance of the Gain and Loss Reserve and periodically shall review the sufficiency of the reserve based on the recommendations of the actuary.

(c) The board may allocate excess earnings of the plan with respect to assets attributable to the Defined Benefit Supplement Program to the Gain and Loss Reserve. In addition, the board may allocate any liability gains and losses attributable to the Defined Benefit Supplement Program to the Gain and Loss Reserve. Upon the recommendation of the actuary, the board shall determine annually the amount, if any, that is to be allocated to the Gain and Loss Reserve for that plan year. That determination shall be made upon recommendation of the actuary after adoption of the actuarial valuation undertaken following the plan year pursuant to Section 22311.5, but no later than June 30 following the end of the plan year. In determining whether to allocate excess earnings to the Gain and Loss Reserve, the board shall consider all of the following:

(1) Whether or not the plan has excess earnings attributable to the Defined Benefit Supplement Program.

(2) The sufficiency of the Gain and Loss Reserve in light of the goal established pursuant to subdivision (b).

(3) The amount required for the plan's administrative costs with respect to the Defined Benefit Supplement Program.

(4) The amount required for crediting members' accounts at the minimum interest rate.

(d) In determining whether to allocate liability gains and losses to the Gain and Loss Reserve, the board shall consider the matters described in paragraphs (2), (3), and (4) of subdivision (c).

SEC. 48. Section 25002 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25002. The board shall establish and maintain a segregated account within the retirement fund to be known as the Annuitant Reserve and the board shall have sole authority over the reserve. The Annuitant Reserve shall be used for the payment of annuities under the Defined Benefit Supplement Program. The board shall transfer the balance of credits in a member's accumulated Defined Benefit Supplement account to the reserve when a benefit is to be paid as an annuity.

SEC. 49. Section 25006 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25006. (a) The board may declare an additional earnings credit to be applied to Defined Benefit Supplement accounts for a plan year. Prior to declaring an additional earnings credit, the board shall consider all of the following:

(1) Whether the plan's investment earnings with respect to the Defined Benefit Supplement Program for the plan year exceed the amount required to meet the liabilities identified in paragraphs (2), (3), and (4).

(2) The amount required for the plan year to credit interest on members' nominal accounts at the minimum interest rate.

(3) The amount of the plan's administrative expenses with respect to the Defined Benefit Supplement Program for the plan year.

(4) The sufficiency of the Gain and Loss Reserve and whether any additions must be made to that reserve.

(b) For any plan year that the board declares an additional earnings credit, the board shall specify the amount to be added to members' accounts as a percentage increase. The additional earnings credit shall be applied to the balance of credits in each member's nominal account as of the last day of the plan year and shall be applied as of the date specified by the board. The additional earnings credit shall not be added to the balance of credits transferred from a member's Defined Benefit Supplement account to the Annuitant Reserve.

(c) The declaration of an additional earnings credit shall be made as a plan amendment adopted by the board with respect to the Defined Benefit Supplement Program upon recommendation of the actuary after adoption of the actuarial valuation undertaken following the plan year pursuant to Section 22311.5, but no later than June 30 following the end of the plan year.

SEC. 50. Section 25008 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25008. A member's right to an amount equal to the member's Defined Benefit Supplement account balance shall be vested at the time contributions are initially credited to the member's account.

SEC. 51. Section 25009 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

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

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

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

SEC. 52. Section 25010 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25010. (a) A member who meets the following eligibility requirements shall receive a retirement benefit under the Defined Benefit Supplement Program:

(1) The member has terminated all employment to perform creditable service subject to coverage by the plan. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(2) The member has retired for service under the Defined Benefit Program pursuant to Chapter 27 (commencing with Section 24201).

(b) A member shall submit an application for a retirement benefit on a form prescribed by the system.

SEC. 53. Section 25011 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25011. (a) A member may elect to receive the retirement benefit as an annuity payable in monthly installments, provided the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable equals

at least three thousand five hundred dollars (\$3,500) after any lump-sum payments have been made from the account.

(b) If the member elects to receive the retirement benefit as an annuity, the member shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the retirement benefit in a lump-sum payment. Upon the death of the member, no other benefit shall be payable to the member's beneficiary under the Defined Benefit Supplement Program.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the retirement benefit in a lump-sum payment. Upon the death of the member, an amount equal to the remaining balance, if any, of credits transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall be returned in a lump-sum payment to the member's beneficiary.

(3) A 100 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, the same monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, one-half of the monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the

member's Defined Benefit Supplement account on the date the retirement benefit becomes payable. The annuity shall be payable over a specified number of years, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the member, or the life expectancy of the member and the member's annuity beneficiary. If the member's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the member's annuity beneficiary pursuant to Section 25022.

(c) The actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account shall reflect increases in annuity payments to be made in the future pursuant to Section 24402.

SEC. 54. Section 25012 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25012. An annuity payable under the Defined Benefit Supplement Program shall be determined as a value actuarially equivalent to the balance of credits in the member's Defined Benefit Supplement account on the date the benefit becomes payable and after any lump-sum payment. If a single life annuity is elected, the annuity shall be calculated using the age of the member on the date the benefit becomes payable. A member may elect a single life annuity only if the member did not elect to receive a modified allowance pursuant to Section 24300. If a joint and survivor annuity is elected, the annuity shall be calculated using the age of the member and the age of the member's beneficiary on the date the benefit becomes payable. A member may elect a joint and survivor annuity only if the member elected to receive a modified allowance pursuant to Section 24300.

SEC. 55. Section 25014 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25014. (a) If a member reinstates from service retirement under this part, payment of a retirement annuity based on the balance of credits that was transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall terminate. The member's Defined Benefit Supplement account shall be credited with the actuarial equivalent of the member's annuity as of the date the annuity is terminated and the Annuitant Reserve shall be reduced by the amount credited to the member's account.

(b) If the member subsequently retires again, an annuity based on the remaining balance of credits in the member's Defined Benefit Supplement account at the time of the subsequent retirement shall become payable pursuant to Section 24202.5 and the balance of credits in the member's Defined Benefit Supplement account shall be transferred to the Annuitant Reserve.

SEC. 56. Section 25015 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25015. (a) If a member elects to receive a benefit payable under the Defined Benefit Supplement Program as a joint and survivor annuity, the designation of the beneficiary made pursuant to Section 24300 shall apply to the benefit payable under this chapter. The annuity beneficiary designation shall not be changed after the date the benefit becomes payable to the member, except as provided in Chapter 12 (commencing with Section 22650).

(b) If the member designates multiple annuity beneficiaries in the designation of beneficiary made pursuant to Section 24300, the percentage of the annuity payable to each annuity beneficiary upon the death of the member specified in that designation shall apply to the benefit payable under this chapter. The annuity amount payable to the member during his or her lifetime shall be modified to be payable over the combined lives of the member and the annuity beneficiary or beneficiaries.

(c) If the member predeceases an annuity beneficiary, the annuity beneficiary may designate a payee to receive an amount that may be payable in a lump-sum pursuant to Section 25023 upon the death of the annuity beneficiary.

SEC. 57. Section 25016 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25016. (a) A member's disability benefit under the Defined Benefit Supplement Program shall be an amount equal to the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable.

(b) A disability benefit shall be a lump-sum payment, or an annuity payable in monthly installments, or a combination of both a lump-sum payment and an annuity, as elected by the member on the application for a disability benefit. Any retirement benefit paid as an annuity under this chapter shall be subject to Section 25018.

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

SEC. 58. Section 25017 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25017. (a) A member who meets the following eligibility requirements shall receive a disability benefit under the Defined Benefit Supplement Program:

(1) The member has terminated all employment to perform creditable service subject to coverage by the plan. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(2) The member has been approved to receive a disability allowance pursuant to Chapter 25 (commencing with Section 24001) or a disability retirement allowance pursuant to Chapter 26

(commencing with Section 24100) under the Defined Benefit Program.

(b) The member, or the member's employer or conservator, on behalf of the member, shall submit an application for a disability benefit on a form prescribed by the system.

SEC. 59. Section 25018 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25018. (a) A member may elect to receive the disability benefit as an annuity, payable in monthly installments, provided the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable equals at least three thousand five hundred dollars (\$3,500) after any lump-sum payment has been made from this account.

(b) If the member elects to receive the disability benefit as an annuity, the member shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the disability benefit in a lump-sum payment. Upon the death of the member, no other benefit shall be payable to the member's beneficiary under the Defined Benefit Supplement Program.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the disability benefit in a lump-sum payment. Upon the death of the member, an amount equal to the remaining balance of credits, if any, transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall be returned in a lump-sum payment to the member's beneficiary.

(3) A 100 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, the same monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50 percent joint and survivor annuity. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, one-half of the

monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that annuity at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable. The annuity shall be payable over a specified number of years, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the member, or the life expectancy of the member and the member's annuity beneficiary. If the member's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the member's annuity beneficiary pursuant to Section 25022.

(c) The actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account shall reflect increases in annuity payments to be made in the future pursuant to Section 24402, unless the member elected a period certain annuity.

SEC. 60. Section 25019 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25019. (a) If a member's disability allowance or disability retirement allowance under this part is terminated, payment of a disability annuity based on the balance of credits transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve also shall terminate. The member's Defined Benefit Supplement account shall be credited with the actuarial equivalent of the member's annuity as of the date the annuity is terminated and the Annuitant Reserve shall be reduced by the amount credited to the member's account.

(b) If a disability allowance or a service or disability retirement allowance subsequently becomes payable again, an annuity based on the remaining balance of credits in the member's Defined Benefit Supplement account at the time of the subsequent disability or service or disability retirement becomes payable and the balance of credits in the member's Defined Benefit Supplement account shall be transferred to the Annuitant Reserve.

SEC. 61. Section 25020 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25020. (a) A final benefit under the Defined Benefit Supplement Program shall become payable when the system receives proof of the member's death.

(b) If the member's death occurs before an annuity under the Defined Benefit Supplement Program becomes payable, the final benefit shall be an amount equal to the balance of credits in the member's Defined Benefit Supplement account on the date of the member's death.

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

SEC. 62. Section 25021 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25021. (a) A beneficiary, other than an entity, may elect to receive the final benefit payable under the Defined Benefit Supplement Program as an annuity payable in monthly installments provided the balance of credits in the member's Defined Benefit Supplement account equals at least three thousand five hundred dollars (\$3,500).

(b) A beneficiary who elects to receive an annuity shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the beneficiary if the beneficiary elected to receive the final benefit in a lump-sum payment. The annuity shall cease to be payable upon the death of the beneficiary, and no other benefit shall be payable under the Defined Benefit Supplement Program because of the death of the member and the member's beneficiary.

(2) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date of the member's death. The annuity shall be payable over a specified number of years, from a minimum of three years to a maximum of 10 years, but not to exceed the life expectancy of the beneficiary. The beneficiary may designate a payee to receive the remaining balance of payments if the beneficiary's death occurs prior to the end of the period certain.

(c) The actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account shall reflect increases in annuity payments to be made in the future pursuant to Section 24402, unless the member elected a period certain annuity.

SEC. 63. Section 25023 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25023. (a) Upon the death of an annuity beneficiary who was receiving an annuity under a joint and survivor annuity elected by the member no further payment shall be made.

(b) Upon the death of a beneficiary who was receiving a single life annuity without a cash refund feature, no further payment shall be made.

(c) Upon the death of a beneficiary who was receiving a period certain annuity, the actuarial equivalent of the remaining balance of payments shall be paid in a lump sum to the payee designated by the beneficiary pursuant to subdivision (c) of Section 25015.

SEC. 64. Section 25024 of the Education Code, as added by Chapter 74 of the Statutes of 2000, is amended to read:

25024. (a) Upon the termination of all employment to perform creditable service subject to coverage under the plan for a reason other than retirement, disability, or death, a member shall be eligible for a termination benefit under the Defined Benefit Supplement Program. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(b) A member shall submit an application for a termination benefit on a form prescribed by the system. If a member submits an application for a refund of contributions under the Defined Benefit Program, pursuant to Section 23103, that application shall also be deemed an application for a termination benefit.

(c) The termination benefit shall be a lump-sum payment that is equal to the balance of credits in the member's Defined Benefit Supplement account.

(d) Upon distribution of the termination benefit, no further benefit shall be payable to the member or the member's beneficiary under the Defined Benefit Supplement Program.

(e) A partial distribution of the balance of credits in a member's Defined Benefit Supplement account shall not be made, except as provided in Section 25009, 25015, 25016, or 25022.

SEC. 65. Section 19.5 of this bill incorporates amendments to Section 22652 of the Education Code proposed by both this bill and AB 820. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 22652 of the Education Code, and (3) this bill is enacted after AB 820, in which case Section 19 of this bill shall not become operative.

SEC. 66. Section 25.5 of this bill incorporates amendments to Section 22662 of the Education Code proposed by both this bill and AB 820. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 22662 of the Education Code, and (3) this bill is enacted after AB 820, in which case Section 25 of this bill shall not become operative.

SEC. 67. The sum of \$600,000 is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board for the administrative costs of implementing the provisions of Chapter 74 of the Statutes of 2000, as amended by this act.

SEC. 68. The unexpended balance of funds appropriated to the Teachers' Retirement Board in Chapter 632 of the Statutes of 1999 for

the payment of administrative costs of implementing the provisions of that act, is hereby reappropriated to the board for the payment of administrative costs of implementing the provisions of legislation enacted during the second year of the 1999-2000 Session of the Legislature affecting the State Teachers' Retirement System.

SEC. 69. The provisions of this act, other than Sections 3, 4, 8, 13, 27, 30, 31, 34, 35, 36, 37, and 68, shall become operative only if Chapter 74 of the Statutes of 2000 becomes effective on or before January 1, 2001.

SEC. 70. The Teachers' Retirement Board shall promptly notify the Secretary of State if and when the condition specified in Sections 3, 4, 5, 27, 30, and 31 of this act has been satisfied to cause those sections to become operative on July 1, 2002.

SEC. 71. The Teachers' Retirement Board shall promptly notify the Secretary of State if and when the condition specified in Sections 34, 35, 36, and 37 of this act has been satisfied to cause those sections to become operative on July 1, 2003.

EDUCATION CODE SECTION 22119.2

*Text of section operative until July 1, 2002, or July 1, 2003,
as set forth in subd. (f) of this section.*

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

- (1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.
- (2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.
- (3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).
- (4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.
- (5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.
- (6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.
- (7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.
- (8) Any other payments the board determines to be "creditable compensation."

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

- (1) Money paid for service performed in excess of the full-time equivalent for the position.
- (2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.
- (3) Money paid for service that is not creditable service pursuant to Section 22119.5.
- (4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the

same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

- (5) Fringe benefits provided by an employer.
- (6) Job-related expenses paid or reimbursed by an employer.
- (7) Money paid for unused accumulated leave.
- (8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.
- (9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.
- (10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

EDUCATION CODE SECTION 22119.2

*Text of section operative July 1, 2002, or July 1, 2003,
as set forth in subd. (g) of this section.*

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

- (1) Salary paid in accordance with a salary schedule or employment agreement.
- (2) Remuneration that is paid in addition to salary, providing it is payable to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.
- (3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).
- (4) Member contributions that are picked up by an employer pursuant to Section 22903 or 22904.
- (5) Amounts that are deducted from a member's compensation, including, but not limited to, salary deductions for participation in a deferred compensation plan; deductions to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.
- (6) Any other payments the board determines to be "creditable compensation."

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

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

- (1) Remuneration that is not payable in cash or is not payable to all persons who are in the same class of employees.
- (2) Remuneration that is paid for service that is not creditable service pursuant to Section 22119.5.
- (3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).
- (4) Remuneration that is paid for unused accumulated leave.

- (5) Annuity contracts, tax-deferred retirement plans, or insurance programs and contributions to plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code when the cost is covered by an employer and is not deducted from the member's salary.
- (6) Fringe benefits provided by an employer.
- (7) Job-related expenses paid or reimbursed by an employer.
- (8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.
- (9) Any other payments the board determines not to be "creditable compensation."

(d) An employer or individual who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (c) shall reimburse the plan for benefit overpayments that occur because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it would be paid to any person who meets the qualifications or requirements specified in a collective bargaining agreement or an employment agreement as a condition of receiving the remuneration.

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

(g) The section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.



December 4, 2001

RECEIVED

DEC 07 2001

**COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of September 28, 2001, the Department of Finance (Finance) has reviewed the test claim submitted by the Lassen and San Luis Obispo County Offices of Education asking the Commission to determine whether specified costs incurred under Chapter 1021, Statutes of 2000, are reimbursable state mandated costs (Claim No. 01-TC-02 "CalSTRS Creditable Compensation"). However, Finance first notes this test claim is premature. Public school employers are not currently required to provide higher monthly remittances to CalSTRS in accordance with Chapter 1021, Statutes of 2000, because that Chapter does not take effect until July 1, 2002. The fact that Claimant has yet to incur costs related to the Chapter in question is reason enough to reject this test claim.

Commencing with Page 4 of the test claim, Claimant has identified the following new duties, which it asserts are reimbursable state mandates. Following each of the enumerated duties is Finance's response:

1. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting STRS costs to employees.

Education Code (EC) Section 22119.5 stipulates that persons who receive "creditable compensation" as certificated employees of school districts, county offices of education or community college districts (public school employers) shall be considered to have performed "creditable service", and shall therefore be eligible for California State Teachers' Retirement System (CalSTRS) membership. Among those certificated employees eligible for CalSTRS membership pursuant to EC Section 22119.5 are instructors, counselors, administrators, health professionals, librarians and superintendents.

EC Section 22119.2 defines "creditable compensation" as salary and other remuneration payable in cash by public school employers to CalSTRS members. Pursuant to Chapter 16 of Part 13 of the Education Code (commencing with Section 22950), public school employers must remit to CalSTRS a monthly contribution that is a percentage of the creditable compensation they provide to each CalSTRS member in their employ.

EC Section 22119.2 currently states the salary or remuneration provided to CalSTRS members for a variety of activities is not creditable compensation, and is therefore excluded when public school employers calculate the monthly amount they must remit to CalSTRS. Among these activities are the following:

- Service in excess of the full-time equivalent for a member's position.
- Pay received by a member for overtime, summer school service or intersession instruction.
- Pay received for extracurricular activities such as coaching that are part of a member's contract.
- Bonus payments that are provided in equal amounts or percentages to all members in a classification.

Effective July 1, 2002, Chapter 1021, Statutes of 2000, will amend EC Section 22119.2 so that salary or remuneration provided by public school employers to CalSTRS members for the above-referenced activities will be considered creditable compensation. Consequently, effective July 1, 2002, public school employers that provide CalSTRS members with salary or remuneration for any of the aforementioned activities will be required to increase the contributions they provide to CalSTRS pursuant to Chapter 16 of Part 13 of the Education Code (commencing with Section 22950).

Claimant alleges the requirement that public school employers provide increased monthly contributions to CalSTRS effective July 1, 2002, will result in their being required to engage in a new activity as defined in Article XIII B, Section 6 of the California Constitution. Claimant therefore alleges the cost of providing the increased monthly contributions are State-mandated, and reimbursable.

However, California courts have ruled that the California Constitution does not require that local agencies be reimbursed for legislatively imposed new costs associated with the provision of contributions to State-administered retirement systems, as this activity does not fall within the parameters of a "new program or higher level of service" as those terms are used in Article XIII B, Section 6 of the California Constitution.

In County of Los Angeles v. State of California, 43 Cal. 3d 46 (hereafter County of Los Angeles), the California Supreme Court established that, in order for costs to be considered reimbursable, local entities must incur those costs through (a) the provision to the public, of a new or higher level of service via a new or an existing program, or (b) the performance of unique requirements that do not apply generally to all residents or entities in the state.

In City of Anaheim v. State of California, 189 Cal.App. 3d 1478, (hereafter City of Anaheim), the plaintiff sought reimbursement for interest it lost on its Public Employees Retirement System (PERS) account pursuant to the provisions of Chapter 1244, Statutes of 1980. The Court found the provision of pension payments to retired employees by local governments is not a public program or service for purposes of Article XIII B, Section 6. The Court further found that requiring local governments to provide higher pension payments to retired employees does not meet the "higher level of service" test in Article XIII B, Section 6.

The Court stated: "Moreover, the goals of Article XIII B of the California Constitution 'were to protect residents from excessive taxation and government spending...[and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies...Bearing the costs of salaries, unemployment insurance, and workers' compensation

coverage costs – which all employers must bear neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.' (County of Los Angeles, supra, at p. 61.) **Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public (emphasis added).**"

In City of Richmond v. Commission on State Mandates, 64 Cal.App.4th 1190, (hereafter City of Richmond), Richmond argued that legislation requiring city payment of death benefits under both PERS and workers' compensation to survivors of a police officer killed in the line of duty imposed a requirement unique to local government. The court concluded that the test claim legislation "merely eliminated the exemption [for local governments] and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement 'new' to local agencies, but that requirement was not 'unique.'" (City of Richmond, supra, at p. 1198). Similarly here, compensation of employees in general is not unique to government. While claimants may argue that compensation of school employees and the associated CalSTRS employer contributions are unique to school employers, the focus must be on the hardly unique function of compensating employees in general. Therefore, increased monthly contributions to CalSTRS are not reimbursable state mandated costs as defined by Article XIII B, Section 6 of the California Constitution.

In accordance with the rulings in County of Los Angeles, City of Anaheim, and City of Richmond, Finance asserts the provision by public school employers of monthly STRS contributions on behalf of their employees is not a program that provides a service to the public or that is unique to local government.

Consequently, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their CalSTRS contributions.

2. Modification of county office of education, school district and school site policies and procedures as necessary to implement the test claim legislation.

For the reasons stated in our response to Issue One, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their CalSTRS contributions.

3. Training of county office of education, school district and school site staff regarding the new requirements to effectuate the test claim legislation.

For the reasons stated in our response to Issue One, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their CalSTRS contributions.

4. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

The appropriate period in the State Mandates process for identifying reimbursable activities is the Test Claim phase; the purpose of the Parameters and Guidelines phase is to specify which activities the Commission identified as reimbursable in the Test Claim phase, to identify eligible claimants, to specify the date upon which the identified activities became reimbursable, and to provide guidance on preparing and submitting reimbursement claims.

It is inappropriate to transform the Parameters and Guidelines phase of the State Mandates process into a venue for Claimants to seek reimbursement for activities they failed to identify in their test claims. If an activity is not identified as reimbursable by the Commission during the Test Claim phase, the costs associated with that activity should not be declared reimbursable at some later date. Claimants' failure to clearly identify in their test claim all activities they deem reimbursable also supports Finance's assertion that this test claim is premature.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your September 28, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst, at (916) 445-0328, or Thomas Lutzenberger, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



RANDAL H. BAKER
Program Budget Manager

Attachment

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. 01-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

December 3, 2001

at Sacramento, CA

Michael Wilkening

Mike Wilkening

PROOF OF SERVICE

Test Claim Name: CalSTRS Creditable Compensation
Test Claim Number: 01-TC-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Floor, Sacramento, CA 95814.

On December 4, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Glenn Haas
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

B-8

State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive
Gold River, CA 95670

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Harmeet Barkschat
Mandate Resource Services
8254 Heath Peak Place
Antelope, CA 95843

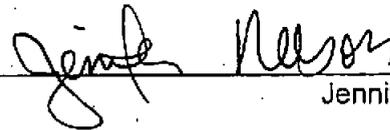
San Luis Obispo County Office of Education
Attention: Eric Smith
PO Box 8105
San Luis Obispo, CA 93403

Lassen County Office of Education
Attention: Gene Sies
472-013 Johnstonville Road North
Susanville, CA 96130

California Teachers Association
Attention: Nancy Shaffer
191 Deerglen Circle
Vacaville, CA 95687

San Juan Unified School District
Attention: Dianna Halpenny
3738 Walnut Avenue
Carmichael, CA 95608

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 4, 2001, at Sacramento, California.



Jennifer Nelson

SixTen and Associates

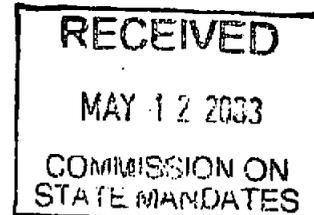
Mandate Reimbursement Services

EXHIBIT C

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

May 7, 2003



Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Santa Monica Community College District
Statutes of 2002/ Chapter 875
CalSTRS Service Credit

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Santa Monica Community College District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District
1900 Pico Blvd
Santa Monica, California 90405-1628

The Commission regulations provide for an informal conference of the interested parties

Paula Higashi, Executive Director,
Commission on State Mandates

May 7, 2003

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,



Keith B. Petersen

C: Cheryl Miller, Associate Vice President, Business Services
Santa Monica Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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RECEIVED
MAY 12 2003
COMMISSION ON
STATE MANDATES

TEST CLAIM FORM

Claim No. 01-12-19

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

CalSTRS Service Credit

See List of Statutes Attached
See List of Code Sections Attached

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Cheryl Miller
Associate Vice President, Business Services

(310) 434-4221

Signature of Authorized Representative

Date

Cheryl Miller

4/30/03

X

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) Chapter 482, Statutes of 1997
) Chapter 1165, Statutes of 1996
) Chapter 680, Statutes of 1996
) Chapter 634, Statutes of 1996
) Chapter 608, Statutes of 1996
) Chapter 383, Statutes of 1996
) Chapter 592, Statutes of 1995
) Chapter 394, Statutes of 1995
) Chapter 390, Statutes of 1995
) Chapter 933, Statutes of 1994
) Chapter 603, Statutes of 1994
) Chapter 507, Statutes of 1994
) Chapter 20, Statutes of 1994
) Chapter 893, Statutes of 1993

) Education Code Sections
) 22000, 22002, 22119.2, 22119.5,
) 22146, 22455.5, 22458, 22460,
) 22461, 22501, 22502, 22503,
) 22504, 22509, 22711, 22712.5,
) 22713, 22714, 22717, 22717.5,
) 22718, 22724, 22800, 22801,
) 22803, 22851, 22852, 22950,
) and 22951

30 PART I. AUTHORITY FOR THE CLAIM

31 The Commission on State Mandates has the authority pursuant to Government
32 Code Section 17551(a) to "...hear and decide upon a claim by a local agency or school
33 district that the local agency or school district is entitled to be reimbursed by the state for
34 costs mandated by the state as required by Section 6 of Article XIII B of the California
35 Constitution." Santa Monica Community College District is a "school district" as defined

1 in Government Code section 17519.¹

2

3

PART II. LEGISLATIVE HISTORY OF THE CLAIM

4 A. Legal Requirements Prior to 1975

5 Article 1. General Provisions

6 Education Code Section 13801² provided that the chapter shall be known as the
7 State Teachers' Retirement Law and may be known and cited as the E. Richard Barnes
8 Act.

9 Education Code Section 13802³ established the State Teachers' Retirement
10 System to provide for the retirement of teachers in the public schools as a unit of the
11 Agriculture and Services Agency.

¹ Government Code Section 17519, as added by Chapter 1459/84:
"School district" means any school district, community college district, or county
superintendent of schools.

² Education Code Section 13801, added by Chapter 896, Statutes of 1969:

"This chapter shall be known and may be cited as the State Teachers' Retirement
Law and may be known and cited as the E. Richard Barnes Act."

³ Education Code Section 13802, added by Chapter 896, Statutes of 1969,
Section 2:

"In order to provide a financially sound plan for the retirement, with 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. The system is a unit of the
Agriculture and Services Agency."

1 Education Code Section 13812⁴ excluded any compensation based on overtime
2 service performed by a member from any computation to be made under this chapter,
3 including but not limited to computation of members' and school districts' or other
4 employing agencies' contributions to the Retirement Annuity Fund.

5 Article 2. Definitions

6 Education Code Section 13824.5⁵ defined "annual salary" as salaries earned
7 during a school year excluding salaries for overtime service.

8 Education Code Section 13832⁶ defined "compensation" and "salary" as

⁴ Education Code Section 13812, added by Chapter 896, Statutes of 1969,
Section 2, as amended by Chapter 1305, Statutes of 1971:

"When the compensation of a member is a factor in any computation to be made under this chapter, including but not limited to computation of members' and school districts' or other employing agencies' contributions to the Retirement Annuity Fund and excluding computation of compensation earnable during time prior to July 1, 1956, there shall be excluded from such computations any compensation based on overtime service performed by a member."

⁵ Education Code Section 13824.5, added by Chapter 1305, Statutes of 1971,
Section 10, as amended by Chapter 1010, Statutes of 1972:

" "Annual salary" means salaries earned during a school year excluding salaries for overtime service. For purposes of determining the amount of survivor benefits under Section 14186 and disability benefits under Section 14260, salary shall include any disability or survivor benefits that are part of a grant established and paid monthly to the teacher or his dependents prior to the teacher's death or disability."

⁶ Education Code Section 13832, added by Chapter 896, Statutes of 1969,
Section 2, as amended by Chapter 976, Statutes of 1973, Section 3:

" "Compensation" and "salary" mean remuneration in cash payable by the employer to the member, plus any payments in cash by the employer to one other than

1 remuneration in cash payable by the employer to the member, plus any payments in
2 cash by the employer to one other than the member for the purpose of purchasing an
3 annuity contract for the member, plus any amount deducted from a member's wages for
4 participation in a deferred compensation plan. Section 13832 excluded from the
5 definition of "compensation" and "salary" job related expenses, money paid to the
6 employee for overtime service, compensatory damages and money paid to the member
7 in excess of regular salary as a compromise settlement of a dispute arising from
8 termination of a member's employment contract, lump sum payments for accumulated
9 sick leave or accumulated vacation leave, money paid for summer school employment,
10 and money paid as a bonus.

the member for the purpose of purchasing an annuity contract for the member under an annuity plan which meets the requirements of Section 403(b) of the Internal Revenue Code of the United States, plus any amount deducted from a member's wages for participation in a deferred compensation plan established pursuant to Chapter 8 (commencing with Section 18310) of Part 1 of Division 5 of Title 2 of the Government Code or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

"Compensation" and "salary" do not mean and shall not include:

- (a) Job-related expenses.
- (b) Money paid to the employee for overtime service.
- (c) Compensatory damages and money paid to the member in excess of regular salary as a compromise settlement of a dispute arising from termination of a member's employment contract.
- (d) Lump sum payments for accumulated sick leave or accumulated vacation leave.
- (e) Money paid for summer school employment.
- (f) Money paid as a bonus.

Any such moneys paid under subdivision (a) through (f) shall not be included as a part of the member's compensation subject to contributions reported to this system."

1 Education Code Section 13833.7⁷ defined "credited service" as service for which
2 the required contributions have been paid.

3 Education Code Section 13852⁸ defined "service" to mean service performed for
4 compensation in a position requiring membership in the system.

5 Article 6. Membership in the System

6 Education Code Section 13941⁹ provided that all teachers employed in the public
7 schools were members of the system unless excluded under Article 7 (commencing with
8 Section 13961).

9 Education Code Section 13943¹⁰ provided that certificated librarians in

⁷ Education Code Section 13833.7, added by Chapter 1305, Statutes of 1971:

"Credited service" means service for which the required contributions have been
paid."

⁸ Education Code Section 13852, added by Chapter 896, Statutes of 1969,
amended by Chapter 1293, Statutes of 1974, Section 26:

"Service means service performed for compensation in a position requiring
membership in the system except as provided in Article 8 (commencing with Section
13980)."

⁹ Education Code Section 13941, added by Chapter 896, Statutes of 1969,
amended by Chapter 466, Statutes of 1970:

"All teachers employed in the public schools of this state are members of the
system unless excluded from membership under Article 7 (commencing with Section
13961) of this chapter."

¹⁰ Education Code Section 13943, added by Chapter 896, Statutes of 1969:

"Certificated librarians in elementary, secondary schools, or junior colleges, or

1 elementary, secondary schools, or junior colleges, and persons who serve partly as
2 librarians and partly as teachers, were members of the system.

3 Education Code Section 13944¹¹ provided that all other employees in the public
4 schools who held valid and unrevoked credentials issued by specified agencies, and
5 who were employed for at least 50 percent of each school month in work authorized by
6 their credentials, were members of the system.

7 Education Code Section 13946¹² provided that any member who subsequently

persons who serve partly as librarians and partly as teachers, are members of the
system."

¹¹ Education Code Section 13944, added by Chapter 896, Statutes of 1969,
amended by Chapter 557, Statutes of 1970:

"All other employees in the public schools of this state who hold valid and
unrevoked credentials issued by the State Board of Education, the Board of Governors
of the California Community Colleges, or the Commission for Teacher Preparation and
Licensing, and who are employed for at least 50 percent of each school month in work
authorized by their credentials, are members of the system."

¹² Education Code Section 13946, added by Chapter 896, Statutes of 1969,
Section 2, as amended by Chapter 1293, Statutes of 1974, Section 35:

"Any person who is a member who subsequently is employed by the same or a
different school district or by a county superintendent, to perform duties which require
membership in a different public retirement system in this state, shall continue to be a
member, unless he elects, in writing and files in the office of the system, with 90 days
after such entry, not to continue as a member in his new position.

Continuance of his membership in this system, of any person so employed prior
to June 26, 1961, is hereby ratified, validated and confirmed, and for all purposes he
shall be considered as having been a member without interruption as far as the
employment is concerned, unless such persons elects within 90 days after the date
upon which notice of such right to elect, is mailed by this system to the member's latest
address on file in the office of this system, not to be a member of the system with

1 was employed by the same or a different school district or by a county superintendent,
2 to perform duties which required membership in a different public retirement system,
3 would continue to be a member unless he or she elected otherwise.

4 Education Code Section 13947¹³ provided that persons employed in the public
5 schools or in county superintendent's offices to perform duties usually performed by
6 counselors, coordinators, and research directors, were members of the system.

7 Education Code Section 13950¹⁴ provided that superintendents, their deputies,
8 and certificated employees under the direction of county superintendents were members
9 of the system.

10 Article 7. Exclusion from Membership

11 Education Code Section 13962¹⁵ excluded persons serving as exchange teachers

respect to the duties which are not so requisite."

¹³ Education Code Section 13947, added by Chapter 896, Statutes of 1969:

"Persons employed in the public schools or in county superintendent's offices of this state to perform duties usually performed by counselors, coordinators, and research directors, are members of the system."

¹⁴ Education Code Section 13950, added by Chapter 896, Statutes of 1969:

"Superintendents, their deputies, and certificated employees under the direction of county superintendents are members of the system."

¹⁵ Education Code Section 13962, added by Chapter 896, Statutes of 1969:

"Persons serving as exchange teachers or sojourn teachers from outside of this state are excluded from membership in the system."

1 or sojourn teachers from outside of this state from membership in the system.

2 Education Code Section 13963¹⁶ excluded persons employed on a substitute
3 basis, who were not already members when they became employed and who rendered
4 less than 100 complete days of service during the school year. Substitute teachers who,
5 at the end of a pay period, rendered more than 100 or more complete days of substitute
6 service in that school year and subsequently rendered one or more complete days of
7 such service in that school were members on the first day of the pay period during which
8 such additional service was rendered.

9 Education Code Section 13964¹⁷ excluded from membership persons who were
10 not already members who were employed on a part-time basis and who performed less
11 than 24 hours of service per pay period, or persons who would serve less than four days

¹⁶ Education Code Section 13963, added by Chapter 896, Statutes of 1969:

"Persons employed on a substitute basis, who are not already members when they become employed and who render less than 100 complete days of service during the school year are excluded from membership in the system.

If, at the end of a pay period, a substitute teacher has rendered 100 or more complete days of substitute service in that school year and subsequently renders one or more complete days of such service in that school year, he shall become a member on the first day of the pay period during which such additional service was rendered."

¹⁷ Education Code Section 13964, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1293, Statutes of 1974, Section 38:

"Persons not already members who are employed on a part-time basis and who will perform less than 24 hours of service per pay period, or persons who will serve less than four days per pay period on a daily basis are excluded from membership in the system."

1 per pay period on a daily basis.

2 Education Code Section 13965¹⁸ excluded from membership persons not already
3 members who were employed as instructors of adult education classes which had a
4 duration of less than one school semester, or less than one school quarter of 12 weeks.

5 Education Code Section 13966¹⁹ excluded from membership persons who were
6 not already members who were employed as part-time teachers and who were
7 concurrently employed in full-time positions as members of another retirement system,
8 other than a local system or a system administered and supported by the United States
9 government, supported wholly or in part by public funds.

10 Education Code Section 13968²⁰ excluded from membership persons who were

¹⁸ Education Code Section 13965, added by Chapter 896, Statutes of 1969:

"Persons not already members who are employed as instructors of adult education classes which have a duration of less than one school semester, or less than one school quarter of 12 weeks if the district operates its adult education program on that basis are excluded from membership in the system."

¹⁹ Education Code Section 13966, added by Chapter 896, Statutes of 1969:

"Persons not already members who are employed as part-time teachers and who are concurrently employed in full-time positions as members of another retirement system, other than a local system or a system administered and supported by the United States government, supported wholly or in part by public funds are excluded from membership in the system."

²⁰ Education Code Section 13968, added by Chapter 896, Statutes of 1969, as amended by Chapter 577, Statutes of 1970:

"Persons not already members who are employed for less than full time in positions requiring health and development credentials, a standard credential in

1 not already members who were employed for less than full-time in positions requiring
2 health and development credentials, a standard credential in designated services for
3 health, or a designated services credential with a specialization in health, except that
4 nurses employed in schools for at least 50 percent of a pay period were not excluded
5 from membership under the provisions of this section.

6 Education Code Section 13969²¹ provided that any member of the Public
7 Employees' Retirement System who subsequently was employed in a position requiring
8 membership in this system was excluded from membership if he or she elected in
9 writing, to continue to be a member of the Public Employees' Retirement System in his
10 or her new position.

11 Article 8. Computation of Allowable Service Credit

designated services for health, or a designated services credential with a specialization
in health are excluded from membership in the system.

The provisions of this section shall not apply to nurses employed in schools for at
least 50 percent of a pay period."

²¹ Education Code Section 13969, added by Chapter 896, Statutes of 1969,
Section 2, as amended by Chapter 1293, Statutes of 1974, Section 41:

"Any person who is a member of the Public Employees' Retirement System and
who subsequently is employed in a position requiring membership in this system is
excluded from membership if he elects, by a writing filed in the office of Board of
Administration of the Public Employees' Retirement System, within 90 days after such
entry, to continue as a member of the Public Employees' Retirement System in the new
duties."

1 Education Code Section 13981²² provided that service performed on or after July
2 1, 1972, by a member would be credited in the proportion the compensation paid bears
3 to the compensation the member would have received if he had been employed on a
4 full-time day basis in the particular position in which he was employed.

5 Education Code Section 13987²³ provided that a member would receive credit for
6 service performed in teaching positions in publicly supported and publicly administered
7 universities and colleges in this state, provided that the member did not have credited
8 service therefor in any other retirement system.

9 Education Code Section 13988²⁴ provided that a member may elect to receive

²² Education Code Section 13981, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1305, Statutes of 1971, Section 34:

"Service performed prior to July 1, 1972, shall be credited according to the provisions of the law in effect at the time service was performed.

Service performed on or after July 1, 1972, by a member shall be credited in the proportion the compensation paid bears to the compensation the member would have received if he had been employed on a full-time day basis in the particular position in which he is employed throughout the school term, school year, or for a period of service at least the equivalent to a school term."

²³ Education Code Section 13987, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1293, Statutes of 1974, Section 48:

"A member shall receive credit for service performed in teaching positions in publicly supported and publicly administered universities and colleges in this state provided he does not have credited service therefor in any other retirement system."

²⁴ Education Code Section 13988, added by 896, Statutes of 1969, Section 2, amended by Chapter 1120, Statutes of 1974, Section 1:

"A member may receive credit for time served in certificated teaching positions in

1 service credit for time served in certificated teaching positions in job corps centers
2 administered by the United States government in this state if such member was
3 employed in a position requiring membership in the system within one year prior to
4 entering such service, and returns to a position requiring membership in the system
5 within six months following the date of termination of service in the job corps.

6 Education Code Section 13994²⁵ provided that a member could elect to receive

job corps centers administered by the United States government in this state providing education programs authorized by the State Department of Education in lieu of California public school programs.

A member may elect to receive job corps credit if he was employed in a position requiring membership in the system within one year prior to entering such service, and returns to position requiring membership in the system within six months following the date of termination of service in the job corps. In no event shall a member receive credit for more than two years of job corps service nor shall a member receive credit for such service if he receives retirement allowance for such service from another retirement system.

A member who receives credit for job corps service shall pay employer and employee contributions plus regular interest in accordance with Section 13997. These contributions shall be based upon the full-time compensation the employee receives at the time the election is made to receive credit under the provisions of this section."

²⁵ Education Code Section 13994, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1293, Statutes of 1974, Section 51:

"A member may elect to receive credit for time during which he serves in the active military service of the United States or of this state including active service in any uniformed auxiliary of, or to, any branch of such military service created or authorized as such auxiliary by the Congress of the United States of America or by the Legislature of the State of California, or in the full-time paid service of the American Red Cross performed prior to September 10, 1957, during war with any foreign power or during other national emergency, or in time of peace if he is drafted for such service by the United States government, if he was employed in a position requiring membership, or in a position time served in which is included in this chapter, within one year prior to entering such service.

1 credit for time during which he served in the active military service of the United States
2 or of this state. Section 13994 also provided that a member could elect to receive credit
3 for time during which he served in the full-time paid service of the American Red Cross
4 prior to September 10, 1957, during war with any foreign power or during any other
5 national emergency, or in time of peace if he was drafted for such service by the United
6 States government. A member could elect to receive such credit if he was employed in a
7 position requiring membership, or in a position in which is included in this chapter, within
8 one year prior to entering such service.

9 Education Code Section 13996²⁶ provided that a member would receive credit for
10 time during which he is excluded from membership because of membership in any other
11 retirement system and during which he serves in a status requiring membership in this
12 system or its predecessors, provided that he subsequently ceases to be a member of,

Time during which a member for other cause is absent without compensation, on leave or otherwise, shall not be included.

Time included under this section shall be considered as served in the state in which the member was last employed before entering such service."

²⁶ Education Code Section 13996, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 195, Statutes of 1973:

"A member shall receive credit for time during which he is excluded from membership because of membership in any other retirement system and during which he serves in a status requiring membership in this system or its predecessors, if he subsequently ceases to be a member of, and ceases to be entitled to benefits from, the other retirement system and becomes a member of this system.

Such credit shall not be given if the member may redeposit withdrawn contributions in any other retirement system."

1 and ceases to be entitled to benefits from, the other retirement system and becomes a
2 member of this system.

3 Education Code Section 13997²⁷ provided that a member would receive credit in
4 the proportion that the compensation paid to the member bears to the full compensation
5 which would be earnable by him while performing his duties on a full-time basis for time
6 during which he is excused from performance of his duties, such as but not limited to,
7 sick leave, holidays, or vacation, whether or not he is required to perform any portion of
8 such duties during such time, and for which he receives compensation, including
9 disability from any insurance carrier of his employer, in an amount less than the full
10 compensation earnable by him while performing his duties when not so excused.

11 Education Code Section 13998²⁸ provided that no member shall receive credit for

²⁷ Education Code Section 13997, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1004, Statutes of 1971, Section 8:

"Time during which a member is excused from performance of his duties, such as but not limited to, sick leave, holidays, or vacation, whether or not he is required to perform any portion of such duties during such time, and for which he receives compensation, including disability from any insurance carrier of his employer, under the Labor Code on account of industrial injury or disease, in an amount less than the full compensation earnable by him while performing his duties when not so excused, shall be credited as service in the proportion that the compensation paid to the member bears to the full compensation which would be earnable by him while performing his duties on a full-time basis. For purposes of this article, any certificated employee on a sabbatical leave as provided under Section 13457 receives full-time service credit for time spent on such leave, providing the member pays contributions as required by Section 14038."

²⁸ Education Code Section 13998, added by Chapter 896, Statutes of 1969:

"Except as otherwise specifically provided in this article no member shall receive

1 service outside this state, except as otherwise specifically provided in this article.

2 Education Code Section 14000²⁹ provided that a member could elect to receive
3 credit for time served in publicly supported and administered schools in other states and
4 territories and possessions of the United States and in Canada as a teacher of children
5 who are deaf or blind, or both, provided the member is (1) credited with at least 10 years
6 of service in this state as a teacher of children who are both deaf and blind; (2) within
7 five years immediately preceding the date when he became a member of this system he
8 served at least one year in publicly supported and administered schools in another state
9 of the United States, its territories and possessions, or in Canada, as a teacher of
10 children who were both deaf and blind; and (3) he was a member of this system on
11 October 1, 1959.

credit for service outside this state."

²⁹ Education Code Section 14000, added by Chapter 896, Statutes of 1969, as amended by Chapter 1010, Statutes of 1972:

"A member may elect to receive credit for time served in publicly supported and administered schools in other states of the United States and its territories and possessions and in Canada as a teacher of children who are deaf or blind or both deaf and blind if the member fulfills all of the following conditions:

(a) He is credited with at least 10 years of service in this state as a teacher of children who are both deaf and blind.

(b) Within five years immediately preceding the date when he became a member of this system he served at least one year in publicly supported and administered schools in other states of the United States, its territories and possessions, or in Canada, as a teacher of children who were both deaf and blind.

(c) He was a member of this system on October 1, 1959."

1 Education Code Section 14004³⁰ provided that a member would be credited at his
2 retirement with credit for each day of accumulated and unused leave of absence for
3 illness or injury for which full salary was allowed to which the member was entitled on
4 the final day he rendered service to the school district or other employing agency by
5 which he was last employed in a position requiring membership in this system. Section
6 14004 also required the school district or other employing agency to certify to the
7 Teachers' Retirement Board the number of days of accumulated and unused leave of
8 absence for illness or injury to which the employee was entitled on his final day of
9 employment.

10 Education Code Section 14009³¹ provided that a member employed on a part-

³⁰ Education Code Section 14004, added by Chapter 89, Statutes of 1974,
Section 1; effective March 21, 1974:

"A member shall be credited at his retirement with credit 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 final day he rendered service to the school district or other employing agency by which he was last employed in a position requiring membership in this system. The number of years of service credit to be granted shall be the product of a factor and the number of days of accumulated and unused leave of absence for illness or injury. The factor shall be determined by dividing the number 1 by the number of days of service required by the member's contract of employment during his final year of service in a position requiring membership in this system. When the member has made application for retirement pursuant to Section 14210, the school district or other employing agency shall certify to the Teachers' Retirement Board the number of days of accumulated and unused leave of absence for illness or injury to which the employee is entitled on his final day of employment."

³¹ Education Code Section 14009, added by Chapter 1367, Statutes of 1974,
Section 2:

1 time basis would receive the same credit as if he was employed on a full-time basis and
2 had his retirement allowance, as well as any other benefits to which he was entitled,
3 based upon the salary he would have received if employed on a full-time basis, provided
4 he and his employer both elected to contribute to the Teachers' Retirement Fund the
5 amount that would have been contributed had the member been employed on a full-time
6 basis. Section 14009 also required the employer to maintain the necessary records to
7 separately identify each employee receiving credit pursuant to this section.

8 Article 9. Member Contributions

9 Education Code Section 14026³² required that each member of the system
10 contribute an amount equivalent to 8 percent of salary earned to the Teachers'
11 Retirement Fund, excluding salaries for overtime service.

"Notwithstanding any other provision of this chapter, a member employed on a part-time basis shall receive the credit he would receive if he was employed on a full-time basis and have his retirement allowance, as well as any other benefits that he is entitled to under this chapter, based upon the salary that he would have received if employed on a full-time basis, if he and his employer both elect to contribute to the Teachers' Retirement Fund the amount that would have been contributed if the member was employed on a full-time basis. This section shall be applicable only to members who have met the criteria provided in Section 13337.7 of this code or Section 24215 of the Government Code and are not older than 65 years and is limited to a period of five years of such part-time status. The employer shall maintain the necessary records to separately identify each employee receiving credit pursuant to this section."

³² Education Code Section 14026, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1305, Statutes of 1971, Section 41:

"Each member of this system shall contribute to the Teachers' Retirement Fund an amount equivalent to 8 percent of salary earned, excluding salaries for overtime service."

1 Education Code Section 14036³³ allowed substitute teachers who had been
2 excluded from membership under Section 13963, part-time employees who had been
3 excluded under Section 13964, instructors in adult education excluded under Section
4 13965, members of another system excluded under Section 13966, and school nurses
5 excluded under Section 13968, to elect membership, and upon their elections, required
6 they be given credit for service performed while so excluded provided they elected to
7 pay, and did pay, contributions with respect to such service in a manner provided by the
8 board.

9 Article 10. Member Contributions for Military Service

10 Education Code Section 14041³⁴ allowed a member who was required to pay

³³ Education Code Section 14036, added by Chapter 896, Statutes of 1969, as amended by Chapter 1010, Statutes of 1972, Section 25:

"Persons who have been excluded from membership under Section 13963, 13964, 13965, or 13966, and school nurses excluded under Section 13968, who subsequently become members shall receive credit for the service performed while so excluded provided they elect to pay, and pay, prior to retirement or payment of a disability allowance, whichever occurs first, and in a manner provided by the board, contributions with respect to such service with regular interest.

Such contributions shall be equal to what they would have been had they not been excluded from membership but calculated at the rate of contribution first applicable to them as members, or upon their reentry to membership.

The provisions of this section shall not apply to service as a school nurse during which time the person was a member for the Public Employees' Retirement System and was excluded from membership in this system under Section 13968."

³⁴ Education Code Section 14041, added by Chapter 896, Statutes of 1969, Section 2, as amended by Chapter 1089, Statutes of 1972, Section 5:

" If any member of the system required to pay contributions under Section 14040,

1 contributions under Section 14040 (membership during or after active military service or
2 Red Cross service), who did not pay those contributions while performing such service,
3 to pay the contributions directly to the system in a single payment before retirement or in
4 monthly installments as provided by the board.

5 Education Code Section 14043³⁵ provided that no contributions shall be required
6 for service credited under Section 13994 from a member for such service on account of
7 an absence after September 15, 1940, if the member returned to an employment
8 requisite for membership in this system prior to March 19, 1948, or after that date if the
9 member returned to such employment within six months after the termination of such
10 service and prior to January 1, 1950.

11 Article 11. Procedures for Collection of Member and Employer Contributions

does not pay such contributions while performing such service, the contributions may be paid by him directly to the system in a single payment before retirement or in monthly installments as provided by the board. Contributions paid under this section shall be paid for service performed after July 1, 1944, with regular interest accruing from the date of the member's discharge or release from military service to the date of payment. Failure to pay such contributions constitutes a break in service."

³⁵ Education Code Section 14043, added by Chapter 896, Statutes of 1969, Section 2:

"No contributions shall be required for service credited under Section 13994 from a member for such service on account of an absence after September 15, 1940, if he returned to an employment requisite for membership in this system prior to March 19, 1948, or after that date if he returned to such employment within six months after the termination of such service and prior to January 1, 1950."

1 Education Code Section 14050³⁶ required each employer to deduct the
2 contributions required by Section 14026 from the salary of members and to pay those
3 contributions to the system along with the contributions required by Section 14100.

4 Education Code Section 14052³⁷ required the member and employer
5 contributions to be due in the office of the system 20 calendar days immediately
6 following the period covered by the monthly report upon which the salary earned during
7 the period is being reported and from and upon which the contributions are due.

8 Education Code Section 14054³⁸ required the county superintendent of schools or
9 employing agency other than a school district or a county to make a report monthly to

³⁶ Education Code Section 14050, added by Chapter 742, Statutes of 1973:

"The governing board of each school district, the county superintendent of schools, the county auditor and any other employing department or agency shall deduct from the salary of employee members of this system the contributions required by Section 14026 and shall pay to the system those contributions plus the contributions required by Section 14100."

³⁷ Education Code Section 14052, added by Chapter 742, Statutes of 1973, Section 4:

"Member contributions required by Section 14026 and employer contributions required by Section 14100 are due and payable in the office of the system 20 calendar days immediately following the period covered by the monthly report upon which the salary earned during the period is being reported and from and upon which the contributions are due, and are delinquent 10 calendar days immediately thereafter."

³⁸ Education Code Section 14054, added by Chapter 742, Statutes of 1973:

"The county superintendent of schools or employing agency other than a school district or a county shall make a report monthly to the system containing such information as the board may require in the administration of the system."

1 the system containing such information as the board may require in the administration of
2 the system.

3 Education Code Section 14055³⁹ provided that monthly reports are due in the
4 office of the system 30 calendar days immediately following the month in which the
5 salary being reported was earned, and that monthly reports are delinquent 15 calendar
6 days immediately thereafter.

7 Education Code Section 14062⁴⁰ required, at any time upon the request of the
8 system, the employing agency to furnish a statement of the amount of contributions
9 deducted from salary payments of any member, the services performed and the salary
10 earned by him since the end of the period covered by the last report of the
11 superintendent or employer.

12 Article 14. Employer and State Contributions

³⁹ Education Code Section 14055, added by Chapter 742, Statutes of 1973:

"Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the salary being reported was earned, and are delinquent 15 calendar days immediately thereafter."

⁴⁰ Education Code Section 14062, added by Chapter 742, Statutes of 1973:

"At any time upon the request of the system, the employing agency shall furnish a statement of the amount of contributions deducted from salary payments of any member, the services performed and the salary earned by him since the end of the period covered by the last report of the superintendent or 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."

1 Education Code Section 14100⁴¹ required school districts and other employing
2 agencies in the state to contribute monthly to the Teachers' Retirement Fund in
3 specified percentages of total salaries. As of January 1, 1975 the specified percentage
4 was 4%.

5 Prior to January 1, 1975, there were no statutes, codes or regulations, which
6 required school districts, county offices of education or community colleges to give
7 employees retirement benefits for sick leave, vacations and other employer approved
8 leaves, for service performed in excess of full-time equivalents, for overtime or summer
9 school service, or for aggregate service performed as a member of the Defined Benefit
10 Program in excess of one year service credit for any one school year.

11 B. Legal Requirements After 1974

12 A. 1993 STATE TEACHERS' RETIREMENT LAW

⁴¹ Education Code Section 14100, added by Chapter 869, Statutes of 1969,
Section 2, as amended by Chapter 361, Statutes of 1972:

"The school district and other employing agencies in the state shall contribute
monthly to the Teachers' Retirement Fund the following percentages of the total of the
salaries upon which members' contributions are based:

- (a) For fiscal year ending June 30, 1973 3.2%
- (b) For fiscal year ending June 30, 1974 4%
- (c) For fiscal year ending June 30, 1975 4.8%
- (d) For fiscal year ending June 30, 1976 5.6%
- (e) For fiscal year ending June 30, 1977 6.4%
- (f) For fiscal year ending June 30, 1978 7.2%
- (g) For fiscal years after June 30, 1978 8%

In a local district only the salaries of those members who are not contributing to
the local system shall be included in the preceding computations of total contributions by
the district."

1 Chapter 893, Statutes of 1993 and Chapter 933, Statutes of 1994, recast and
2 recodified the State Teachers' Retirement Law. Section 1 of Chapter 893, Statutes of
3 1993, repealed former Part 13 (commencing with Education Code Section 22000).

4 Chapter 1. General Provisions

5 Chapter 1 is entitled "General Provisions". Section 22000⁴² requires the part to
6 be known as the State Teachers' Retirement Law. Section 22001⁴³ established the
7 State Teachers' Retirement System as a unit of the State and Consumer Services
8 Agency. Section 22002⁴⁴ requires both members and employing agencies to contribute

⁴² Education Code Section 22000, added by Chapter 893, Statutes of 1993, Section 2, as amended by Chapter 939, Statutes of 1999, Section 1:

"This part shall be known and cited as the E. Richard Barnes Act and together with Part 14 (commencing with Section 26000) shall be known as the Teachers' Retirement Law."

⁴³ Education Code Section 22001, added by Chapter 893, Statutes of 1993, Section 2:

"In order to provide a financially sound plan for the retirement, with 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. The system is a unit of the State and Consumer Services Agency."

⁴⁴ Education Code Section 22002, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 1; Chapter 482, Statutes of 1997, Section 1; as last amended by Chapter 965, Statutes of 1998, Section 1:

"The Legislature recognizes that the assets of the State Teachers' Retirement Plan with respect to the Defined Benefit Program are insufficient to meet the obligations of that program already accrued or to accrue in the future with respect to service credited to members of that program prior to July 1, 1972. Therefore, the Legislature

1 a percentage of the total creditable compensation on which member contributions are
2 based.

3 Chapter 2. Definitions

4 Chapter 893, Statutes of 1993, Section 2, enacted Chapter 2, (commencing with
5 Section 22100) and is entitled "Definitions".

6 Section 22109⁴⁵ defines "board" as the Teachers' Retirement Board.

7 Section 22110.1⁴⁶ defines "Cash Balance Benefit Program" as the benefit
8 program of the State Teachers' Retirement Plan as set forth in Part 14 (commencing
9 with Section 26000).

declares the following policies with respect to the financing of the Defined Benefit
Program of the State Teachers' Retirement Plan:

(a) Members shall contribute a percentage of creditable compensation, unless
otherwise specified by this part.

(b) Employers shall contribute a percentage of the total creditable compensation
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 under this part."

⁴⁵ Education Code Section 22109, added by Chapter 933, Statutes of 1994,
Section 3:

" "Board" means the Teachers' Retirement Board."

⁴⁶ Education Code Section 22110.1, added by Chapter 634, Statutes of 1996,
Section 6, as last amended by Chapter 1048, Statutes of 1998, Section 2:

" "Cash Balance Benefit Program" means the benefit program of the State
Teachers' Retirement Plan as set forth in Part 14 (commencing with Section 26000)."

1 Section 22115⁴⁷ defines "compensation earnable" as the annual creditable
2 compensation that a person would earn in a school year if he or she were employed on
3 a full-time basis and if that person worked full time in that position.

4 Section 22119.2⁴⁸ defines "creditable compensation."

⁴⁷ Education Code Section 22115, added by Chapter 933, Statutes of 1994, Section 5 (effective September 28, 1994), amended by Chapter 933, Statutes of 1994, Section 5.5 (operative January 1, 1995); Chapter 390, Statutes of 1995, Section 3; Chapter 634, Statutes of 1996, Section 8; Chapter 482, Statutes of 1997, Section 2; as last amended by Chapter 1021, Statutes of 2000, Section 3; operative July 1, 2002:

"(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) When service credit for a school year is less than 1.000, compensation earnable shall be the product obtained when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least .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. When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than .900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) The amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2003."

⁴⁸ Education Code Section 22119.2, added by Chapter 1165, Statutes of 1996, Section 7, amended by Chapter 482, Statutes of 1997, Section 3; Chapter 939, Statutes

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of 1999, Section 10; Chapter 1021, Statutes of 2000, Section 4; as last amended by Chapter 803, Statutes of 2001, Section 1; operative until July 1, 2002:

"(a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

(4) Member contributions picked up by an employer pursuant to Section 22903, or 22904.

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deduction for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to

Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) or Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose

1 Subdivision (a) defines "creditable compensation" as salary and other remuneration
2 payable in cash by an employer to a member for creditable service. Creditable
3 compensation shall include:

4 1. Money paid in accordance with a salary schedule based on years of
5 training and years of experience for creditable service performed up to and including the
6 full-time equivalent for the position in which the service is performed.

7 2. For members not paid according to a salary schedule, money paid for
8 creditable service performed up to and including the full-time equivalent for the position
9 in which the service is performed.

10 3. Money paid for the member's absence from performance of creditable
11 service as approved by the employer, except as provided in paragraph (7) of subdivision
12 (b). (infra)

13 4. Member contributions picked up by an employer pursuant to Section
14 22903 or 22904.

15 5. Amounts deducted by an employer from the member's salary, including
16 deductions for participation in a deferred compensation plan; deductions for the

of enhancing benefits:

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed."

1 purchase of annuity contracts, tax-deferred retirement plans, or other insurance
2 programs; and deductions for participation in a plan that meets the requirements of
3 Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

4 6. Money paid by an employer in addition to salary paid under paragraph (1)
5 or (2) if paid to all employees in a class in the same dollar amount, the same percentage
6 of salary, or the same percentage of the amount being distributed.

7 7. Any other payments the board determines to be "creditable compensation."

8 Subdivision (b) of Section 22119.2 excludes from creditable compensation:

9 1. Money paid for service performed in excess of the full-time equivalent for
10 the position.

11 2. Money paid for overtime or summer school service, or money paid for the
12 aggregate service performed as a member of this plan in excess of one year of service
13 credit for any one school year.

14 3. Money paid for service that is not creditable service as defined by Section
15 22119.5.

16 4. Money paid by an employer in addition to salary paid under paragraph (1)
17 or (2) if not paid to all employees in a class in the same dollar amount, the same
18 percentage of salary, or the same percentage of the amount being distributed.

19 5. Fringe benefits provided by an employer.

20 6. Job-related expenses paid or reimbursed by an employer.

21 7. Money paid for unused accumulated leave.

1 8. Compensatory damages or money paid to a member in excess of
2 creditable compensation as a compromise settlement or as severance pay.

3 9. Annuity contracts, tax-deferred retirement programs, or other insurance
4 programs, including, but not limited to, plans that meet the requirements of Section 125,
5 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an
6 employer for the member.

7 10. Any payments determined by the board to have been made by an
8 employer for the principal purpose of enhancing a member's benefits under the plan. An
9 increase in the salary of a member who is the only employee in a class pursuant to
10 subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of
11 compensation during the member's final compensation period shall be presumed to
12 have been granted for the principal purpose of enhancing benefits under the plan and
13 shall not be creditable compensation.

14 11. Any other payments the board determines not to be "creditable
15 compensation."

16 Chapter 1021, Statutes of 2000, Section 5, added Education Code Section
17 22119.2⁴⁹ which became effective on July 1, 2002.

⁴⁹ Education Code Section 22119.2, added by Chapter 1021, Statutes of 2000, Section 5; operative July 1, 2002:

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

(1) Salary paid in accordance with a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary, providing it is payable to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).

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

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

(6) Any other payments the board determines to be "creditable compensation."

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

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

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

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

(3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

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

(5) Annuity contracts, tax-deferred retirement plans, or insurance programs and contributions to plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code when the cost is covered

1
2 Subdivision (a) of new Section 22119.2 differs from former section 29119.2 in
3 that it expands the basic definition of "creditable compensation":

4 1. New subparagraph (1) adds salary paid in accordance with "employment

by an employer and is not deducted from the member's salary.

(6) Fringe benefits provided by an employer.

(7) Job-related expenses paid or reimbursed by an employer.

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

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

(d) An employer or individual who knowingly or willfully reports compensation in a
manner inconsistent with subdivision (a) or (c) shall reimburse the plan for benefit
overpayments that occur because of that inconsistent reporting and may be subject to
prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The
system may establish procedures to ensure that compensation reported by an employer
is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it
would be paid to any person who meets the qualifications or requirements specified in a
collective bargaining agreement or an employment agreement as a condition of
receiving the remuneration.

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

(g) The section shall become operative on July 1, 2002, if the revenue limit cost-
of-living adjustment computed by the Superintendent of Public Instruction for the 2001-
02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall
become operative on July 1, 2003."

1 agreements", in addition to those paid in accordance with a salary schedule and
2 omits the language based upon years of training and years of experience.

3 2. New subparagraph (2) restates the provisions of former subparagraph (6)
4 pertaining to remuneration that is paid in addition to salary to all persons in the
5 same class, in the same dollar amount, or percentage of salary.

6 3. New subparagraph (3) continues to include money paid during a member
7 approved absence and adds "sick leave, vacation and other employer-approved
8 leave."

9 4. New subparagraph (4) is the same as former subparagraph (4) relating to
10 contributions picked up by an employer.

11 5. New subparagraph (5) is the same as former subparagraph (5) relating to
12 amounts deducted from a member's compensation for deferred compensation
13 plans and retirement plans.

14 6. New subparagraph (6) is the same as former subparagraph (8) relating to
15 any other payments determined by the board to be creditable compensation.

16 Omitted in the new section is former subparagraph (2) pertaining to members not
17 paid according to a salary schedule and subparagraph (7) pertaining to money
18 paid for achieving certification from a national board.

19 Subdivision (b) of new Section 22119.2 is a major change in subparagraph (10)
20 of former subdivision (b). Under the prior provision, any payments determined by the
21 board to have been made by an employer for the principal purpose of enhancing a

1 member's benefits under the Defined Benefit Program was excluded from "creditable
2 compensation". Under new subdivision (b), any salary or other remuneration
3 determined by the board to have been paid for the principal purpose of enhancing a
4 member's benefits shall be credited to the Defined Benefit Supplement Program.⁵⁰

5 Former subdivision (b) is generally restated as new subdivision (c). The most
6 notable change is that money paid for service performed in excess of the full-time
7 equivalent for the position [former subparagraph (1)], money paid for overtime or
8 summer school service, or money paid for aggregate service performed as a member of
9 the Defined Benefit Program in excess of one year of service credit for any one school
10 year [former subparagraph (2)] are no longer excluded from "creditable compensation".

11 Section 22119.5⁵¹ defines "creditable service" as any of the activities specified in

⁵⁰ The Defined Benefit Supplement Program is found in Chapter 38 which was added by Chapter 74, Statutes of 2000, Section 69.

⁵¹ Education Code Section 22119.5, added by Chapter 394, Statutes of 1995, Section 1, operative August 1, 1995, amended by Chapter 592, Statutes of 1995, Section 1; Chapter 608, Statutes of 1996, Section 1; as last amended by Chapter 375, Statutes of 2002, Section 1:

(a) "Creditable service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

1 this section performed for an employer in a position requiring a credential, certificate, or
2 permit pursuant to this code or under the appropriate minimum standards adopted by
3 the Board of Governors of the California Community Colleges or under the provisions of
4 an approved charter for the operation of a charter school for which the employer is
5 eligible to receive state apportionment. Section 22119.5 also defines "creditable service"
6 to include the work of (1) instructors, district interns and academic employees employed
7 in instructional programs and prekindergarten programs, (2) education or vocational
8 counseling, guidance and placement services, (3) directors, coordinators and assistant

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section.

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.

(8) Services as a school librarian.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified."

1 administrators who plan courses of study or research connected with the evaluation or
2 efficiency of the instructional program, (4) the selection, demonstration or evaluation of
3 instructional materials of any course of study or other services related to school
4 curriculum, (5) the examination, selection, in-service training, or assignment of teachers,
5 principals or other similar personnel, (6) school activities related to, and an outgrowth of,
6 the instructional guidance program of the school, (7) the work of physicians, speech
7 therapists, psychologists, audiometrists, audiologists and other employees of the school
8 health program, (8) school librarians and (9) the work of county and district
9 superintendents and other employees who are responsible for the supervision of
10 persons or administration of the duties described.

11 Section 22121⁵² defines "credited service" as service for which the required
12 contributions have been paid.

13 Section 22122.5⁵³ defines "Defined Benefit Program" as the Defined Benefit
14 Program provided in the State Teachers' Retirement Plan.

⁵² Education Code Section 22121, added by Chapter 933, Statutes of 1994,
Section 3, as last amended by Chapter 965, Statutes of 1998, Section 4:

"Credited service" means service for which the required contributions have been
paid."

⁵³ Education Code Section 22122.5, added by Chapter 634, Statutes of 1996,
Section 13, as amended by Chapter 1048, Statutes of 1998, Section 3:

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

1 Section 22131⁵⁴ defines "employer" or "employing agency" as the state or any
2 agency or political subdivision thereof for which creditable service subject to coverage
3 by the plan is performed.

4 Section 22138.6⁵⁵ defines "full-time equivalent" as the days or hours of creditable
5 service that a person who is employed on a part-time basis would be required to perform
6 in a school year if he or she were employed full time in that part-time position.

7 Section 22146⁵⁶ defines a "member" to mean any person, unless excluded, who

⁵⁴ Education Code Section 22131, added by Chapter 933, Statutes of 1994, Section 3, as amended by Chapter 634, Statutes of 1996, Section 21:

" "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."

⁵⁵ Education Code Section 22138.6, added by Chapter 390, Statutes of 1995, Section 7, amended by Chapter 965, Statutes of 1998, Section 6; as last amended by Chapter 803, Statutes of 2001, Section 3:

" "Full-time equivalent" means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time in that part-time position."

⁵⁶ Education Code Section 22146, added by Chapter 592, Statutes of 1995, Section 3, amended by Chapter 634, Statutes of 1996, Section 26; Chapter 965, Statutes of 1998, Section 7; as last amended by Chapter 1025, Statutes of 2000, Section 5:

" "Member" means any persons, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 and has earned creditable compensation for that service and has not received a refund for that service and, as a result, is subject to the Defined Benefit Program. A member's rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any

1 has performed creditable service and has received compensation. Subdivisions (b), (c),
2 (d) and (e) add the definitions of an active member, an inactive member, a disabled
3 member and a retired member.

4 Section 22146.5⁵⁷ defines "membership" as membership in the Defined Benefit
5 Program, except as otherwise specifically provided.

6 Section 22151⁵⁸ defines "overtime" as the aggregate creditable service in excess

applicable exceptions under other provisions of this part.

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

(b) An inactive member is a member who is not retired or disabled and who has not earned creditable compensation during the school year immediately prior to and the school year during which the member retires for service.

(c) A disabled member is a member to whom a disability allowance is payable under Chapter 25 (commencing with Section 24001).

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable."

⁵⁷ Education Code Section 22146.5, added by Chapter 634, Statutes of 1996, Section 27, as amended by Chapter 965, Statutes of 1998, Section 8:

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

⁵⁸ Education Code Section 22151, added by Chapter 933, Statutes of 1994, Section 3, amended by Chapter 965, Statutes of 1998, Section 10; Chapter 1025, Statutes of 2000, Section 9; as last amended by Chapter 803, Statutes of 2001, Section 4:

" "Overtime" means the aggregate creditable service in excess of one year

1 of one year (1.000) of creditable service that is performed by a member in a school year.

2 Section 22161⁵⁹ defines "public school" as any day or evening elementary or
3 secondary school, community college, technical school, kindergarten or prekindergarten
4 school established by the Legislature, or by municipal or district authority.

5 Section 22170.5⁶⁰, subdivision (a), defines "sick leave days" as the number of
6 days of accumulated and unused leave of absence for illness or injury. Subdivision (c)
7 defines "excess sick leave days" as the day or total number of days, granted by an
8 employer in a pay period as defined in Section 22154 after June 30, 1986, for paid leave
9 of absence due to illness or injury, in excess of a basic sick leave day.

(1.000) of creditable service that is performed by a member in a school year."

⁵⁹ Education Code Section 22161, added by Chapter 933, Statutes of 1994,
Section 3, amended by Chapter 965, Statutes of 1998, Section 13, as last amended by
Chapter 939, Statutes of 1999, Section 21:

"Public school" means any day or evening elementary school, and day or
evening secondary school, community college, technical school, kindergarten school,
and prekindergarten school established by the Legislature, or by municipal or district
authority."

⁶⁰ Education Code Section 22170.5, added by Chapter 939, Statutes of 1999,
Section 23:

(a) "Sick leave days" means the number of days of accumulated and unused
leave of absence for illness or injury.

(b) "Basic sick leave day" means the equivalent of one day's paid leave of
absence per pay period due to illness or injury.

(c) "Excess sick leave days" means the day or total number of days, granted by
an employer in a pay period as defined in Section 22154 after June 30, 1986, for paid
leave of absence due to illness or injury, in excess of a basic sick leave day."

1 Chapter 9. Member and Employer Duties

2 Section 22455⁶¹ requires the county superintendent and other employing
3 agencies to furnish any further information concerning any member or beneficiary the
4 board may require.

5 Section 22455.5⁶², subdivision (b), requires employing agencies to make
6 membership criteria available, in a timely manner, to all certificated employees and to
7 inform part-time and substitute certificated employees within 30 days of hire date, that
8 they may elect membership in the system anytime while employed and required the

⁶¹ Education Code Section 22455, added by Chapter 893, Statutes of 1993,
Section 2:

"The county superintendent and other employing agencies shall furnish any
further information concerning any member or beneficiary the board may require."

⁶² Education Code Section 22455.5, added by Chapter 603, Statutes of 1994,
Section 1, amended by Chapter 634, Statutes of 1996, Section 98; as last amended by
Chapter 939, Statutes of 1999, Section 29:

"(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 Defined Benefit Program, 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's Defined Benefit Program 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 with respect to the Defined Benefit Program 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."

1 employer to maintain files containing written acknowledgment by the employees.

2 Section 22456⁶³ requires an employing agency, upon request of the system, to
3 furnish a statement of the account of contributions deducted from salary payments of
4 any member, the services performed and the salary earned by him or her since the end
5 of the period covered by the last report of the superintendent or employer.

6 Section 22457⁶⁴ requires each county superintendent to give immediate notice in
7 writing to the board of the employment, death, resignation, or discharge of any person

⁶³ Education Code Section 22456, added by Chapter 893, Statutes of 1993,
Section 2, amended by Chapter 634, Statutes of 1996; Section 99; as last amended by
Chapter 482, Statutes of 1997, Section 6:

"At any time upon the request of the system, the employing agency shall furnish a
statement of the amount of contributions deducted from salary payments of any
member, the services performed and the salary earned by him or her since the end of
the period covered by the last report of the superintendent or 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."

⁶⁴ Education Code Section 22457, added by Chapter 893, Statutes of 1993,
Section 2, amended by Chapter 634, Statutes of 1996, Section 100; as last amended by
Chapter 939, Statutes of 1999, Section 30:

"(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 Defined Benefit Program.

(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 Defined
Benefit Program."

1 employed by the county or by a school district or community college district in the county
2 to perform creditable service subject to coverage by the Defined Benefit Program.

3 Subdivision (b) requires every other employing agency to give similar notice with respect
4 to each person it employs to perform creditable service subject to coverage by the
5 Defined Benefit Program.

6 Section 22458⁶⁵ requires each employing agency to annually provide the system
7 with copies of documents respecting the compensation to be paid to employees in that
8 school year, including, but not limited to, employment contracts, salary schedules, and
9 local board minutes.

10 Section 22459⁶⁶ requires the county superintendent or other employing agency to

⁶⁵ Education Code Section 22458, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 101; as last amended by Chapter 939, Statutes of 1999, Section 31:

"Each employer shall provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program 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."

⁶⁶ Education Code Section 22459, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 102; as last amended by Chapter 939, Statutes of 1999, Section 32:

"(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 Defined Benefit Program, or to pay amounts due from the member to the fund with respect to the Defined Benefit Program.

(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

1 withhold the salary of any member who fails to file information required by the board in
2 the administration of the Defined Benefit Program, or to pay amount due from the
3 members to the fund with respect to the Defined Benefit Program.

4 Section 22460⁶⁷ requires employing school districts to notify all members who
5 terminate employment with less than five years of credited California service, as part of
6 other separation documents, that the only benefit for which they are eligible at any time
7 is the refund of accumulated contributions, the rate of interest that will be earned, and

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

⁶⁷ Education Code Section 22460, added by Chapter 1021, Statutes of 2000, Section 17:

"(a) If a member terminates employment with less than five years of credited service, the employer shall notify the member of the following:

(1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement pursuant to paragraph (2) of subdivision (a) of Section 24201, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the member's accumulated Defined Benefit Supplement account balance.

(2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.

(3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

(b) Employers shall transmit to a member who terminates employment with less than five years of credited service the information specified in subdivision (a) as part of the usual separation documents."

1 actions that may taken by the board if the contributions are not withdrawn.

2 Section 22461⁶⁸ requires a school district, a community college district and the
3 county superintendent of schools, upon the hiring of a retirant, to both (1) advise the
4 retirant of his or her earnings limitations and (2) maintain accurate records of the
5 retirant's earnings and to report those earnings monthly to the system and to the retirant.

6 Chapter 10. Membership

7 Section 22501⁶⁹ provides that any person employed to perform creditable service

⁶⁸ Education Code Section 22461, added by Chapter 893, Statutes of 1993,
Section 2, as amended by Chapter 634, Statutes of 1996, Section 104:

"(a) Upon retaining the services of a retired member under Section 24116, 24214,
or 24215, the 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."

⁶⁹ Education Code Section 22501, added by Chapter 634, Statutes of 1996,
Section 107, as amended by Chapter 965, Statutes of 1998, Section 46:

"(a) Any person employed to perform creditable service on a full-time basis who is
not already a member of the Defined Benefit Program under the plan shall become a
member as of the first day of employment, unless excluded from membership pursuant
to Section 22601.

1 on a full-time basis who is not already a member of the Defined Benefit Program under
2 the plan shall become a member as of the first day of employment, unless excluded
3 from membership pursuant to Section 22601.

4 Section 22502⁷⁰ provides that any person employed to perform creditable service
5 on a part-time basis who is not already a member of the Defined Benefit Program shall
6 become a member as of the first day of subsequent employment to perform creditable
7 service for 50 percent or more of the full-time equivalent for the position, unless
8 excluded from membership pursuant to Section 22601. Subdivision (c) provides that this
9 section is deemed to have become operative on July 1, 1996.

10 Section 22503⁷¹ provides that any person employed to perform creditable service

(b) Creditable service in more than one position shall not be aggregated for the
purpose of determining mandatory membership under this section.

(c) This section shall be deemed to have become operative on July 1, 1996."

⁷⁰ Education Code Section 22502, added by Chapter 965, Statutes of 1998,
Section 47, operative July 1, 1996, as amended by Chapter 939, Statutes of 1999,
Section 33:

"(a) Any person employed to perform creditable service on a part-time basis who
is not already a member of the Defined Benefit Program shall become a member as of
the first day of subsequent employment to perform creditable service for 50 percent or
more of the full-time equivalent for the position, unless excluded from membership
pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage
under this part and to persons who are employed by employers who provide benefits for
their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996."

⁷¹ Education Code Section 22503, added by Chapter 965, Statutes of 1998,
Section 48, operative July 1, 1996, as amended by Chapter 939, Statutes of 1999,
Section 34:

1 as a substitute teacher who is not already a member of the Defined Benefit Program
2 shall become a member as of the first day of the pay period following the pay period in
3 which the person performed 100 or more complete days of creditable service during the
4 school year in one school district, community college district, or county superintendent's
5 office, unless excluded from membership pursuant to Section 22601. Subdivision (b)
6 provides that this section shall not apply to persons who are employed by employers
7 who provide benefits for their employees under Part 14 (commencing with Section
8 26000). Subdivision (c) provides that this section is deemed to have become operative
9 on July 1, 1996.

10 Section 22504⁷² provides that any person employed to perform creditable service

"(a) Any person employed to perform creditable service as a substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996."

⁷² Education Code Section 22504, added by Chapter 965, Statutes of 1998, Section 49, operative July 1, 1996, as amended by Chapter 939, Statutes of 1999, Section 35:

"(a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

1 on a part-time basis who is not already a member of the Defined Benefit Program shall
2 become a member as of the first day of the pay period following the pay period in which
3 the person performed at least 60 hours of creditable service, if employed on an hourly
4 basis, or 10 days of creditable service, if employed on a daily basis, during the school
5 year, in one school district, community college district, or county superintendent's office,
6 unless excluded from membership pursuant to Section 22601. Subdivision (b) provides
7 that this section does not apply to persons who are employed by employers who provide
8 benefits for their employees under Part 14 (commencing with Section 26000).
9 Subdivision (c) provides that this section is deemed to have become operative on July 1,
10 1996.

Section 22508⁷³ provides that a member who becomes employed by the same or

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996."

⁷³ Education Code Section 22508, added by Chapter 383, Statutes of 1996, Section 3, amended by Chapter 965, Statutes of 1998, Section 50; Chapter 939, Statutes of 1999, Section 36; Chapter 880, Statutes of 2000, Section 1; Chapter 1025, Statutes of 2000, Section 18; as last amended by Chapter 77, Statutes of 2001, Section 1:

"(a) A member who becomes employed by the same or a different school district or community college district, or a county superintendent, or who becomes employed by the state in a position described in subdivision (b), to perform service that requires membership in a different public retirement system, and who is not excluded from membership in that public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service

1 a different school district or community college district, or a county superintendent, or
2 who is subsequently employed by the state in a position described in subdivision (b), to
3 perform service that requires membership in a different public retirement system, and
4 who is not excluded from membership in that public retirement system, may elect to
5 have that service subject to coverage by the Defined Benefit Program and excluded
6 from coverage by the other public retirement system. The election to become a member
7 of the Defined Benefit Program must be made in writing on a form prescribed by this

performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) Subdivision (a) shall apply to a member who becomes employed by the state only if the member is also one of the following:

(1) Represented by a state bargaining unit that represents educational consultants, professional educators, or librarians employed by the state.

(2) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(3) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(c) (1) A member of the Public Employees' Retirement System described in paragraph (2) who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that subsequent service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program pursuant to Section 20309 of the Government Code. If the election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

(2) This subdivision shall apply to a member of the Public Employees' Retirement System who either (A) is employed by a school district, community college district, a county superintendent, or the State Department of Education or (B) has at least five years of credited service under the system.

(d) An election made by a member pursuant to this section shall be irrevocable."

1 system within 60 days from the date of hire in the position requiring membership in the
2 other public retirement system. Subdivision (a) further provides that if the election is
3 made, the service performed for the employer after the date of hire shall be considered
4 creditable service for the purposes of this part. Persons who become employed by the
5 state in a position described in subdivision (b) of this section to perform services that
6 require membership in a different public retirement system, may elect to have that
7 service subject to coverage by the Defined Benefit Program and excluded from
8 coverage by the other retirement system. Subdivision (b) sets forth the positions in
9 which persons must be employed in order to qualify under subdivision (a). These
10 position include positions which are represented by a state bargaining unit that
11 represents educational consultants, professional educators, or librarians; persons who
12 are excluded from the definition of "state employee" in subdivision (c) of Section 3513 of
13 the Government Code, but performing, supervising, or managing work similar to work
14 performed by employees described in paragraph (1) of subdivision (b); positions not
15 covered by civil service and in the executive branch of government, but performing,
16 supervising, or managing work similar to work performed by employees described in
17 paragraph (1) of subdivision (b). Subdivision (c) provides that members of the Public
18 Employees' Retirement System described in paragraph (2) who are subsequently
19 employed to perform creditable service subject to coverage by the Defined Benefit
20 Program may elect to have that subsequent service subject to coverage by the Public
21 Employees' Retirement System and excluded from coverage by the Defined Benefit

1 Program pursuant to Section 20309 of the Government Code. Subdivision (c) further
2 provides that if the election is made, creditable service performed for the employer after
3 the date of hire shall be subject to coverage by the Public Employees' Retirement
4 System. Subparagraph (2) of subdivision (c) provides that subdivision (c) shall also
5 apply to a member of the Public Employees' Retirement System who has at least five
6 years of credited service under the system.

7 Section 22508.5⁷⁴ provides that members of the Defined Benefit Program
8 employed by a community college district who subsequently are employed by the Board
9 of Governors of the California Community Colleges to perform duties that are subject to

⁷⁴ Education Code Section 22508.5, added by Chapter 838, Statutes of 1997, Section 1, amended by Chapter 965, Statutes of 1998, Section 51; as last amended by Chapter 939, Statutes of 1999, Section 37:

"(a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement Plan employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that are subject to membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the Defined Benefit Program. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the program.

(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage under the Defined Benefit Program, may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage under the Defined Benefit Program pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998."

1 membership in a different public retirement system are excluded from membership in
2 that system if the member elects, in writing, and files that election in the office of the
3 State Teachers' Retirement System within 60 days after the person's entry into the new
4 position, to continue as a member of the Defined Benefit Program. Subdivision (b)
5 provides that a member of the Public Employees' Retirement System who is employed
6 by the Board of Governors of the California Community Colleges who is subsequently
7 employed by a community college district to perform creditable service subject to
8 coverage under the Defined Benefit Program, may elect to have that service subject to
9 coverage by the Public Employees' Retirement System and excluded from coverage
10 under the Defined Benefit Program.

Section 22508.6⁷⁵, subdivision (a), allows any person who is a member of the

⁷⁵ Education Code Section 22508.6, added by Chapter 402, Statutes of 2000, Section 2, effective September 11, 2000:

"(a) Any person who is a member of the Defined Benefit Program and who subsequently became employed and continues to be employed by the state to perform service that requires membership in the Public Employees' Retirement System and who meets the requirements of subdivision (b) may elect to have that state service subject to coverage by the Defined Benefit Program and excluded from coverage by the Public Employees' Retirement System.

(b) (1) Only a person who has achieved program vesting shall be eligible to make the election under this section.

(2) A person is eligible to make the election if he or she left employment with a school district, county superintendent of schools, or community college district and began employment with the state within 30 days without any intervening employment and that change in employment occurred on or after July 1, 1991, and prior to the effective date of this section.

(3) A person is eligible to make the election if, at the time of the election, he or she is a member of the Public Employees' Retirement System subject to

1 Defined Benefit Program and who subsequently became employed, and continues to be
2 employed, by the state to perform service that requires membership in the Public
3 Employees' Retirement System, and who meets the requirement of subdivision (b), to
4 elect to have that service subject to coverage by the Defined Benefit Program and
5 excluded from coverage by the Public Employees' Retirement System. Subdivision (b)
6 sets forth the requirements which must be met in order for any person described in
7 subdivision (a) to be eligible to make the election under this section.

8 Section 22509⁷⁶, subdivision (a), requires employers to inform employees of the

Second Tier benefits and is one of the following:

(A) Represented by a State Bargaining Unit that has agreed by a memorandum of understanding to become subject to Section 20309.5 of the Government Code.

(B) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in subparagraph (A).

(C) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in subparagraph (A).

(c) The election under this section shall be made in writing to each system within 90 days after the effective date of this section or within 60 days after the eligible member is notified by the system of his or her right to make the election, whichever is later. The member's election shall be effective on the day following the date on which the election is received by the Public Employees' Retirement System.

(d) If the election is made, the state service performed from and after the date of the election shall be considered creditable service for purposes of this part and the provisions of Section 22801.5 shall be applicable with respect to service performed prior to that date."

⁷⁶ Education Code Section 22509, added by Chapter 383, Statutes of 1996, Section 5, as amended by Chapter 838, Statutes of 1997, Section 2:

1 right to make an election pursuant to Section 22508 and to make available to the
2 employee written information provided by the retirement systems to assist the employee
3 in making an election.

4 Section 22515⁷⁷ provides that persons excluded from membership by Sections
5 22601.5 (employment basis of less than 50 percent full-time equivalent for position),
6 22602 (persons employed on a substitute basis) and 22604 (persons employed on a

“(a) Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election.

“(b) Any election made pursuant to subdivision (a) of Section 22508 or subdivision (a) of Section 22508.5 shall be filed with the office of the State Teachers' Retirement System and a copy of the election shall be filed with the other public retirement system. Any election made pursuant to subdivision (b) of Section 22508 or subdivision (b) of Section 22508.5 shall be filed with the office of the Public Employees' Retirement System and a copy of the election shall be filed with the office of this system.

“(c) Any election made pursuant to Section 22508 or Section 22508.5 shall become effective as of the first day of employment in the position that qualified the employee to make an election.”

⁷⁷ Education Code Section 22515, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 507, Statutes of 1994, Section 2; Chapter 634, Statutes of 1996, Section 112; Chapter 965, Statutes of 1998, Section 53; as last amended by Chapter 375, Statutes of 2002, Section 4:

“Persons excluded from membership pursuant to Sections 22601.5, 22602, and 22604 may elect membership in the Defined Benefit Program at any time while employed to perform creditable service subject to coverage under that program. The election shall be in writing on a form prescribed by this system 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.”

1 part-time basis) may elect membership at any time while employed to perform creditable
2 service subject to coverage under Defined Benefit Program.

3 Chapter 11. Exclusions From Membership

4 Section 22601⁷⁸ excludes from membership persons serving as exchange
5 teachers or sojourn teachers from outside of this state.

6 Section 22601.5⁷⁹ excludes from mandatory membership persons who are not
7 already members of the plan who are employed to perform creditable service and whose
8 basis of employment is less than 50 percent of the full-time equivalent for the position.

9 Subdivision (c) provides that this section is deemed to have become operative on July 1,
10 1996.

⁷⁸ Education Code Section 22601, added by Chapter 893, Statutes of 1993, Section 2, as amended by Chapter 634, Statutes of 1996, Section 114:

"Persons serving as exchange teachers or sojourn teachers from outside of this state are excluded from membership in the plan."

⁷⁹ Education Code Section 22601.5, added by Chapter 634, Statutes of 1996, Section 115, amended by Chapter 965, Statutes of 1998, Section 56; as last amended by Chapter 939, Statutes of 1999, Section 40:

"(a) Any person employed to perform creditable service who is not already a member in the Defined Benefit Program and whose basis of employment is less than 50 percent of the full-time equivalent for the position is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996."

1 Section 22602⁸⁰ excludes from mandatory membership any person employed to
2 perform creditable service as a substitute teacher who is not already a member in the
3 Defined Benefit Program and who performs less than 100 complete days of creditable
4 service in one school district, community college district, or county superintendent's
5 office during the school year.

6 Section 22604⁸¹ excludes from mandatory membership any person employed to

⁸⁰ Education Code Section 22602, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 592, Statutes of 1995, Section 9; Chapter 634, Statutes of 1996, Section 116; Chapter 965, Statutes of 1998, Section 57; as last amended by Chapter 939, Statutes of 1999, Section 41:

"(a) Any person employed to perform creditable service as a substitute teacher who is not already a member in the Defined Benefit Program and who performs less than 100 complete days of creditable service in one school district, community college district, or county superintendent's office during the school year is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who perform service for employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996."

⁸¹ Education Code Section 22604, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 592, Statutes of 1995, Section 11; Chapter 634, Statutes of 1996, Section 117; Chapter 965, Statutes of 1998, Section 58; as last amended by Chapter 939, Statutes of 1999, Section 42:

"(a) Any person employed to perform creditable service on a part-time basis who is not already a member in the Defined Benefit Program and who performs less than 60 hours of creditable service in a 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, during the school year in one school district, community college district, or county superintendent's office is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who are employed by employers who

1 perform creditable service on a part-time basis who is not already a member in the
2 Defined Benefit Program and who performs less than 60 hours of creditable service in a
3 pay period if employed on an hourly basis, or less than 10 days of creditable service in a
4 pay period if employed on a daily basis, during the school year in one school district,
5 community college district, or county superintendent's office.

6 Chapter 13. Service Credit

7 Section 22709⁸² provides that a member shall receive credit for time during which
8 he or she was prevented from performing creditable service by act of God or by reason
9 of the closing of a school by any authorized officer or body.

provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996."

⁸² Education Code Section 22709, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 133.5; as last amended by Chapter 965, Statutes of 1998, Section 80:

"A member shall receive credit under this part for time during which the member is prevented from performing creditable service subject to coverage under the Defined Benefit Program, 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 under the Defined Benefit Program, the system shall give the member four years of service credit under this part."

1 Section 22710⁸³ provides that service shall be credited upon payment of
2 employee and district contributions for time during which a member is excused from
3 performance of duties and for which the member receives worker's compensation, or
4 compensation from an insurer, due to injury or illness arising out of and in the course of
5 the member's employment.

6 Section 22711⁸⁴ provides that a member shall receive full credit for time during

⁸³ Education Code Section 22710, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 482, Statutes of 1997, Section 8; as last amended by Chapter 965, Statutes of 1998, Section 81:

"(a) Service shall be credited under this part, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of creditable service and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the creditable compensation paid to the member bears to the compensation earnable by the member.

(b) The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of absence specified in subdivision (a)."

⁸⁴ Education Code Section 22711, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 134; as last amended by Chapter 965, Statutes of 1998, Section 83:

"(a) A member under this part shall be granted service 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 under this Defined Benefit Program in the month prior to commencement of the leave of absence.

1 which a member serves as an elected officer in an employee organization while on a
2 compensated leave of absence provided the member was employed and performed
3 creditable service subject to coverage under this plan in the month prior to
4 commencement of the leave of absence, and both the member and the employer district
5 contribute to the Teachers' Retirement Fund based upon the salary that would have
6 been paid to the member had he or she been employed full time. Subdivision (b)
7 provides that the maximum amount of credit under this section is 12 calendar years.

8 Section 22712⁸⁵ provides that a member shall receive credit for time served as an
9 exchange teacher in any location.

(2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(3) The member's employer contributes to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(b) The maximum period of time during which a member may serve as an elected officer and receive service credit pursuant to this section shall not exceed 12 calendar years."

⁸⁵ Education Code Section 22712, added by Chapter 893, Statutes of 1993, Section 2, as amended by Chapter 965, Statutes of 1998, Section 83:

"A member under this part shall receive credit for time served as an exchange teacher in any location."

1 Section 22712.5⁸⁶ continues to credit service by members employed by school
2 districts, community college districts, or superintendent of schools who received credit
3 during the school year ending June 30, 1996, for continued service performed as a
4 community service teacher or in a classified position that does not qualify for
5 membership in the Public Employees' Retirement System.

6 Section 22713⁸⁷ provides that the governing board of a school district or

⁸⁶ Education Code Section 22712.5, added by Chapter 634, Statutes of 1996,
Section 135, as amended by Chapter 965, Statutes of 1998, Section 84:

"All members under this part who are employed by a school district, community college district, or superintendent of schools and 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."

⁸⁷ Education Code Section 22713, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 136; Chapter 482, Statutes of 1997, Section 9; Chapter 965, Statutes of 1998, Section 85; Chapter 939, Statutes of 1999, Section 44; Chapter 1025, Statutes of 2000, Section 20; as last amended by Chapter 375, Statutes of 2002, Section 7:

"(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 of the Defined Benefit Program 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, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but may 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 may be revoked only with the mutual consent of the

1 community college or a county superintendent of schools may establish regulations that

employer and the member.

(2) The member shall have been employed full time to perform creditable service subject to coverage under the Defined Benefit Program for at least 10 years including five years of full-time employment immediately preceding the reduction in workload and have a minimum of 10 years of credited service.

(3) The member may 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 may not constitute a break in service. For purposes of this subdivision, the period of time during which a member is retired for service shall constitute a break in service and a member who reinstates from retirement shall be required to perform at least five years of full-time creditable service immediately preceding the reduction in workload.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations may not exceed 10 years.

(6) The reduced workload shall be equal to at least 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 creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced 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 make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section."

1 allow an employee to reduce his or her workload from full-time to part-time and receive
2 the service credit the member would receive had the member been employed on a full-
3 time basis. Subdivision (c) requires district personnel, in conjunction with the
4 administrative staff of the State Teachers' Retirement System, to verify the eligibility of
5 the applicant prior to the reduction of his or her workload. Subdivision (e) requires the
6 school district employer to contribute to the Teachers' Retirement Fund an amount
7 based upon the salary that would have been paid to the member had the member been
8 employed full-time. Subdivision (f) requires the district employer to maintain the
9 necessary records to separately identify each member receiving credit pursuant to this
section.

11 Section 22714⁸⁸ requires an additional two years of service be credited to a

⁸⁸ Education Code Section 22714, added by Chapter 20, Statutes of 1994, Section 2, amended by Chapter 634, Statutes of 1996, Section 137; Chapter 965, Statutes of 1998, Section 36; as last amended by Chapter 939, Statutes of 1999, Section 45:

"(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 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 credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

1

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) 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.

(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 pursuant to 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 service credit pursuant to this section and the amount the member would have received without the 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 Section 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 subparagraph (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 costs to 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 subparagraph (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 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 of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates 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

1 member whenever the governing board of a school district, community college district,
2 or county office of education determines, by formal action prior to January 1, 1999, that
3 it is in its best interest to encourage the retirement of certificated or academic
4 employees and that the retirement will satisfy specified criteria, including a reduction of
5 the number of certificated employees or academic employees as a result of declining
6 enrollment, or, result in the retention of certificated employees who are credentialed to
7 teach in, or faculty who are qualified to teach in, teacher shortage disciplines.

8 Subdivision (b)(1) requires school districts to demonstrate and certify to the county
9 superintendent that any formal action taken to encourage retirement will meet the
10 criteria specified. Paragraph (2) of subdivision (b) requires the county superintendent to
11 certify to the Teachers' Retirement Board that the action will meet the required criteria.

12 Subdivision (b)(3) requires school districts to reimburse the county superintendent for all
13 the costs of the county superintendent that result from the required certification.

14 Subdivision (c)(1) requires a county office of education to demonstrate and certify to the
15 Superintendent of Public Instruction that the formal action will meet specified criteria,
16 including a reduction of the number of certificated employees as a result of declining
17 enrollment, or, the retention of certificated employees who are credentialed to teach in
18 teacher shortage disciplines. Subdivision (c)(2) requires the Superintendent to certify to
19 the Teachers' Retirement Board that the specified result can be demonstrated.

effective date of the formal action, or if the member is not otherwise eligible to retire for
service."

1 Subdivision (c)(3) requires a county office of education to reimburse the Superintendent
2 of Public Instruction for all administrative costs of certification, when requested.

3 Subdivision (d)(1) requires a community college district to demonstrate and certify to the
4 chancellor's office that the formal action will meet specified criteria, including a reduction
5 in the number of academic employees as a result of declining enrollment, or, the
6 retention of faculty who are qualified to teach in teacher shortage disciplines.

7 Subdivision (d)(2) requires the chancellor to certify to the Teachers' Retirement Board
8 that the specified result can be demonstrated. Subdivision (d)(3) requires the community

9 college district to reimburse the chancellor for all administrative costs of certification,
when requested. In each instance, the employer is required to contribute into the

11 Teachers' Retirement Fund the actuarial equivalent of the difference between the
12 members' allowance after early retirement and the amount the member would have
13 received without the service credit.

14 Section 22717⁸⁹ provides that a member shall be credited at retirement for

⁸⁹ Education Code Section 22717, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 140; Chapter 1006, Statutes of 1998, Section 2; as last amended by Chapter 939, Statutes of 1999, Section 46.

"(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 Defined-Benefit Program.

(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

1 each day of accumulated and unused leave of absence for illness or injury for which full
2 salary is allowed and for which the member was entitled. Subdivision (c) requires the
3 school district to certify to the board, within 30 days following the effective date of
4 retirement, the number of days of accumulated and unused leave of absence for illness
5 or injury to which the employee is entitled on the final day of employment. Subdivision
6 (d) states that this section shall not be applicable to any person who became a member
7 of the system on or after July 1, 1980.

8 Section 22717.5⁹⁰ requires that members be credited at service retirement for 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 Defined Benefit Program, which shall not be less than the minimum standard specified in Section 22138.5. The number of days shall not include school and legal holidays. In no event shall the divisor be less than 175. For members employed less than full time, the standards identified in Section 22138.5 shall be considered as the minimum full-time equivalent. For those standards identified in Section 22138.5 that are applicable to teachers or instructors and that are expressed only in terms of hours or instructional hours, the number of hours or instructional hours shall be divided by six to determine the number of days.

(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 be applicable to any person who retires on or after January 1, 1999."

⁹⁰ Education Code Section 22717.5, added by Chapter 402, Statutes of 2000, Section 3:

"(a) A member shall be credited at service retirement for each day of accumulated and unused leave of absence for education for which full salary is allowed on the member's final day of employment with the state.

1 number of days of accumulated and unused leave of absence for education for which
2 full salary is allowed on the member's final day of employment. Subdivision (c) requires
3 the employer to certify to the board, within 30 days following the effective date of the
4 member's service retirement, the number of days of accumulated and unused leave of
5 absence for education that the member was entitled to on the final day of employment.

6 Section 22718⁹¹ requires the Teachers' Retirement Board to establish rules and

(b) The amount of service credit to be granted shall be 0.004 years of service for each unused day of educational leave credit.

(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 education 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 apply to eligible state employees in state bargaining units that have agreed to this section in a memorandum of understanding, or as authorized by the Director of the Department of Personnel Administration for classifications of state employees that are excluded from the definition of "state employee" by paragraph (c) of Section 3513 of the Government Code.

(e) The provisions of this section shall be effective for eligible members who retire directly from state employment on or after January 1, 2000."

⁹¹ Education Code Section 22718, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 141; Chapter 965, Statutes of 1998, Section 89; as last amended by Chapter 939, Statutes of 1999, Section 47:

"(a) The Teachers' Retirement Board shall bill school employers for service credit granted for unused excess sick leave under this part, subject to the following provisions:

(1) (A) In addition to the certification of sick leave days, the employer shall also certify the number of unused excess sick leave days.

(B) Excess sick leave days granted by an employer other than the member's last employer shall be deemed to be granted by the last employer and shall be included in the certification if the member was

1 regulations for the purpose of billing school district employers for the service credit
2 awarded for sick leave greater than one day per pay period of at least four weeks that is
3 granted to members of the State Teachers' Retirement System. Subdivision (a)(1)
4 requires the employer to certify the number of unused excess sick leave days in addition
5 to the certification of sick leave days, including excess sick leave days granted by an

eligible to use those excess sick leave days while he or she was employed
by the last employer.

(2) 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
Defined Benefit Program.

(3) The employer shall be billed only for the present value of the unused
excess sick leave days and any subsequent adjustments to the billing shall be
billed or refunded, as appropriate, to the employer.

(4) (A) The employer shall remit the amount billed to the system with
the certification required by Section 22717 within 30 days after the
effective date of the member's retirement or within 30 days after the date
the system has notified the employer that a certification must be made,
whichever is later.

(B) If payment is not received within 30 days, the present value
shall be recalculated to include regular interest from the due date to the
date full payment is received.

(C) If the system has billed the employer for an additional amount,
the employer shall remit the additional amount within 30 days after the
date of the billing. If payment is not received for the additional amount
within 30 days, the present value shall be recalculated to include regular
interest from the due date to the date full payment is received.

(b) If a school employer fails to pay a bill charged according 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."

1 employer other than the member's last employer which shall be deemed to be granted
2 by the last employer if the member was eligible to use those excess sick leave days
3 while he or she was employed by the last employer. Subdivision (a)(4) requires
4 employers to remit the amount billed to the system with the certification required within
5 30 days after the effective date of the member's retirement or within 30 days after the
6 date the system has notified the employer that a certification must be made, whichever
7 is later.

8 Section 22724⁹² sets forth the formula for determining the number of excess sick
9 leave days to which a member is entitled at retirement. Subdivision (b) requires the
employer to submit sick leave records of past years at the request of the board.

11 Chapter 14. Permissive and Additional Service Credit

⁹² Education Code Section 22724, added by Chapter 939, Statutes of 1999,
Section 48:

"(a) To determine the number of excess sick leave days to which a member is entitled when he or she retires, the employer shall deduct the days of sick leave used by the member from the member's accumulated and unused sick leave balance according to the following method:

(1) Sick leave usage shall first be deducted from the accumulated and unused sick leave balance existing on July 1, 1986.

(2) Sick leave usage shall next be deducted from basic sick leave days granted to the member by an employer after June 30, 1986.

(3) Sick leave usage shall then be deducted from any excess sick leave days granted to the member by an employer after June 30, 1986.

(b) Upon request from the board, the employer shall submit sick leave records of past years for audit purposes."

1 Section 22800⁹³ requires claims for creditable service to be corroborated by a
2 statement from the superintendent of schools or custodian of records of the employing
3 agency or public school where the service was performed. Subdivision (b) requires
4 claims for creditable service performed outside the United States or in federal schools
5 within the United States to be corroborated by a statement from the custodian of
6 records. Subdivision (c) provides that if the official records of the service have been
7 destroyed, the claim may be corroborated by one or more affidavits of knowledge of the
8 service, preferably by persons who served with the member at the time the service was
9 performed.

10 Section 22801⁹⁴ provides that a member who elects to receive additional service

⁹³ Education Code Section 22800, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 933, Statutes of 1994, Section 42; Chapter 634, Statutes of 1996, Section 145; as last amended by Chapter 965, Statutes of 1998, Section 91;

"(a) Claims for permissive and additional service credit under this part 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 under this part 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."

⁹⁴ Education Code Section 22801, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 146; Chapter 838, Statutes of 1997, Section 3; Chapter 1076, Statutes of 1998, Section 5; as last amended by Chapter 939, Statutes of 1999, Section 49;

credit shall pay, prior to retirement, all contributions with respect to that service.

"(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, adopted by the board as a plan amendment, in effect at the time of election. If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(b) If the member is employed to perform creditable service subject to coverage by the Defined Benefit Program 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 Defined Benefit Program 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) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) 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.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments. Regular interest shall not be charged or be payable for the period of a delay caused by the system's inability or failure to determine and inform the member or beneficiary of the amount of contributions and interest that is payable. The period of delay shall commence on the 20th day following the day on which the member or beneficiary who wishes to make payment evidences in writing to the system that he or she is ready, willing, and able to make payment to the system. The period of delay shall cease on the first day of the month following the mailing of notification of contributions and interest payable."

1 Subdivision (d) provides that the employer may pay the amount required as employer
2 contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of
3 subdivision (a) of Section 22803.

4 Section 22801.5⁹⁵ provides that a member who elects to have his or her service
5 subject to coverage by the Defined Benefit Program shall receive additional service

⁹⁵ Education Code Section 22801.5, added by Chapter 402, Statutes of 2000,
Section 4:

"(a) A member who elects pursuant to Section 22508.6 to have his or her state service subject to coverage by the Defined Benefit Program shall receive additional service credit for the time spent subject to coverage by the Public Employees' Retirement System between July 1, 1991, and the effective date of the election.

(b) A member described in subdivision (a) shall pay all contributions with respect to his or her state service as a member of the Public Employees' Retirement System at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of the election. Contributions shall be made in a lump sum or in not more than 120 monthly installments. Payment shall be made or shall commence within 120 days after the date of the election. No installment, except the final installment, shall be less than twenty-five dollars (\$25). The member shall not be credited with any service pursuant to this section until the contributions have been paid in full.

(c) If the member is employed to perform creditable service 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.

(d) If the member is not employed to perform creditable service 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.

(e) The total amount of contributions due from the member under subdivision (b) shall be reduced by the amount received from the Public Employees' Retirement System pursuant to Section 20309.5 of the Government Code. Under no circumstances shall the assets received from the Public Employees' Retirement System, pursuant to that section, be allocated or awarded to individual members or their spouses or beneficiaries."

1 credit for the time spent subject to coverage by the Public Employees' Retirement
2 System between July 1, 1991, and the effective date of the election. Subdivision (b)
3 provides that a member described in subdivision (a) is required to pay all contributions
4 with respect to his or her state service as a member of the Public Employees'
5 Retirement System at the contribution rate for additional service credit.

6 Section 22802⁹⁶ provides that a member who was previously excluded from

⁹⁶ Education Code Section 22802, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 147; Chapter 965, Statutes of 1998, Section 92, Chapter 1020, Statutes of 2000, Section 4; as last amended by Chapter 802, Statutes of 2001, Section 5:

“(a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

- (1) Service as a substitute excluded under Section 22602.
- (2) Creditable service subject to coverage under the Cash Balance Benefit Program, excluding service credited pursuant to Section 26402, if the member has terminated all service subject to coverage under the Cash Balance Benefit Program. Upon electing to receive credit under this paragraph, the member shall cease to be eligible for a benefit for the same service or time previously credited under the Cash Balance Benefit Program pursuant to Part 14 (commencing with Section 26000).
- (3) Service performed on a part-time basis excluded under Section 22601.5 or Section 22604, other than service credited under paragraph (2).
- (4) Adult education service excluded under Section 22603, as it read on December 31, 1995.
- (5) Service as a school nurse excluded under Section 22606, as it read on December 31, 1995.
- (6) Service performed in a position prior to the date the position was made subject to coverage under the Defined Benefit Program.
- (7) Service subject to coverage under the Defined Benefit Program 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

1 membership in the Defined Benefit Program; may elect to receive credit for: (1) service
2 as a substitute excluded under Section 22602; (2) creditable service subject to coverage
3 under the Cash Balance Benefit Program, if the member has terminated all service
4 subject to coverage under the Cash Balance Benefit Program; (3) service performed on
5 a part-time basis excluded under Section 22601.5 or Section 22604, other than service
6 credited under paragraph (2); (4) adult education service excluded under Section 22603,
7 as it read on December 31, 1995; (5) service as a school nurse excluded under Section
8 22606, as it read on December 31, 1995; (6) service performed in a position prior to the
9 date the position was made subject to coverage under the Defined Benefit Program; and
10 (7) service subject to coverage under the Defined Benefit Program performed while a
11 member of another California public retirement system, provided the member has
12 ceased to be a member of, and has ceased to be entitled to benefits from, the other
13 retirement system. Subdivision (b) provides that a member who elects to receive credit
14 under this part for service performed while excluded from membership under the

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 under this part for service performed
while excluded from membership under the Defined Benefit Program shall pay all of the
required contributions for all or the portion of that service for which the member elects to
receive credit.

(c) A member may not elect to receive credit for service or time described in
paragraphs (1) and (3) to (7), inclusive, of subdivision (a) if, after the election, the
member would continue to receive credit for the same service or time in the Cash
Balance Benefit Program under Part 14 (commencing with Section 26000) or another
retirement system."

1 Defined Benefit Program is required to pay all of the required contributions for all or the
2 portion of that service for which the member elects to receive credit.

3 Section 22803⁹⁷ provides that a member may elect to receive credit for any of the

⁹⁷ Education Code Section 22803, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 933, Statutes of 1994, Section 43; Chapter 634, Statutes of 1996, Section 148; Chapter 838, Statutes of 1997, Section 4; Chapter 1076, Statutes of 1998, Section 6; as last amended by Chapter 939, Statutes of 1999, Section 50:

"(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 under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program 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

1 following: (1) service in a certificated teaching position in a publicly supported and
2 administered university or college in this state; (2) service in a certificated teaching
3 position in a child care center operated by a county superintendent or a school district in
4 this state; (3) service in a teaching position in the California School for the Deaf or the
5 California School for the Blind, or in special classes maintained by the public schools of
6 this state for the instruction of the deaf, the hard of hearing, the blind, or the
7 semisighted; (4) service in a certificated teaching position in a federally supported and
8 administered Indian school in this state; (5) time served, not to exceed two years, in a
9 certificated teaching position in a job corps center administered by the United States in
10 this state; (6) time spent on a sabbatical leave after July 1, 1956; (7) time spent on an
11 approved leave to participate in any program under the federal Mutual Educational and
12 Cultural Exchange Program; (8) time spent on an approved maternity or paternity leave
13 of two years or less in duration; (9) time spent on an approved leave, up to four months
14 in any 12-month period, for family care leave purposes; and (10) time spent employed by

maternity and paternity leave.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), 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 Benefit Program under Part 14 (commencing with Section 26000) or another retirement system."

1 the Board of Governors of the California Community Colleges in a position subject to
2 coverage by the Public Employees' Retirement System between July 1, 1991, and
3 December 31, 1997, provided the member has elected to return to coverage under the
4 State Teachers' Retirement System pursuant to Government Code Section 20309.

5 Chapter 14.5. Military Service

6 Section 22850⁹⁸ sets forth the legislative intent of providing retirement benefits to

⁹⁸ Education Code Section 22850, added by Chapter 680, Statutes of 1996,
Section 2, as amended by Chapter 965, Statutes of 1998, Section 101:

"(a) The Legislature hereby declares its intent to provide benefits under this part to reemployed members who have been absent from a position of employment subject to coverage under the Defined Benefit Program to perform service in the uniformed services of the United States in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code).

(b) The system shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training; and a period for which a member is absent from a position of employment for the purpose of an examination to determine the fitness of the member to perform any duty.

(d) "Uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) Except as provided in Section 22851, no benefit shall accrue during the period of service in the uniformed services if the member does not return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code."

1 reemployed members who have been absent to serve in the uniformed services of the
2 United States.

3 Section 22851⁹⁹ provides that each eligible period of service served in the

⁹⁹ Education Code Section 22851, added by Chapter 680, Statutes of 1996, Section 2, as amended by Chapter 965, Statutes of 1998, Section 102:

"The right to pension benefits under this part of a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, and is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be determined under this section.

(a)(1) A member shall be treated as not having incurred a break in service by reason of that member's eligible period or periods of service in the uniformed services.

(2) Each eligible period of service served by a member in the uniformed services shall, upon return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, be deemed to constitute service with the employer or employers toward plan vesting and eligibility for membership in the Defined Benefit Program.

(3) A member who returns to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall not be entitled to any benefits under this part in respect of service in the uniformed services to which the member would not otherwise have been entitled had the member remained continuously employed and not undertaken such service in the uniformed services.

(b) For purposes of calculating benefits, a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall be entitled to service credit under this part for the eligible period of service in the uniformed services upon his or her payment of the member contributions required under Section 22901 that otherwise would have been due for such period of service had the member remained continuously employed and not undertaken such service in the uniformed services. No such payment of member contributions may exceed the amount the member would have been required to contribute under this part had the member not served in the uniformed services and had remained continuously employed by the employer throughout the eligible period of service in the uniformed services. If a member fails to remit the member contributions

1 uniformed services shall be deemed to constitute service with the employer toward plan
2 vesting and eligibility for membership in the plan. Section 22851 also entitles a member
3 who returns to employment with the same employer which had employed the member
4 immediately prior to the eligible period of service in the uniformed services to service
5 credit for the eligible period of service in the uniformed services upon his or her payment
6 of member contributions.

7 Section 22852¹⁰⁰, subdivision (a), requires an employer reemploying a member

that would have been required under Section 22901 in respect of the eligible period of service in the uniformed services no service credit shall be provided under this part for the period to which the omitted contributions relate.

(c) Any payment of member contributions to the Defined Benefit Program in this section shall be made by the member during the period beginning with the date of return to employment and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any payment of member contributions to the Defined Benefit Program in this section by a member who returned to employment prior to January 1, 1997, and qualifies for benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code), shall be made by the member during the period beginning with the date of notification of eligibility by the employer to the system and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any subsequent request to purchase this service shall be subject to the provisions of Chapter 14 (commencing with Section 22800). If all contributions due under this part are not paid to the plan with respect to the Defined Benefit Program within the specified repayment period and in accordance with subdivision (b) of Section 22851 the contributions shall be returned to the member at the end of the repayment period. Interest on member contributions made for the eligible period of service in the uniformed services shall not be credited under this part until after the contributions due are paid and then only prospectively to the member's account in accordance with Section 22216."

¹⁰⁰ Education Code Section 22852, added by Chapter 680, Statutes of 1996, Section 2, as amended by Chapter 965, Statutes of 1998, Section 103:

1 with service subject to the requirements of Chapter 43 (commencing with Section 4301)
2 of Title 38 of the United States Code to pay to the plan employer contributions provided
3 that employer was the last employer employing the member immediately prior to the

"(a) An employer reemploying a member of the Defined Benefit Program with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be liable to the plan for the employer contributions under this part provided that employer was the last employer employing the member immediately prior to the period served by the member in the uniformed services.

(b) For purposes of determining the amount of that liability under this part and any obligation to the plan with respect to the Defined Benefit Program, interest shall not be included in the liability to the plan.

(c) Subject to subdivision (e), the employer shall pay the employer contributions for the eligible period of service in the uniformed services, that would have been required under Sections 22950 and 22951 had the member remained continuously employed during that period of eligible service in the uniformed services.

(d) The employer shall not be liable for employer contributions under this part for the eligible period of service in the uniformed services to the extent that the member fails to remit the member contributions for such period.

(e) The employer shall provide information regarding the reemployment of a member who is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United State Codes on a form prescribed by the system within 30 days of the date of reemployment.

(f) Employers shall remit to the plan with respect to the Defined Benefit Program the employer contributions required under subdivision (c) within 60 working days of the date the system notifies the employer of the amount of contributions due with respect to the member who elects to remit the member contributions for the eligible period of service in the uniformed services.

(g) If the employee does not comply with subdivision (b) of Section 22851 within the time period specified, the employer contributions that were remitted for that period shall be adjusted pursuant to Section 23008."

1 period served by the member in the uniformed services. Subdivision (c) requires the
2 employer to pay the employer contributions for the eligible period of service in the
3 uniformed services, that would have been required under Sections 22950 and 22951
4 had the member remained continuously employed during that period. Subdivision (d)
5 provides that an employer shall not be liable for employer contributions to the extent that
6 the member fails to remit his or her contributions for the eligible period of service.

7 Subdivision (e) requires the employer to provide information regarding reemployment on
8 a form prescribed by the system within 30 days after the date of reemployment.

9 Subdivision (f) requires the employer to remit the employer contributions to the plan
10 within 60 working days after notification of the amount due.

11 Section 22853¹⁰¹ provides the method for computing an employer's contributions
12 for the eligible period of service or the member's contributions under this part.

¹⁰¹ Education Code Section 22853, added by Chapter 680, Statutes of 1996,
Section 2, as amended by Chapter 965, Statutes of 1998, Section 104:

"For purposes of computing an employer's contributions for the eligible period of
service or the member's contributions under this part, the employee's compensation
earnable during the period shall be computed as follows:

(a) The compensation earnable the member would have received for the eligible
period of service.

(b) In the event the compensation earnable is not reasonably certain, the
employer's contributions and member's contributions shall be based on the member's
average compensation earnable during the 12-month period immediately preceding the
eligible period of service in the uniformed services or, if shorter, the period of
employment immediately preceding that period of service."

1 Section 22854¹⁰² provides that a reemployed member who has been absent from
2 a position of employment subject to coverage under the Defined Benefit Program to

¹⁰² Education Code Section 22854, added by Chapter 680, Statutes of 1996, Section 2, as amended by Chapter 965, Statutes of 1998, Section 105:

"A reemployed member who has been absent from a position of employment subject to coverage under the Defined Benefit Program to perform service in the uniformed services, pursuant to Section 22850, for a period in excess of five years shall not be entitled to service credit or credit for plan vesting purposes under this part, except where the service in the uniformed services has exceeded five years for the following reasons:

(a) The member is required to serve beyond five years to complete an initial period of obligated service.

(b) The member was unable to obtain orders releasing the member from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the member.

(c) The member served in the uniformed services as required pursuant to Section 270 of Title 10 of the United States Code, Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining.

(d) The member is ordered to do any of the following:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673(b), 673(c), or 688 of Title 10 of the United States Code or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673(b) of Title 10 of the United States Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a member of the National Guard under Chapter 15 (commencing with Section 331) of Title 10 of the United States Code or under Section 3500 or 8500 of Title 10 of the United States Code."

1 perform service in the uniformed services for a period in excess of five years is not
2 entitled to service credit or credit for plan vesting purposes, except in specific situations.

3 Section 22855¹⁰³ provides that a member of the Defined Benefit Program shall
4 have no right to the benefits under this part otherwise accorded in respect of service in
5 the uniformed services upon the occurrence of any of the events set forth in this section,
6 including (a) a separation of the member from the uniformed services with a
7 dishonorable or bad conduct discharge; (b) a separation of the member from the
8 uniformed service under other than honorable conditions; (c) a dismissal of the member
9 permitted under Section 1161(a) of Title 10 of the United States Code; or (d) a dropping
of the member from the rolls pursuant to Section 1161(b) of Title 10 of the United States

11 Code.

12 Chapter 16. Employer and State Contributions

¹⁰³ Education Code Section 22855, added by Chapter 680, Statutes of 1996,
Section 2, as amended by Chapter 965, Statutes of 1998, Section 106:

"A member of the Defined Benefit Program shall have no right to the benefits
under this part otherwise accorded under this chapter in respect of service in the
uniformed services upon the occurrence of any of the following events:

(a) A separation of the member from the uniformed service with a dishonorable or
bad conduct discharge.

(b) A separation of the member from the uniformed service under other than
honorable conditions, as characterized pursuant to regulations prescribed by the
secretary concerned.

(c) A dismissal of the member permitted under Section 1161(a) of Title 10 of the
United States Code.

(d) A dropping of the member from the rolls pursuant to Section 1161(b) of Title
10 of the United States Code."

1 Section 22950¹⁰⁴ requires school districts which employ members of the State
2 Teachers' Retirement System to contribute, monthly, to the Teachers' Retirement Fund,
3 8 percent of the total salaries upon which members' contributions are based.

4 Section 22951¹⁰⁵ provides that, in addition to any other contributions required by

¹⁰⁴ Education Code Section 22950, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 160; Chapter 482, Statutes of 1997, Section 16; Chapter 965, Statutes of 1998, Section 115; Chapter 1032, Statutes of 2000, Section 1; as last amended by Chapter 159, Statutes of 2001, Section 60:

"(a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based.

(b) From the contributions required under subdivision (a), there shall be deposited in the Teachers' Retirement Fund an amount, determined by the board, that is not less than the amount, determined in an actuarial valuation of the Defined Benefit Program pursuant to Section 22311.5, necessary to finance the liabilities associated with the benefits of the Defined Benefit Program over the funding period adopted by the board, after taking into account the contributions made pursuant to Sections 22901, 22951, and 22955.

(c) The amount of contributions required under subdivision (a) that is not deposited in the Teachers' Retirement Fund pursuant to subdivision (b) shall be deposited directly into the Teachers' Health Benefits Fund, as established in Section 25930, and shall not be deposited into or transferred from the Teachers' Retirement Fund."

¹⁰⁵ Education Code Section 22951, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 161; Chapter 482, Statutes of 1997, Section 17; Chapter 965, Statutes of 1998, Section 116; Chapter 967, Statutes of 1998, Section 2; as last amended by Chapter 1025, Statutes of 2000, Section 22:

"In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based."

1 this part, school districts are required to contribute, monthly, to the Teachers' Retirement
2 Fund, 0.25% of the total of the creditable compensation upon which members'
3 contributions are based.

4 Chapter 17. Employer Collection and Reporting Procedures

5 Section 23000¹⁰⁶ requires each employer to deduct from the creditable
6 compensation of employee members the member contributions required by this part and
7 remit to the system those contributions plus the employer contributions required by this
8 part and Section 44987.

9 Section 23001¹⁰⁷ requires the county superintendent, district superintendent,

¹⁰⁶ Education Code Section 23000, added by Chapter 893, Statutes of 1993,
Section 2, amended by Chapter 634, Statutes of 1996, Section 165; as last amended by
Chapter 482, Statutes of 1997, Section 21:

"Each employer shall deduct from the creditable compensation of members
employed by the employer the member contributions required by this part and shall remit
to the system those contributions plus the employer contributions required by this part
and Section 44987."

¹⁰⁷ Education Code Section 23001, added by Chapter 893, Statutes of 1993,
Section 2, amended by Chapter 634, Statutes of 1996, Section 166; as last amended by
Chapter 1025, Statutes of 2000, Section 24:

"Each county superintendent, district superintendent, chancellor of a community
college district, or other employing agency that reports directly to the system shall draw
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, district superintendent, chancellor of a community college district, or
other employing agency 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."

1 chancellor of a community college district, or other employing agency that reports
2 directly to the system to draw requisitions for contributions required by Sections 22901
3 and 22950 in favor of the State Teachers' Retirement System, and the requisitions,
4 when allowed and signed by the county auditor, shall constitute a warrant against the
5 county treasury. The county superintendent, district superintendent, chancellor of a
6 community college district, or other employing agency is thereupon required to forward
7 the warrants to the board in Sacramento, where the amounts received are required to
8 be deposited immediately in the State Treasury to the Teachers' Retirement Fund.

9 Section 23002¹⁰⁸ requires the member and employer contributions to be due in
10 the office of the system five working days immediately following the period covered by
11 the monthly report upon which the salary earned during the period is being reported and

¹⁰⁸ Education Code Section 23002, added by Chapter 893, Statutes of 1993,
Section 2, as amended by Chapter 482, Statutes of 1997, Section 22:

"Member and employer contributions required by this part and Section 44987 are due in the office of the system five working days immediately following the period covered by the monthly report upon which the compensation earned during the period is being reported and from and upon which the contributions are due. Payments shall be delinquent on the sixth working day thereafter and regular interest on delinquent payments shall begin to accrue as of that day.

The board shall authorize estimated payments of not less than 95 percent of the contributions due, and, in that case, the balance of contributions payable shall be due in the office of the system no more than 15 working days following the period covered by the monthly report upon which the contributions are based. This additional payment shall be delinquent on the 16th working day thereafter, and regular interest shall begin to accrue as of that day."

1 upon which the contributions are due.

2 Section 23004¹⁰⁹ requires the county superintendent of schools or employing
3 agency to, and a school district or community college district may, with the approval of
4 the board, make a report monthly to the system containing such information as the
5 board may require.

6 Section 23008¹¹⁰ requires the county superintendent, district superintendent, or

¹⁰⁹ Education Code Section 23004, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 634, Statutes of 1996, Section 167; as last amended by Chapter 939, Statutes of 1999, Section 57:

"The county superintendent of schools or employing agency shall, or a school district or community college district may, with approval of the board, submit a report monthly to the system containing such information as the board may require in the administration of the plan."

¹¹⁰ Education Code Section 23008, added by Chapter 893, Statutes of 1993, Section 2, amended by Chapter 507, Statutes of 1994, Section 3; Chapter 634, Statutes of 1996, Section 169; Chapter 482, Statutes of 1997, Section 24; as last amended by Chapter 1025, Statutes of 2000, Section 25:

"(a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any payment of creditable compensation to a member, proper adjustments shall be made on a monthly report, by the county superintendent, district superintendent, chancellor of a community college district, or other employing agency who submitted the report, within 60 days after discovery or 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 pursuant to Section 23006. 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 Teacher's Retirement Fund based on that information, the county superintendent, district superintendent, chancellor of a

1 other employing agency who submitted the report to make proper adjustments within 60
2 days after discovery or notification by the system on a monthly report, and the employing
3 agency is required to make refunds to the member within the same time period, if more
4 or less than the required contributions specified in this part and Section 44987 are paid
5 to the system based on any payment of creditable compensation to a member.

6 PART III. STATEMENT OF THE CLAIM

7 SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

8 The statutes referenced in this test claim result in school districts, community
9 college districts and county offices of education incurring costs mandated by the state,
10 as defined in Government Code Section 17514¹¹¹, by creating new state-mandated
11 duties related to the uniquely governmental function of providing public service to
12 students and these statutes apply to school districts and do not apply generally to all
13 residents and entities in the state.¹¹²

community college district, or other employing agency who submitted the report shall
reimburse the retirement fund in full for the amount of the erroneous disbursement.
Reimbursement shall be made immediately upon notification by the system."

¹¹¹ Government Code Section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency
or school district is required to incur after July 1, 1980, as a result of any statute enacted
on or after January 1, 1975f, or any executive order implementing any statute enacted
on or after January 1, 1975, which mandates a new program or higher level of service of
an existing program within the meaning of Section 6 of Article XIII B of the California
Constitution."

¹¹² Public schools are an Article XIII B, Section 6 "program," pursuant to Long
Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225

1 The new duties mandated by the state upon school districts, county offices of
2 education, and community college districts require state reimbursement of the direct and
3 indirect costs of labor, materials and supplies, data processing services and software,
4 contracted services and consultants, equipment and capital assets, staff and student
5 training and travel to implement the following activities:

6 **1. General Provisions (Chapter 1)**

7 1A) To adopt policies and procedures, and to periodically update those policies and
8 procedures to implement the State Teachers' Retirement Law, pursuant to Part
9 13, Division 1, Title 1 of the Education Code, commencing with Education Code
Section 22000.

11 1B) Pursuant to Education Code Section 22002, subdivision (b), to contribute a
12 percentage of the total creditable compensation on which member contributions
13 are based. The required percentages are set forth below in Part 8.

14 **2. Definitions (Chapter 2)**

15 2A) Pursuant to Education Code Section 22119.2, subdivision (a), (in effect prior to
16 July 1, 2002) "creditable compensation", subject to employer contributions,

Cal.App.3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a particularly governmental function. (Cf. Carmel Vally Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537). Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 means salary and other remuneration payable in cash by an employer to a
2 member for creditable service. Creditable compensation shall include:

- 3 (1) Money paid in accordance with a salary schedule based on years of
4 training and years of experience for creditable service performed up
5 to and including the full-time equivalent for the position in which the
6 service is performed.
- 7 (2) For members not paid according to a salary schedule, money paid
8 for creditable service performed up to and including the full-time
9 equivalent for the position in which the service is performed.
- 10 (3) Money paid for the member's absence from performance of
11 creditable service as approved by the employer, except as provided
12 in paragraph (7) of subdivision (b).
- 13 (4) Member contributions picked up by an employer pursuant to Section
14 22903 or 22904.
- 15 (5) Amounts deducted by an employer from the member's salary,
16 including deductions for participation in tax-deferred retirement
17 plans, or other insurance programs; and deductions for participation
18 in a plan that meets the requirements of Section 125, 401(k), or
19 403(b) of Title 26 of the United States Code.
- 20 (6) Money paid by an employer in addition to salary paid under
21 paragraph (1) or (2) if paid to all employees in a class in the same

1 dollar amount, the same percentage of salary, or the same
2 percentage of the amount being distributed.

3 (7) Money paid in accordance with a salary schedule by an employer to
4 an employee for achieving certification from a national board based,
5 in part, on years of training or years of experience in teaching
6 service, if the compensation is paid by the employer to all
7 employees who achieved this certification.

8 (8) Any other payments the board determines to be "creditable
9 compensation."

10 2B) Pursuant to Education Code Section 22119.2, subdivision (b), (in effect prior to
11 July 1, 2002) "creditable compensation", subject to employer contributions, does
12 not include:

13 (1) Money paid for service performed in excess of the full-time
14 equivalent for the position.

15 (2) Money paid for overtime or summer school service, or money paid
16 for the aggregate service performed in excess of one year of
17 service credit for any one school year.

18 (3) Money paid for service that is not creditable service pursuant to
19 Section 22119.5.

20 (4) Money paid by an employer in addition to salary paid under
21 paragraph (1) or (2) of subdivision (a) if not paid to all employees in

1 a class in the same dollar amount, the same percentage of salary,
2 or the same percentage of the amount being distributed, except as
3 provided in paragraph (7) of subdivision (a).

- 4 (5) Fringe benefits provided by an employer.
5 (6) Job-related expenses paid or reimbursed by an employer.
6 (7) Money paid for unused accumulated leave.
7 (8) Severance pay or compensatory damages or money paid to a
8 member in excess of salary as a compromise settlement.
9 (9) Annuity contracts, tax-deferred retirement programs, or other
10 insurance programs, including, but not limited to, plans that meet
11 the requirements of Section 125, 401(k), or 403(b) of Title 26 of the
12 United States Code that are purchased by an employer for the
13 member and are not deducted from the member's salary.
14 (10) Any payments determined by the board to have been made by an
15 employer for the principal purpose of enhancing a member's
16 benefits under the Defined Benefit Program.
17 (11) Any other payments the board determines not to be "creditable
18 compensation."

19 2C) Pursuant to Education Code Section 22119.2, subdivision (a), (in effect after
20 July 1, 2002) "creditable compensation", subject to employer contributions, is
21 expanded to include:

1 (1) Salary paid in accordance with "employment agreements", in
2 addition to those paid in accordance with a salary schedule, and
3 without reference to years of training and experience.

4 (2) Money paid during "sick leave, vacation leave, and other employer-
5 approved leave".

6 "Creditable compensation, subject to employer contributions, is omitted for:

7 (3) Money paid for achieving certification from a national board.

8 2D) Pursuant to Education Code Section 22119.2, subdivision (b), (in effect after
9 July 1, 2002) "creditable compensation", subject to employer contributions, is
10 expanded to include payments determined to have been paid for the principal
11 purpose of enhancing a member's benefits and shall be credited to the Defined
12 Benefit Supplement Program.

13 2E) Pursuant to Education Code Section 22119.2, subdivision (c), (in effect after
14 July 1, 2002) "creditable compensation", subject to employer contributions, is
15 expanded to include:

16 (1) Money paid for service performed in excess of the full-time
17 equivalent for the position and

18 (2) Money paid for overtime or summer school service or money paid
19 for aggregate service performed as a member of the Defined
20 Benefit Program in excess of one year of service credit for any one
school year.

1 2F) Pursuant to Education Code Section 22119.5 "creditable service" includes any of
2 the following new activities performed for an employer in a position requiring a
3 credential, certificate, or permit pursuant to the Education Code or under the
4 appropriate minimum standards adopted by the Board of Governors of the
5 California Community Colleges or under the provisions of an approved charter for
6 the operation of a charter school for which the employer is eligible to receive state
7 apportionment or pursuant to a contract between a community college district and
8 the United States Department of Defense to provide vocational training:

- 9 (1) The work of teachers, instructors, district interns, and academic
10 employees employed in the instructional program for pupils,
11 including special programs such as adult education, regional
12 occupation programs, child care centers, and prekindergarten
13 programs pursuant to Section 22161.
- 14 (2) The work of directors, coordinators, and assistant administrators
15 who plan courses of study to be used in California public schools, or
16 research connected with the evaluation or efficiency of the
17 instructional program.
- 18 (3) The selection, collection, preparation, classification, demonstration,
19 or evaluation of instructional materials of any course of study for
20 use in the development of the instructional program in California
21 public schools, or other services related to school curriculum.

1 (4) The examination, selection, in-service training, or assignment of
2 teachers, principals or other similar personnel involved in the
3 instructional program.

4 (5) School activities related to, and an outgrowth of, the instructional
5 and guidance program of the school when performed in addition to
6 other activities described in this section.

7 (6) The work of nurses, physicians, speech therapists, psychologists,
8 audiometrists, audiologists, and other school health professionals.

9 (7) The work of employees who are responsible for the supervision of
10 persons or administration of the duties described in this part 2F.

11 (8) Pursuant to subdivision (b), "creditable service" also means the
12 work of superintendents of California public schools.

13 2G) Pursuant to Education Code Section 22146, employers are required to make
14 contributions for members defined as any person, unless excluded, who has
15 performed creditable service as defined in Section 22119.5 and has earned
16 creditable compensation for that service and, as a result, is subject to the Defined
17 Benefit Program.

18 **3. Member and Employer Duties (Chapter 9)**

19 3A) Pursuant to Education Code Section 22455.5, subdivision (b), employers shall
20 make available criteria for membership, including optional membership, in a
21 timely manner to all persons employed to perform creditable service subject to

1 coverage by the Defined Benefit Program; and shall inform part-time and
2 substitute employees, within 30 days of the date of hire, or by March 1, 1995,
3 whichever is later, that they may elect membership in the plan's Defined Benefit
4 Program at any time while employed. Written acknowledgment by the employee
5 shall be maintained in employer files on a form provided by this system.

6 3B) Pursuant to Education Code Section 22458, each employer shall provide the
7 system with information regarding the compensation to be paid to employees
8 subject to the Defined Benefit Program in that school year. The information shall
9 be submitted annually as determined by the board and may include, but shall not
10 be limited to, employment contracts, salary schedules, and local board minutes.

11 3C) Pursuant to Education Code Section 22460, subdivision (a), each employer,
12 commencing January 1, 2001, is required to notify a member who terminates
13 employment with less than five years of credited service, of the following:

14 (1) That unless the member is eligible, or becomes eligible in the future, for
15 concurrent retirement, the member is eligible only for a refund of
16 accumulated retirement contributions under the Defined Benefit Program
17 and the return of the member's accumulated Defined Benefit Supplement
18 account balance.

19 (2) The current rate of interest that shall be earned on accumulated retirement
20 contributions that are not refunded and the current minimum interest rate
21 that shall be applied to the member's Defined Benefit Supplement account.

1 (3) Actions that may be taken by the board if accumulated retirement
2 contributions are not refunded under the Defined Benefit Program and the
3 member's Defined Benefit Supplement account balance is not returned.

4 3D) Pursuant to Education Code Section 22461, subdivision (a), each school district,
5 community college district and county superintendent of schools, upon retaining
6 the services of a retired member under Section 24116, 24214, or 24215, shall do
7 both of the following regardless of whether the retired member performs the
8 services as an employee of the employer, an employee of a third party, or an
9 independent contractor:

10 (1) Advise the retired member of the earnings limitation set forth in
11 Sections 24116, 24214, and 24215.

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

16 **4. Membership (Chapter 10)**

17 4A) Pursuant to Education Code Section 22501, the additional cost of employer
18 contributions for any person employed to perform creditable service on a full-time
19 basis in a position not subject to contributions prior to January 1, 1975, unless
20 excluded from membership pursuant to Section 22601.

21 4B) Pursuant to Education Code Section 22502, effective retroactively to July 1,

1 1996, the additional cost of employer contributions for any person employed to
2 perform creditable service on a part-time basis when he or she becomes a
3 member as of the first day of subsequent employment to perform creditable
4 service for 50 percent or more of the full-time equivalent for the position, unless
5 excluded from membership pursuant to Section 22601.

6 4C) Pursuant to Education Code Section 22503, effective retroactively to July 1,
7 1996, the additional cost of employer contributions for any person employed to
8 perform creditable service as a substitute teacher when he or she becomes a
9 member as of the first day of the pay period following the pay period in which the
10 person performed 100 or more complete days of creditable service during the
11 school year in one school district, community college district, or county
12 superintendent's office, unless excluded from membership pursuant to Section
13 22601.

14 4D) Pursuant to Education Code Section 22504, effective retroactively to July 1,
15 1996, the additional cost of employer contributions for any person employed to
16 perform creditable service on a part-time basis when he or she becomes a
17 member as of the first day of the pay period following the pay period in which the
18 person performed at least 60 hours of creditable service, if employed on an
19 hourly basis, or 10 days of creditable service, if employed on a daily basis, during
20 the school year, in one school district, community college district, or county
21 superintendent's office, unless excluded from membership pursuant to Section

1 22601.

2 4E) Pursuant to Education Code Section 22509, subdivision (a), school districts are
3 required, within 10 working days of the date of hire of an employee who has the
4 right to make an election pursuant to Section 22508 or 22508.5, to inform the
5 employee of the right to make an election and shall make available to the
6 employee written information provided by each retirement system concerning the
7 benefits provided under that retirement system to assist the employee in making
8 an election. Subdivision (b) requires school districts to file the election with the
9 office of the State Teachers' Retirement System and a copy of the election shall
be filed with the other public retirement system.

11 **5. Service Credit (Chapter 13)**

12 5A) Pursuant to Education Code Section 22711, costs that result from additional
13 employer contributions based upon increased service credit during which a
14 member serves as an elected officer of an employee organization while on a
15 compensated leave of absence pursuant to Section 44987 or 87768.5, if all of the
16 following conditions are met:

- 17 (1) The member was employed and performed creditable service
18 subject to coverage under this Defined Benefit Program in the
19 month prior to commencement of the leave of absence.
- 20 (2) The member makes contributions to the Teachers' Retirement Fund
in the amount that the member would have contributed had the

1 member performed creditable service on a full-time basis during the
2 period the member served as an elected officer of the employee
3 organization.

- 4 (3) The employer's contribution to the Teachers' Retirement Fund shall
5 be at a rate adopted by the board as a plan amendment with
6 respect to the Defined Benefit Program in an amount based upon
7 the creditable compensation that would have been paid to the
8 member had the member performed creditable service on a full-time
9 basis during the period the member served as an elected officer of
10 the employee organization.

11 Pursuant to subdivision (b), the maximum period of time during which a member
12 may serve as an elected officer and receive service credit pursuant to this section
13 shall not exceed 12 calendar years.

- 14 5B) Pursuant to Education Code Section 22712.5, costs that result from additional
15 employer contributions based upon service performed as a community service
16 teacher or in a classified position that does not qualify for membership in the
17 Public Employees' Retirement System, by members under this part who are
18 employed by a school district, community college district, or superintendent of
19 schools and who received credit during the school year ending June 30, 1996
20 and continue to receive credit for that service performed after June 30, 1996.

- 21 5C) Pursuant to Education Code Section 22713, costs that result from additional

1 employer contributions based upon employees who reduce their workload from
2 full time to part time, and receive the service credit the member would have
3 received if the member had been employed on a full-time basis based upon
4 regulations established by the governing board of a school district or a community
5 college district or a county superintendent of schools and the maintenance of
6 necessary records to separately identify each member who participates in the
7 reduced workload program.

8 5D) Pursuant to Education Code Section 22714, subdivision (a), costs that result from
9 additional employer contributions and the administrative costs incurred by the
10 system when an additional two years of service credit is granted to a member of
11 the Defined Benefit Program whenever the governing board of a school district or
12 a community college district or a county office of education, by formal action
13 taken prior to January 1, 1999, determines pursuant to Section 44929 or 87488
14 that, because of impending curtailment of, or changes in, the manner of
15 performing services, the best interests of the district or county office of education
16 would be served by encouraging certificated employees or academic employees
17 to retire from service and that the retirement will either result in a reduction of the
18 number of certificated employees or academic employees as a result of declining
19 enrollment; or result in the retention of certificated employees who are
20 credentialed to teach in, or faculty who are qualified to teach in, teacher shortage
21 disciplines, including, but not limited to, mathematics and science.

- 1 5E) Pursuant to Education Code Section 22714, subdivision (b), a school district's
2 cost of reimbursing the county superintendent for all costs resulting from his or
3 her certification to the Teachers' Retirement Board that the formal action of the
4 district will result in a reduction of the number of certificated employees as a
5 result of declining enrollment, as computed pursuant to Section 42238.5 or the
6 retention of certificated employees who are credentialed to teach in teacher
7 shortage disciplines.
- 8 5F) Pursuant to Education Code Section 22714, subdivision (c), a county office of
9 education's cost of reimbursing the Superintendent of Public Instruction for all
10 costs resulting from his or her certification to the Teachers' Retirement Board that
11 the formal action of the county office will result in a reduction of the number of
12 certificated employees as a result of declining enrollment or the retention of
13 certificated employees who are credentialed to teach in teacher shortage
14 disciplines.
- 15 5G) Pursuant to Education Code Section 22714, subdivision (d), a community college
16 district's cost of reimbursing the chancellor for all costs resulting from his or her
17 certification to the Teachers' Retirement Board that the formal action of the
18 district will result in a reduction of the number of academic employees as a result
19 of declining enrollment, as computed pursuant to subdivision (c) of Section 84701
20 or the retention of faculty qualified to teach in teacher shortage disciplines.
- 21 5H) Pursuant to Education Code Section 22717, subdivision (a), costs that result from

1 additional employer contributions and certification requirements when a member
2 is granted credit at service retirement (on or after January 1, 1999) for each day
3 of accumulated and unused leave of absence for illness or injury for which full
4 salary is allowed and to which the member was entitled on the member's final day
5 of employment.

6 5I) Pursuant to Education Code Section 22717.5, subdivision (a), costs that result
7 from additional employer contributions and certification requirements when a
8 member is granted credit at service retirement for each day of accumulated and
9 unused leave of absence for education for which full salary is allowed on the
10 member's final day of employment with the state.

11 5J) Pursuant to Education Code Section 22718, subdivision (a), costs that result
12 from additional employer contributions and certification requirements when billed
13 by the Teachers' Retirement Board for service credit granted for unused excess
14 sick leave

15 5K) Pursuant to Education Code Section 22724, the cost of determining excess sick
16 leave days to which a member is entitled when he or she retires and the cost of
17 submitting to the board sick leave records of past years for audit purposes.

18 **6. Permissive and Additional Service Credit (Chapter 14)**

19 6A) Pursuant to Education Code Section 22800, subdivision (a), claims for
20 permissive and additional service credit under this part shall be corroborated by a
statement from the superintendent of schools or custodian of records of the employer for

1 which the service was performed. Pursuant to subdivision (c), when the official records
2 of the service have been destroyed, the claim shall be corroborated by one or more
3 affidavits of knowledge of the service, preferably by persons who served with the
4 member at the time the service was performed.

5 6B) Pursuant to Education Code Section 22801, subdivision (d), district employers
6 may pay the amount required as employer contributions for additional service
7 credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section
8 22803.

9 6C) Pursuant to Education Code Section 22803, subdivision (a), the cost of additional
10 employer contributions when a member elects to receive credit for any of the
11 following:

12 (1) Service performed in a certificated teaching position in a child care
13 center operated by a county superintendent of schools or a school
14 district in this state.

15 (2) Service performed in a teaching position in the California School for
16 the Deaf or the California School for the Blind, or in special classes
17 maintained by the public schools of this state for the instruction of
18 the deaf, the hard of hearing, the blind, or the semisighted.

19 (3) Time served, not to exceed two years, in a certificated teaching
20 position in a job corps center administered by the United States
21 government in this state if the member was employed to perform

1 creditable service subject to coverage under the Defined Benefit
2 Program within one year prior to entering the job corps and returned
3 to employment to perform creditable service subject to coverage
4 under the Defined Benefit Program within six months following the
5 date of termination of service in the job corps.

6 (4) Time spent on an approved leave to participate in any program
7 under the federal Mutual Educational and Cultural Exchange
8 Program.

9 (5) Time spent on an approved maternity or paternity leave of two
10 years or less in duration, regardless of whether or not the leave was
11 taken before or after the addition of this subdivision.

12 (6) Time spent on an approved leave, up to four months in any
13 12-month period, for family care or medical leave purposes, as
14 defined by Section 12945.2 of the Government Code, as it read on
15 the date leave was granted, excluding maternity and paternity
16 leave.

17 **7. Military Service (Chapter 14.5)**

18 7A) Pursuant to Education Code Sections 22851 and 22852, the cost of additional
19 employer contributions when a member returns to employment with the same
20 employer which had employed the member immediately prior to the eligible period
21 of voluntary service in the uniformed services

1 **8. Employer and State Contributions (Chapter 16)**

2 8A) Pursuant to Education Code Section 22950, the cost of contributions to the
3 Teachers' Retirement Fund for all members in an amount equal to four percent
4 (4%) of their creditable compensation, that sum being the incremental increase in
5 contribution rates since December 31, 1974.

6 8B) Pursuant to Education Code Section 22950, the cost of contributions to the
7 Teachers' Retirement Fund for all members not previously qualified for
8 membership on December 31, 1974 in an amount equal to eight percent (8%) of
9 their creditable compensation, less any amounts reimbursed pursuant to
10 paragraph 8A, supra.

11 8C) Pursuant to Education Code Section 22950, the cost of contributions to the
12 Teachers' Retirement Fund for all members for creditable service not previously
13 considered creditable service on December 31, 1974, in an amount equal to eight
14 percent (8%) of the creditable compensation for such service, less any amounts
15 reimbursed pursuant to paragraph 8A, supra.

16 8D) Pursuant to Education Code Section 22951, the cost of contributions to the
17 Teachers' Retirement Fund for all members in an amount equal to 0.25% of the
18 total creditable compensation upon which members' contributions are based.

19 /

20 /

1 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

2 None of the Government Code Section 17556¹¹³ statutory exceptions to a finding
3 of costs mandated by the state apply to this test claim. Note, that to the extent school
4 districts may have previously performed functions similar to those mandated by the

¹¹³ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

1 referenced code sections, such efforts did not establish a preexisting duty that would
2 relieve the state of its constitutional requirement to later reimburse school districts when
3 these activities became mandated.¹¹⁴

4 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

5 To the extent state general funds were appropriated and continue to be
6 appropriated for these new duties, such funds shall be an offset to the increased costs
7 which result from the statutes described herein.

8 PART IV. ADDITIONAL CLAIM REQUIREMENTS

9 The following elements of this claim are provided pursuant to Section 1183, Title
10 2, California Code of Regulations:

11 Exhibit 1: Declaration of Cheryl Miller
12 Santa Monica Community College District

13
14 Declaration of Les Phillips
15 San Diego County Office of Education

16
17 Exhibit 2: Copies of Statutes Cited:

18
19 Chapter 803, Statutes of 2001
20 Chapter 802, Statutes of 2001
21 Chapter 159, Statutes of 2001
22 Chapter 77, Statutes of 2001
23 Chapter 1032, Statutes of 2000

¹¹⁴ Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Test Claim of Santa Monica Community College District
Chapter 375, Statutes of 2002 - CalSTRS

- 1 Chapter 1025, Statutes of 2000
- 2 Chapter 1021, Statutes of 2000
- 3 Chapter 1020, Statutes of 2000
- 4 Chapter 880, Statutes of 2000
- 5 Chapter 402, Statutes of 2000
- 6 Chapter 939, Statutes of 1999
- 7 Chapter 1076, Statutes of 1998
- 8 Chapter 1048, Statutes of 1998
- 9 Chapter 1006, Statutes of 1998
- 10 Chapter 967, Statutes of 1998
- 11 Chapter 965, Statutes of 1998
- 12 Chapter 838, Statutes of 1997
- 13 Chapter 482, Statutes of 1997
- 14 Chapter 1165, Statutes of 1996
- 15 Chapter 680, Statutes of 1996
- 16 Chapter 634, Statutes of 1996
- 17 Chapter 608, Statutes of 1996
- 18 Chapter 383, Statutes of 1996
- 19 Chapter 592, Statutes of 1995
- 20 Chapter 394, Statutes of 1995
- 21 Chapter 390, Statutes of 1995
- 22 Chapter 933, Statutes of 1994
- 23 Chapter 603, Statutes of 1994
- 24 Chapter 507, Statutes of 1994
- 25 Chapter 20, Statutes of 1994
- 26 Chapter 893, Statutes of 1993

28 Exhibit 3: Copies of Education Code Sections Cited

- 30 Section 22000
- 31 Section 22002
- 32 Section 22119.2
- 33 Section 22119.5
- 34 Section 22146
- 35 Section 22455.5
- 36 Section 22458
- 37 Section 22460
- 38 Section 22461
- 39 Section 22501
- 40 Section 22502
- 41 Section 22503

1	Section 22504
2	Section 22509
3	Section 22711
4	Section 22712.5
5	Section 22713
6	Section 22714
7	Section 22717
8	Section 22717.5
9	Section 22718
10	Section 22724
11	Section 22800
12	Section 22801
13	Section 22803
14	Section 22851
15	Section 22852
16	Section 22950
17	Section 22951
18	
19	<u>Exhibit 4:</u> Index of Statutes
20	Operative Dates 1975-1993
21	
22	Index of Statutes
23	Operative Dates 1993-2003
24	

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on April 15, 2003, at Santa Monica, California by:

Cheryl Miller

Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

Voice: 310-434-4221
Fax: 310-434-3607

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates and Associates, as its representative for this test claim.

Cheryl Miller

Cheryl Miller
Associate Vice President
Business Services

4/15/03

Date

EXHIBIT 1
Declaration of Cheryl Miller
Declaration of Les Phillips

DECLARATION OF LES PHILLIPS

San Diego County Office of Education

Test Claim of Santa Monica Community College District

CSM No. _____

Chapter 803, Statutes of 2001	Education Code Section 22000
Chapter 802, Statutes of 2001	Education Code Section 22002
Chapter 159, Statutes of 2001	Education Code Section 22119.2
Chapter 77, Statutes of 2001	Education Code Section 22119.5
Chapter 1032, Statutes of 2000	Education Code Section 22146
Chapter 1025, Statutes of 2000	Education Code Section 22455.5
Chapter 1021, Statutes of 2000	Education Code Section 22458
Chapter 1020, Statutes of 2000	Education Code Section 22460
Chapter 880, Statutes of 2000	Education Code Section 22461
Chapter 402, Statutes of 2000	Education Code Section 22501
Chapter 939, Statutes of 1999	Education Code Section 22502
Chapter 1076, Statutes of 1998	Education Code Section 22503
Chapter 1048, Statutes of 1998	Education Code Section 22504
Chapter 1006, Statutes of 1998	Education Code Section 22509
Chapter 967, Statutes of 1998	Education Code Section 22711
Chapter 965, Statutes of 1998	Education Code Section 22712.5
Chapter 838, Statutes of 1997	Education Code Section 22713
Chapter 482, Statutes of 1997	Education Code Section 22714
Chapter 1165, Statutes of 1996	Education Code Section 22717
Chapter 680, Statutes of 1996	Education Code Section 22717.5
Chapter 634, Statutes of 1996	Education Code Section 22718
Chapter 608, Statutes of 1996	Education Code Section 22724
Chapter 383, Statutes of 1996	Education Code Section 22800
Chapter 592, Statutes of 1995	Education Code Section 22801
Chapter 394, Statutes of 1995	Education Code Section 22803
Chapter 390, Statutes of 1995	Education Code Section 22851
Chapter 933, Statutes of 1994	Education Code Section 22852
Chapter 603, Statutes of 1994	Education Code Section 22950
Chapter 507, Statutes of 1994	Education Code Section 22951
Chapter 20, Statutes of 1994	
Chapter 893, Statutes of 1993	

CalSTRS Service Credit

I, Les Phillips, Retirement Systems Supervisor, San Diego County Office of Education, make the following declaration and statement.

In my capacity as Retirement System Supervisor, I am responsible for the business activities related to administration of the California State Teacher's Retirement System at the San Diego Office of Education. I am familiar with the provisions and requirements of the statutes and Education Code Sections enumerated above.

These Education Code sections require the San Diego County Office of Education and school districts to:

1. **General Provisions (Chapter 1)**

- 1A) To adopt policies and procedures, and to periodically update those policies and procedures to implement the State Teachers' Retirement Law, pursuant to Part 13, Division 1, Title 1 of the Education Code, commencing with Education Code Section 22000.
- 1B) Pursuant to Education Code Section 22002, subdivision (b), to contribute a percentage of the total creditable compensation on which member contributions are based. The required percentages are set forth below in Part 8.

2. **Definitions (Chapter 2)**

- 2A) Pursuant to Education Code Section 22119.2, subdivision (a), (in effect prior to July 1, 2002) "creditable compensation", subject to employer contributions, means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

- (1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up

to and including the full-time equivalent for the position in which the service is performed.

- (2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.
- (3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).
- (4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.
- (5) Amounts deducted by an employer from the member's salary, including deductions for participation in tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.
- (6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.
- (7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board based,

in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

- (8) Any other payments the board determines to be "creditable compensation."

2B) Pursuant to Education Code Section 22119.2, subdivision (b), (in effect prior to July 1, 2002) "creditable compensation", subject to employer contributions, does not include:

- (1) Money paid for service performed in excess of the full-time equivalent for the position.
- (2) Money paid for overtime or summer school service, or money paid for the aggregate service performed in excess of one year of service credit for any one school year.
- (3) Money paid for service that is not creditable service pursuant to Section 22119.5.
- (4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).
- (5) Fringe benefits provided by an employer.

- (6) Job-related expenses paid or reimbursed by an employer.
- (7) Money paid for unused accumulated leave.
- (8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.
- (9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.
- (10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program.
- (11) Any other payments the board determines not to be "creditable compensation."

2C) Pursuant to Education Code Section 22119.2, subdivision (a), (in effect after July 1, 2002) "creditable compensation", subject to district contributions, is expanded to include:

- (1) Salary paid in accordance with "employment agreements", in addition to those paid in accordance with a salary schedule, and without reference to years of training and experience.
- (2) Money paid during "sick leave, vacation leave, and other employer-

approved leave".

"Creditable compensation, subject to employer contributions, is omitted for:

(3) Money paid for achieving certification from a national board.

- 2D) Pursuant to Education Code Section 22119.2, subdivision (b), (in effect after July 1, 2002) "creditable compensation", subject to employer contributions, is expanded to include payments determined to have been paid for the principal purpose of enhancing a member's benefits and shall be credited to the Defined Benefit Supplement Program.
- 2E) Pursuant to Education Code Section 22119.2, subdivision (c), (in effect after July 1, 2002) "creditable compensation", subject to employer contributions, is expanded to include:
- (1) Money paid for service performed in excess of the full-time equivalent for the position and
 - (2) Money paid for overtime or summer school service or money paid for aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.
- 2F) Pursuant to Education Code Section 22119.5 "creditable service" includes any of the following new activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to the Education Code or under the appropriate minimum standards adopted by the Board of Governors of the

California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

- (1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.
- (2) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.
- (3) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.
- (4) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.
- (5) School activities related to, and an outgrowth of, the instructional

and guidance program of the school when performed in addition to other activities described in this section.

- (6) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.
- (7) The work of employees who are responsible for the supervision of persons or administration of the duties described in this part 2F.
- (8) Pursuant to subdivision (b), "creditable service" also means the work of superintendents of California public schools.

2G) Pursuant to Education Code Section 22146, employers are required to make contributions for members defined as any person, unless excluded, who has performed creditable service as defined in Section 22119.5 and has earned creditable compensation for that service and, as a result, is subject to the Defined Benefit Program.

3. Member and Employer Duties (Chapter 9)

3A) Pursuant to Education Code Section 22455.5, subdivision (b), school district 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 Defined Benefit Program, 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's Defined Benefit Program at any time while employed. Written acknowledgment

by the employee shall be maintained in employer files on a form provided by this system.

- 3B) Pursuant to Education Code Section 22458, each employer shall provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program 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.
- 3C) Pursuant to Education Code Section 22460, subdivision (a), each employer, commencing January 1, 2001, is required to notify a member who terminates employment with less than five years of credited service, of the following:
- (1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the member's accumulated Defined Benefit Supplement account balance.
 - (2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.
 - (3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

- 3D) Pursuant to Education Code Section 22461, subdivision (a), each school district, community college district and county superintendent of schools, upon retaining the services of a retired member under Section 24116, 24214, or 24215, shall do both of the following regardless of whether the retired member performs the services as an employee of the employer, an employee of a third party, or an independent contractor:
- (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.

4. **Membership (Chapter 10)**

- 4A) Pursuant to Education Code Section 22501, the additional cost of employer contributions for any person employed to perform creditable service on a full-time basis in a position not subject to contributions prior to January 1, 1975, unless excluded from membership pursuant to Section 22601.
- 4B) Pursuant to Education Code Section 22502, effective retroactively to July 1, 1996, the additional cost of employer contributions for any person employed to perform creditable service on a part-time basis when he or she becomes a member as of the first day of subsequent employment to perform creditable

service for 50 percent or more of the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.

- 4C) Pursuant to Education Code Section 22503, effective retroactively to July 1, 1996, the additional cost of employer contributions for any person employed to perform creditable service as a substitute teacher when he or she becomes a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.
- 4D) Pursuant to Education Code Section 22504, effective retroactively to July 1, 1996, the additional cost of employer contributions for any person employed to perform creditable service on a part-time basis when he or she becomes a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.
- 4E) Pursuant to Education Code Section 22509, subdivision (a), school districts are required, within 10 working days of the date of hire of an employee who has the

right to make an election pursuant to Section 22508 or 22508.5, to inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. Subdivision (b) requires school districts to file the election with the office of the State Teachers' Retirement System and a copy of the election shall be filed with the other public retirement system.

5. Service Credit (Chapter 13)

5A) Pursuant to Education Code Section 22711, costs that result from additional employer contributions based upon increased service credit during which a 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 under this Defined Benefit Program in the month prior to commencement of the leave of absence.
- (2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

- (3) The employer's contribution to the Teachers' Retirement Fund shall be at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program in an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

Pursuant to subdivision (b), the maximum period of time during which a member may serve as an elected officer and receive service credit pursuant to this section shall not exceed 12 calendar years.

- 5B) Pursuant to Education Code Section 22712.5, costs that result from additional employer contributions based upon service performed as a community service teacher or in a classified position that does not qualify for membership in the Public Employees' Retirement System, by members under this part who are employed by a school district, community college district, or superintendent of schools and who received credit during the school year ending June 30, 1996 and continue to receive credit for that service performed after June 30, 1996.
- 5C) Pursuant to Education Code Section 22713, costs that result from additional employer contributions based upon employees who reduce their 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 based upon

regulations established by the governing board of a school district or a community college district or a county superintendent of schools and the maintenance of necessary records to separately identify each member who participates in the reduced workload program.

- 5D) Pursuant to Education Code Section 22714, subdivision (a), costs that result from additional employer contributions and the administrative costs incurred by the system when an additional two years of service credit is granted to a member of the Defined Benefit Program 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 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 from service and that the retirement will either 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.
- 5E) Pursuant to Education Code Section 22714, subdivision (b), a school district's cost of reimbursing the county superintendent for all costs resulting from his or her certification to the Teachers' Retirement Board that the formal action of the

district will result in a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5 or the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

5F) Pursuant to Education Code Section 22714, subdivision (c), a county office of education's cost of reimbursing the Superintendent of Public Instruction for all costs resulting from his or her certification to the Teachers' Retirement Board that the formal action of the county office will result in a reduction of the number of certificated employees as a result of declining enrollment or the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

5G) Pursuant to Education Code Section 22714, subdivision (d), a community college district's cost of reimbursing the chancellor for all costs resulting from his or her certification to the Teachers' Retirement Board that the formal action of the district will result in a reduction of the number of academic employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701 or the retention of faculty qualified to teach in teacher shortage disciplines.

5H) Pursuant to Education Code Section 22717, subdivision (a), costs that result from additional employer contributions and certification requirements when a member is granted credit at service retirement (on or after January 1, 1999) for each day of accumulated and unused leave of absence for illness or injury for which full

salary is allowed and to which the member was entitled on the member's final day of employment.

5I) Pursuant to Education Code Section 22717.5, subdivision (a), costs that result from additional employer contributions and certification requirements when a member is granted credit at service retirement for each day of accumulated and unused leave of absence for education for which full salary is allowed on the member's final day of employment with the state.

5J) Pursuant to Education Code Section 22718, subdivision (a), costs that result from additional employer contributions and certification requirements when billed by the Teachers' Retirement Board for service credit granted for unused excess sick leave

5K) Pursuant to Education Code Section 22724, the cost of determining excess sick leave days to which a member is entitled when he or she retires and the cost of submitting to the board sick leave records of past years for audit purposes.

6. Permissive and Additional Service Credit (Chapter 14)

6A) Pursuant to Education Code Section 22800, subdivision (a), claims for permissive and additional service credit under this part shall be corroborated by a statement from the superintendent of schools or custodian of records of the employer for which the service was performed. Pursuant to subdivision (c), when the official records of the service have been destroyed, the claim shall 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.

- 6B) Pursuant to Education Code Section 22801, subdivision (d), employers 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.
- 6C) Pursuant to Education Code Section 22803, subdivision (a), the cost of additional employer contributions when a member elects to receive credit for any of the following:
- (1) 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.
 - (2) 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.
 - (3) 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 under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program within six months following the

date of termination of service in the job corps.

- (4) Time spent on an approved leave to participate in any program under the federal Mutual Educational and Cultural Exchange Program.
- (5) 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.
- (6) 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.

7. **Military Service (Chapter 14.5)**

- 7A) Pursuant to Education Code Sections 22851 and 22852, the cost of additional employer contributions when a member returns to employment with the same employer which had employed the member immediately prior to the eligible period of voluntary service in the uniformed services

8. **Employer and State Contributions (Chapter 16)**

- 8A) Pursuant to Education Code Section 22950, the cost of contributions to the Teachers' Retirement Fund for all members in an amount equal to four percent (4%) of their creditable compensation, that sum being the incremental increase in

contribution rates since December 31, 1974.

- 8B) Pursuant to Education Code Section 22950, the cost of contributions to the Teachers' Retirement Fund for all members not previously qualified for membership on December 31, 1974 in an amount equal to eight percent (8%) of their creditable compensation, less any amounts reimbursed pursuant to paragraph 8A, supra.
- 8C) Pursuant to Education Code Section 22950, the cost of contributions to the Teachers' Retirement Fund for all members for creditable service not previously considered creditable service on December 31, 1974, in an amount equal to eight percent (8%) of the creditable compensation for such service, less any amounts reimbursed pursuant to paragraph 8A, supra.
- 8D) Pursuant to Education Code Section 22951, the cost of contributions to the Teachers' Retirement Fund for all members in an amount equal to 0.25% of the total creditable compensation upon which members' contributions are based.

It is estimated that the San Diego County Office of Education incurred approximately \$1,000, or more, in staffing and other costs in excess of any funding provided to county offices and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

DECLARATION OF Cheryl Miller
Santa Monica Community College District

Test Claim of Santa Monica Community College District

CSM No. _____

Chapter 803, Statutes of 2001	Education Code Section 22000
Chapter 802, Statutes of 2001	Education Code Section 22002
Chapter 159, Statutes of 2001	Education Code Section 22119.2
Chapter 77, Statutes of 2001	Education Code Section 22119.5
Chapter 1032, Statutes of 2000	Education Code Section 22146
Chapter 1025, Statutes of 2000	Education Code Section 22455.5
Chapter 1021, Statutes of 2000	Education Code Section 22458
Chapter 1020, Statutes of 2000	Education Code Section 22460
Chapter 880, Statutes of 2000	Education Code Section 22461
Chapter 402, Statutes of 2000	Education Code Section 22501
Chapter 939, Statutes of 1999	Education Code Section 22502
Chapter 1076, Statutes of 1998	Education Code Section 22503
Chapter 1048, Statutes of 1998	Education Code Section 22504
Chapter 1006, Statutes of 1998	Education Code Section 22509
Chapter 967, Statutes of 1998	Education Code Section 22711
Chapter 965, Statutes of 1998	Education Code Section 22712.5
Chapter 838, Statutes of 1997	Education Code Section 22713
Chapter 482, Statutes of 1997	Education Code Section 22714
Chapter 1165, Statutes of 1996	Education Code Section 22717
Chapter 680, Statutes of 1996	Education Code Section 22717.5
Chapter 634, Statutes of 1996	Education Code Section 22718
Chapter 608, Statutes of 1996	Education Code Section 22724
Chapter 383, Statutes of 1996	Education Code Section 22800
Chapter 592, Statutes of 1995	Education Code Section 22801
Chapter 394, Statutes of 1995	Education Code Section 22803
Chapter 390, Statutes of 1995	Education Code Section 22851
Chapter 933, Statutes of 1994	Education Code Section 22852
Chapter 603, Statutes of 1994	Education Code Section 22950
Chapter 507, Statutes of 1994	Education Code Section 22951
Chapter 20, Statutes of 1994	
Chapter 893, Statutes of 1993	

CalSTRS Service Credit

I, Cheryl Miller, Associate Vice President Business Services, Santa Monica

Community College District, make the following declaration and statement.

In my capacity as Associate Vice President Business Services, I am responsible for the business activities related to administration of the California State Teacher's Retirement System at the district. I am familiar with the provisions and requirements of the statutes and Education Code Sections enumerated above.

These Education Code sections require the Santa Monica Community College District to:

1. General Provisions (Chapter 1)

- 1A) To adopt policies and procedures, and to periodically update those policies and procedures to implement the State Teachers' Retirement Law, pursuant to Part 13, Division 1, Title 1 of the Education Code, commencing with Education Code Section 22000.
- 1B) Pursuant to Education Code Section 22002, subdivision (b), to contribute a percentage of the total creditable compensation on which member contributions are based. The required percentages are set forth below in Part 8.

2. Definitions (Chapter 2)

- 2A) Pursuant to Education Code Section 22119.2, subdivision (a), (in effect prior to July 1, 2002) "creditable compensation", subject to employer contributions, means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

- (1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.
- (2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.
- (3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).
- (4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.
- (5) Amounts deducted by an employer from the member's salary, including deductions for participation in tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.
- (6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same

percentage of the amount being distributed.

- (7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.
- (8) Any other payments the board determines to be "creditable compensation."

2B) Pursuant to Education Code Section 22119.2, subdivision (b), (in effect prior to July 1, 2002) "creditable compensation", subject to employer contributions, does not include:

- (1) Money paid for service performed in excess of the full-time equivalent for the position.
- (2) Money paid for overtime or summer school service, or money paid for the aggregate service performed in excess of one year of service credit for any one school year.
- (3) Money paid for service that is not creditable service pursuant to Section 22119.5.
- (4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in

a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

- (5) Fringe benefits provided by an employer.
- (6) Job-related expenses paid or reimbursed by an employer.
- (7) Money paid for unused accumulated leave.
- (8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.
- (9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.
- (10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program.
- (11) Any other payments the board determines not to be "creditable compensation."

2C) Pursuant to Education Code Section 22119.2, subdivision (a), (in effect after July 1, 2002) "creditable compensation", subject to employer contributions, is

expanded to include:

- (1) Salary paid in accordance with "employment agreements", in addition to those paid in accordance with a salary schedule, and without reference to years of training and experience.
- (2) Money paid during "sick leave, vacation leave, and other employer-approved leave".

"Creditable compensation, subject to employer contributions, is omitted for:

- (3) Money paid for achieving certification from a national board.

2D) Pursuant to Education Code Section 22119.2, subdivision (b), (in effect after July 1, 2002) "creditable compensation", subject to employer contributions, is expanded to include payments determined to have been paid for the principal purpose of enhancing a member's benefits and shall be credited to the Defined Benefit Supplement Program.

2E) Pursuant to Education Code Section 22119.2, subdivision (c), (in effect after July 1, 2002) "creditable compensation", subject to employer contributions, is expanded to include:

- (1) Money paid for service performed in excess of the full-time equivalent for the position and
- (2) Money paid for overtime or summer school service or money paid for aggregate service performed as a member of the Defined

Benefit Program in excess of one year of service credit for any one school year.

2F) Pursuant to Education Code Section 22119.5 "creditable service" includes any of the following new activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to the Education Code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

- (1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.
- (2) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.
- (3) The selection, collection, preparation, classification, demonstration,

or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school-curriculum.

- (4) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.
- (5) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section.
- (6) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.
- (7) The work of employees who are responsible for the supervision of persons or administration of the duties described in this part 2F.
- (8) Pursuant to subdivision (b), "creditable service" also means the work of superintendents of California public schools.

2G) Pursuant to Education Code Section 22146, employers are required to make contributions for members defined as any person, unless excluded, who has performed creditable service as defined in Section 22119.5 and has earned creditable compensation for that service and, as a result, is subject to the Defined Benefit Program.

3. Member and Employer Duties (Chapter 9)

- 3A) Pursuant to Education Code Section 22455.5, subdivision (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 Defined Benefit Program, 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's Defined Benefit Program at any time while employed. Written acknowledgment by the employee shall be maintained in employer files on a form provided by this system.
- 3B) Pursuant to Education Code Section 22458, each employer shall provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program 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.
- 3C) Pursuant to Education Code Section 22460, subdivision (a), each employer, commencing January 1, 2001, is required to notify a member who terminates employment with less than five years of credited service, of the following:
- (1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program

and the return of the member's accumulated Defined Benefit Supplement account balance.

- (2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.
- (3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

3D) Pursuant to Education Code Section 22461, subdivision (a), each school district, community college district and county superintendent of schools, upon retaining the services of a retired member under Section 24116, 24214, or 24215, shall do both of the following regardless of whether the retired member performs the services as an employee of the employer, an employee of a third party, or an independent contractor:

- (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.

4. **Membership (Chapter 10)**

- 4A) Pursuant to Education Code Section 22501, the additional cost of employer contributions for any person employed to perform creditable service on a full-time basis in a position not subject to contributions prior to January 1, 1975, unless excluded from membership pursuant to Section 22601.
- 4B) Pursuant to Education Code Section 22502, effective retroactively to July 1, 1996, the additional cost of employer contributions for any person employed to perform creditable service on a part-time basis when he or she becomes a member as of the first day of subsequent employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.
- 4C) Pursuant to Education Code Section 22503, effective retroactively to July 1, 1996, the additional cost of employer contributions for any person employed to perform creditable service as a substitute teacher when he or she becomes a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.
- 4D) Pursuant to Education Code Section 22504, effective retroactively to July 1,

1996, the additional cost of employer contributions for any person employed to perform creditable service on a part-time basis when he or she becomes a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

- 4E) Pursuant to Education Code Section 22509, subdivision (a), school districts are required, within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Section 22508 or 22508.5, to inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. Subdivision (b) requires school districts to file the election with the office of the State Teachers' Retirement System and a copy of the election shall be filed with the other public retirement system.

5. **Service Credit (Chapter 13)**

- 5A) Pursuant to Education Code Section 22711, costs that result from additional employer contributions based upon increased service credit during which a

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 under this Defined Benefit Program in the month prior to commencement of the leave of absence.
- (2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.
- (3) The employer's contribution to the Teachers' Retirement Fund shall be at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program in an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

Pursuant to subdivision (b), the maximum period of time during which a member may serve as an elected officer and receive service credit pursuant to this section

shall not exceed 12 calendar years.

- 5B) Pursuant to Education Code Section 22712.5, costs that result from additional employer contributions based upon service performed as a community service teacher or in a classified position that does not qualify for membership in the Public Employees' Retirement System, by members under this part who are employed by a school district, community college district, or superintendent of schools and who received credit during the school year ending June 30, 1996 and continue to receive credit for that service performed after June 30, 1996.
- 5C) Pursuant to Education Code Section 22713, costs that result from additional employer contributions based upon employees who reduce their 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 based upon regulations established by the governing board of a school district or a community college district or a county superintendent of schools and the maintenance of necessary records to separately identify each member who participates in the reduced workload program.
- 5D) Pursuant to Education Code Section 22714, subdivision (a), costs that result from additional employer contributions and the administrative costs incurred by the system when an additional two years of service credit is granted to a member of the Defined Benefit Program 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 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 from service and that the retirement will either 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.

5E) Pursuant to Education Code Section 22714, subdivision (b), a school district's cost of reimbursing the county superintendent for all costs resulting from his or her certification to the Teachers' Retirement Board that the formal action of the district will result in a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5 or the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

5F) Pursuant to Education Code Section 22714, subdivision (c), a county office of education's cost of reimbursing the Superintendent of Public Instruction for all costs resulting from his or her certification to the Teachers' Retirement Board that

the formal action of the county office will result in a reduction of the number of certificated employees as a result of declining enrollment or the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

- 5G) Pursuant to Education Code Section 22714, subdivision (d), a community college district's cost of reimbursing the chancellor for all costs resulting from his or her certification to the Teachers' Retirement Board that the formal action of the district will result in a reduction of the number of academic employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701 or the retention of faculty qualified to teach in teacher shortage disciplines.
- 5H) Pursuant to Education Code Section 22717, subdivision (a), costs that result from additional employer contributions and certification requirements when a member is granted credit at service retirement (on or after January 1, 1999) for each day of accumulated and unused leave of absence for illness or injury for which full salary is allowed and to which the member was entitled on the member's final day of employment.
- 5I) Pursuant to Education Code Section 22717.5, subdivision (a), costs that result from additional employer contributions and certification requirements when a member is granted credit at service retirement for each day of accumulated and unused leave of absence for education for which full salary is allowed on the

member's final day of employment with the state.

5L) Pursuant to Education Code Section 22718, subdivision (a), costs that result from additional employer contributions and certification requirements when billed by the Teachers' Retirement Board for service credit granted for unused excess sick leave

5K) Pursuant to Education Code Section 22724, the cost of determining excess sick leave days to which a member is entitled when he or she retires and the cost of submitting to the board sick leave records of past years for audit purposes.

6. Permissive and Additional Service Credit (Chapter 14)

6A) Pursuant to Education Code Section 22800, subdivision (a), claims for permissive and additional service credit under this part shall be corroborated by a statement from the superintendent of schools or custodian of records of the employer for which the service was performed. Pursuant to subdivision (c), when the official records of the service have been destroyed, the claim shall 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.

6B) Pursuant to Education Code Section 22801, subdivision (d), employers 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.

6C) Pursuant to Education Code Section 22803, subdivision (a), the cost of additional

employer contributions when a member elects to receive credit for any of the

following:

- (1) 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.
- (2) 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.
- (3) 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 under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program within six months following the date of termination of service in the job corps.
- (4) Time spent on an approved leave to participate in any program under the federal Mutual Educational and Cultural Exchange Program.

- (5) 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.
- (6) 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.

7. **Military Service (Chapter 14.5)**

- 7A) Pursuant to Education Code Sections 22851 and 22852, the cost of additional employer contributions when a member returns to employment with the same employer which had employed the member immediately prior to the eligible period of voluntary service in the uniformed services

8. **Employer and State Contributions (Chapter 16)**

- 8A) Pursuant to Education Code Section 22950, the cost of contributions to the Teachers' Retirement Fund for all members in an amount equal to four percent (4%) of their creditable compensation, that sum being the incremental increase in contribution rates since December 31, 1974.
- 8B) Pursuant to Education Code Section 22950, the cost of contributions to the Teachers' Retirement Fund for all members not previously qualified for

membership on December 31, 1974 in an amount equal to eight percent (8%) of their creditable compensation, less any amounts reimbursed pursuant to paragraph 8A, supra.

8C) Pursuant to Education Code Section 22950, the cost of contributions to the Teachers' Retirement Fund for all members for creditable service not previously considered creditable service on December 31, 1974, in an amount equal to eight percent (8%) of the creditable compensation for such service, less any amounts reimbursed pursuant to paragraph 8A, supra.

8D) Pursuant to Education Code Section 22951, the cost of contributions to the Teachers' Retirement Fund for all members in an amount equal to 0.25% of the total creditable compensation upon which members' contributions are based.

It is estimated that the Santa Monica Community College District incurred approximately \$1,000, or more, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

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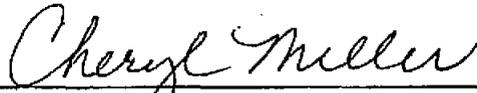
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Declaration of Cheryl Miller
Santa Monica Community College District
Chapter 375/2002 CalSTRS Service Credit

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 15 day of April, 2003, at Santa Monica, California



Cheryl Miller
Associate Vice President Business Services
Santa Monica Community College District

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Administration
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EXHIBIT 2
COPIES OF STATUTES CITED

BILL NUMBER: AB 1796 CHAPTERED 10/08/93

CHAPTER 893
 FILED WITH SECRETARY OF STATE OCTOBER 8, 1993
 APPROVED BY GOVERNOR OCTOBER 7, 1993
 PASSED THE ASSEMBLY SEPTEMBER 2, 1993
 PASSED THE SENATE AUGUST 27, 1993
 AMENDED IN SENATE AUGUST 17, 1993

INTRODUCED BY Assembly Member Napolitano

MARCH 5, 1993

An act to repeal and add Part 13 (commencing with Section 22000) of the Education Code, relating to the State Teachers' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

AB 1796, Napolitano. State Teachers' Retirement Law.

The State Teachers' Retirement Law establishes the State Teachers' Retirement System, and sets forth the provisions for its administration and the delivery of benefits to its members.

This bill would recast and recodify these provisions, and would state the intent of the Legislature that the bill would not make any substantive change in the law. It would also provide that any act enacted in 1993 at the 1993-94 Regular Session of the Legislature shall prevail over the bill.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 13 (commencing with Section 22000) of the Education Code is repealed.

SEC. 2. Part 13 (commencing with Section 22000) is added to the Education Code, to read:

PART 13. STATE TEACHERS' RETIREMENT SYSTEM
 CHAPTER 1. GENERAL PROVISIONS

22000. This part shall be known and may be cited as the State Teachers' Retirement Law and may be known and cited as the E. Richard Barnes Act.

22001. In order to provide a financially sound plan for the retirement, with 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. The system is a unit of the State and Consumer Services Agency.

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 be required to contribute a percentage of

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salaries earned.

(b) The employing agencies 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.

22003. The revision of the State Teachers' Retirement Law, enacted at the 1971 and 1972 Regular Sessions of the Legislature, shall not be construed to affect benefits of persons retired prior to July 1, 1972, or their beneficiaries, except as specifically provided.

22004. If the provisions of this part are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, 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, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

22005. The right of a person to a pension, retirement allowance, return of contributions, any optional benefit, or any other right accrued or accruing to any person under this part is exempt from taxation, including any inheritance tax, whether state, county, municipal, or district.

22006. The right of a person to an annuity, a retirement salary, or a retirement allowance, to the return of contributions, the annuity, retirement salary, 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.

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

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board or the system three years after all obligations to or on behalf of the member, former member, disabilitant, retirant, or beneficiary have been discharged.

(b) In cases where the system makes an error resulting in incorrect payment to a member, disabilitant, retirant, beneficiary, child, or dependent parent, the system's right to commence recovery shall expire three years from the date of payment.

(c) In cases where payment is erroneous due to lack of information or inaccurate information regarding the eligibility of a member, disabilitant, retirant, beneficiary, child, or dependent parent to receive benefits under this part, the period of limitation shall commence with the discovery of the erroneous payment.

(d) Notwithstanding any other provision of this section, where any erroneous payment has been made on the basis of fraud or intentional misrepresentation by a member, disabilitant, retirant, beneficiary, or other party in relation to or on behalf of a member, disabilitant, retirant, or beneficiary, the three-year period of limitation shall not be deemed to commence

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or to have commenced until the discovery of the error or omissions.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

22009. If any provision of this part or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

CHAPTER 2. DEFINITIONS

22100. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

22101. "Accumulated annuity deposit contributions" means the sum of all the annuity deposits standing to the credit of the member's account, together with credited interest.

22102. "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.

22103. "Accumulated tax-sheltered annuity contributions" means the tax-sheltered contributions made by a member and standing to the credit of the member's account, together with credited interest.

22104. "Actuarial equivalent" means an allowance of equal value when computed upon the basis of such tables and interest rates that are adopted by the board.

22105. "Annuity" means payments for life derived from the "accumulated annuity deposit contributions" of a member.

22106. "Annuity deposit contributions" means additional contributions made by a member above those required for credited service for the purpose of providing additional retirement income.

22107. "Beneficiary" means any person or entity receiving or entitled to receive allowances and payments pursuant to this part because of the death of member, disabilitant, or retirant.

22108. "Benefits" means any monthly payment due a retirant, disabilitant, or other beneficiary, and includes lump-sum payments due on account of death.

22109. "Board" means the Teachers' Retirement Board.

22110. "California service" means service performed in California for which credit may be given.

22111. (a) "Child" or "children" under the disability allowance and family allowance programs means any of the following:

(1) The unmarried offspring of a member under 18 years of age, not adopted by a person other than the spouse, and dependent upon the member on the effective date of disability allowance or death. Offspring shall include a child who is born within the 10-month period commencing on the effective date of the earlier of disability allowance or death.

(2) The unmarried child, under 18 years of age, adopted by the member, and dependent upon the member on the effective date of disability allowance or death.

(3) The unmarried stepchild of the member, under 18 years of age, and dependent upon the member on the effective date of disability allowance or death.

(4) The dependent unmarried child described in paragraph (1),

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(2), or (3) who is under 22 years of age and who is registered as a full-time student, as defined in Section 22138, on the effective date of disability allowance or death. A dependent unmarried child who is a full-time student in the month of attaining age 22 years, shall be deemed not to have attained that age until the first day of the month following the end of the school quarter or semester that was in progress in the month of attainment of age 22 years.

(b) For those members receiving a disability allowance and who subsequently die, the maximum number of children for family benefits shall be those who were eligible on the effective date of disability allowance.

22112. "Child" or "children," under the disability retirement and survivor benefits programs, means any of the following:

(a) The offspring of a member up to the attainment of 21 years of age, not adopted by a person other than the spouse, and dependent upon the member on the effective date of disability retirement or death. Offspring includes a child who is born within the 10-month period commencing on the effective date of disability retirement or death.

(b) The child, up to the attainment of 21 years of age, adopted by the member, and dependent upon the member on the effective date of disability retirement or death.

(c) The stepchild of the member, up to the attainment of 21 years of age, and dependent upon the member on the effective date of disability retirement or death.

22113. "Comparable level position" means any job in which the member can earn 662/3 percent or more of indexed final compensation.

22114. (a) "Compensation" and "salary" mean any of the following:

(1) Remuneration in cash payable by the employer to the member.

(2) Any member contributions paid by the employer pursuant to Sections 22903 and 22904.

(3) Any amount deducted from the member's salary for payment to one other than the member for the purpose of purchasing an annuity contract for the member under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 403(b)).

(4) Any amount deducted from a member's wages for participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6 of Division 5 of Title 2 of, or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5 of, the Government Code.

(5) Any amount deducted from the member's salary for payment for participation in a voluntary tax-deferred retirement plan that meets the requirements of Section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 401(k)).

(6) Any other payments the board may determine to be "compensation" and "salary."

(b) "Compensation" and "salary" do not mean, and shall not include, any of the following:

(1) Job-related expenses.

(2) Money paid to the employee for overtime service on and after July 1, 1956.

(3) Compensatory damages and money paid to the member in excess of regular salary as a compromise settlement of a dispute arising from termination of a member's employment contract.

(4) Lump-sum payments for accumulated sick leave or accumulated vacation leave.

(5) Money paid for summer school employment.

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(6) Money paid as a bonus. For purposes of this part, a "bonus" is a payment made only to a selected employee or employees and not to the entire class of employees on a systematic basis.

(7) Tax-sheltered annuity contributions that do not result in a reduction of the earned contract salary paid to the employee.

(8) Fringe benefits paid for by the employer in lieu of salary.

(9) Money not available for payment of salaries and that is applied by an employer for the purchase of annuity contracts or for other insurance programs, including those that meet the requirements of Section 403(b) of the Internal Revenue Code of 1986.

(10) Money not available for payment of salaries and that is applied by an employer for the purchase of a tax-deferred retirement plan which meets the requirements of Section 401(k) of the Internal Revenue Code of 1986.

(11) Money paid as a stipend to mentor teachers pursuant to subdivision (a) of Section 44494.

(12) Any other payments the board may determine not to be "compensation" and "salary."

(c) Any moneys paid under paragraphs (1) to (12), inclusive, of subdivision (b), shall not be included as a part of the member's compensation subject to contributions reported to the system.

(d) The system may establish procedures to ensure that information reported by employers is in compliance with this section.

(e) The Legislature finds and declares that any person who willfully reports compensation in a manner inconsistent with the definitions set forth in this section may be subject to prosecution for fraud, theft, or embezzlement under the Penal Code.

22115. (a) "Compensation earnable" by a member means the compensation as determined by the 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.

(b) For part-time service, "compensation earnable" means the compensation that would be earnable if the employment were on a full-time basis and the member worked full-time.

(c) For purposes of this part, "full-time" means service that is not less than the minimum schoolday for each day the schools of the district are maintained during the school year. If persons employed in positions requiring certification qualifications are required to serve a longer period of time in each schoolday than the minimums required, the longer period is recognized provided all those employees in similar grades or levels are similarly required to serve the longer periods of time, and provided that the duties required of those persons during the extended time is directly related to and restricted to their normal assignment.

22116. (a) "Compensation earnable," for the purposes of determining final compensation for part-time employees, means the earned salary divided by the service credit.

(b) The compensation earnable shall be limited to the highest salary on the school district salary schedule for a teacher or principal, whichever is applicable, when the service credit for any year is less than one-half of one year's service credit.

(c) The compensation earnable may be determined by the board when the service credit for any year is less than one-fifth of one year's service credit.

22117. "Contribution rate for additional service credit" means the contribution rate adopted by the board to purchase

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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.

22118. "County" includes "city and county."

22119. "County superintendent" means the county superintendent of schools.

22120. "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.

22121. "Custodian" as used in Section 22359, is 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 Teachers' Retirement Fund:

22122. (a) "Dependent child" means that more than one-half of the child's support was being provided by the member at the time of the member's disability or death.

(b) The system may require that income tax records and similar substantiating data be submitted by the member or the member's representative. Failure, neglect, or refusal by the member or the member's representative to provide requested tax records or data may constitute grounds for a determination by the system that the child was not dependent at the time of the member's disability or death.

22123. "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 age 18 years, and who was receiving one-half of his or her support from the member at the time of the member's death.

22124. "Disabilitant" means a member of the system to whom a disability allowance is payable.

22125. "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 on-the-job performance 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.

22126. "Disability allowance" means monthly amounts payable to a disabilitant.

22127. "Early retirement" and "early retirement age" means age 55 years and 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.

22128. "Educational institution" is 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.

22129. "Effective date" means the date stated in the application upon and continuously after which, should death occur, the member is considered a retirant or disabilitant.

22130. "Employer" or "employing agency" means the state or any agency or political subdivision thereof by whom a member is paid.

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22131. "Employment" means employment in a position requiring membership in the system.

22132. "Family allowance" means amounts payable to eligible survivors provided pursuant to Chapter 22 (commencing with Section 23800) after June 30, 1972.

22133. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive years during his or her membership in the system or time during which he or she was not a member but for which the member has received credit under the system, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For the purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who is also a member of the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or the San Francisco City and County Employees' Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this system.

(3) Retirement under this system is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23804.

(e) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this system under board rules in effect prior to that date.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and the children's increment of the survivor benefit allowances payable on and after January 1, 1978. The earnable salaries for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

22134. "Indexed final compensation" means final compensation upon which a disability allowance or disability retirement allowance was based, adjusted annually from the school year in which an allowance begins to accrue by the rate of change in the average compensation earnable as determined by the board.

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22133, "final compensation" means the highest annual compensation earnable by a member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the system. The last 12 consecutive months of employment shall be used by the system in determining final

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compensation unless designated to the contrary in writing by the member.

(b) Section 22133, except subdivision (a) of that section, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22133 or "final compensation" with respect to a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means any of the following:

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

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

(d) As used in this section, "classroom teacher" does not include any of the following:

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

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

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

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

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer that has, pursuant to Chapter 1017 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written agreement with an exclusive representative, that makes this section applicable to all of its classroom teachers, as defined in subdivision (c).

(f) The written agreement shall include a mechanism to pay for all increases in benefits and allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in benefits and allowance provided by this section and related administrative costs, a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of the benefit improvement, the establishment

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of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system the amount determined by the Teachers' Retirement Board to be equal to the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22133 and the proportionate share of the cost to the system, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in benefits and allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of the receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

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

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the eligibility of an employee, upon retirement or eligibility for a disability or family allowance, pursuant to the criteria set forth in this section.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payment not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

22136. "Final compensation" with respect to a member whose salary has been reduced by 5 or more percent after age 58 years because of a reduction in school funds means the highest average annual compensation earnable by the member during any three years during his or her membership in the system if the member elects to be subject to this section.

22137. With respect to a state employee member who dies or retires on or after July 1, 1991, and who was a managerial or supervisory employee, as defined by subdivisions (e) and (g) of Section 3513 of the Government Code, whose monthly salary range was administratively reduced by 5 percent because of the salary range reductions administratively imposed upon managers and supervisors during the 1991-92 fiscal year, "final compensation" means the highest annual compensation the state employee member would have earned had his or her salary range not been reduced by the 5-percent reduction. This section shall only apply if the period during which the state member's salary was reduced would have otherwise been included in determining his or her final compensation for retirement purposes. The costs, if any, that may result from the use of the higher final compensation shall be paid for by the employer at the time of retirement in a manner prescribed by the system.

22138. "Full-time student" means a child in full-time

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attendance at an educational institution. The final determination whether a person qualifies as a full-time student shall be made by the board in light of standards and practices of the institution involved.

22139. "Improvement factor" means an increase of 2 percent in benefits for each year commencing on September 1, following the first anniversary of the effective retirement date, or the date on which monthly benefits commenced to accrue to any beneficiary other than a retirant or such other periods as 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 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.

22140. Notwithstanding Section 22139, "improvement factor" means an increase of 2 percent in benefits provided under Sections 24408 and 24409 for each year commencing on September 1, 1981. 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 the economic conditions dictate. No adjustments of the 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.

22141. "Credited interest" is interest that is credited to members' accounts at a rate set annually by the board.

22142. "Regular interest" is interest that is compounded annually based upon the annual equivalent of the average rate yielded on commitments during the prior year for maturities of more than one year in length of fixed-income senior securities. For purposes of this section, "senior securities" means all investments except common stock and preferred stock investments and real estate ownership.

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.

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 system upon approval by the Teachers' Retirement 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.

22145. "Local system" means any retirement system, exclusive of this system, in which public school teachers are members, operated by a city, county, or other political subdivision of the state.

22146. "Member" means any person included in the membership of the system.

22147. (a) "Month" means 20 days or four weeks of five days each, including legal holidays, with respect to the computation and crediting of service.

(b) "Month," for all other purposes, means a period

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commencing on any day of a calendar month and extending through the day preceding the corresponding day of the succeeding calendar month, if there is any such corresponding day, and if not, through the last day of the succeeding calendar month.

22148. "Normal retirement" and "normal retirement age" means age 60 years and 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.

22149. "Option beneficiary" means a person designated to receive an actuarially reduced retirement allowance upon a retirant's or a member's death.

22150. "Other public systems" means the (a) old age, survivors, disability, and health insurance program, other than the lump-sum death payment, provided by the Social Security Act (42 U.S.C.A. Sec. 300 and following); (b) the federal civil service retirement program; (c) federal military disability; (d) railroad retirement; (e) a workers' compensation program; (f) federal railroad retirement; or (g) any other public retirement system, including any disability programs financed from public funds.

22151. "Overtime" means 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.

22152. "Parent" means a natural parent of a member or a parent who adopted the member prior to his or her attainment of 18 years of age or to the member's marriage, whichever occurs earlier.

22153. "Part-time basis with respect to service" means a basis of service that is for less time than is required of persons serving on a full-time-day basis even though the employee may be subject to call at any time.

22154. "Pay period" means a pay period of not less than four weeks or more than one calendar month.

22155. "Payroll" includes registers, warrants, and any other documents upon which all persons receiving salary payments are listed.

22156. "Projected final compensation" means the final compensation used in computing the disability or family allowance increased by 2 percent, compounded annually to the earlier of normal retirement age or the date the disability allowance is terminated.

22157. "Projected service" means the credited service plus the service which would have been earned had the member or disabilitant 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 disability allowance began to accrue.

22158. "Proof of death" means filing with the system a certified copy of the public record of death.

22159. "Public school" means any day or evening elementary school, and any day and evening secondary schools, community colleges, technical schools, kindergarten schools, and prekindergarten schools established by the Legislature, or by municipal or district authority.

22161. "Retirant" means a former member who has been retired for service or disability and is receiving a retirement allowance.

22162. "Retirement" means withdrawal from membership with a retirement allowance.

22163. "Retirement allowance" means the monthly amounts payable to a retirant or the option beneficiary.

22164. "Retirement fund" means the Teachers' Retirement

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Fund.

22165. "Return on investments" means income received or receivable from the system's investments.

22166. "School year" means the fiscal year or the academic year.

22167. "Service" means service performed for compensation in a position requiring membership in the system, except as otherwise specifically provided in this part.

22168. "Spouse" means a person who was married to the member at least 12 months prior to the death of the member unless a child is born to the union within the 12-month period or the surviving spouse is carrying the member's unborn child.

22169. "Survivor allowance" means the allowance provided for in Section 23804 as it read under the law in effect on June 30, 1972.

22170. "Survivor benefit allowance" means the monthly allowance that a surviving spouse may elect to receive pursuant to Chapter 23 (commencing with Section 23850).

22171. "System" means the State Teachers' Retirement System.

22172. "Final vesting" means the right of a member or a beneficiary to receive a monthly retirement allowance, disability allowance, or a family benefit when the member has completed the minimum number of years of credited service, has attained the minimum specified age, has formally terminated his or her active service, has made application for retirement, or has been formally retired in accordance with Section 22162, after which the kind and amount of the retirement allowance is fixed and cannot thereafter be changed except as provided in this part.

22173. "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 contributions as provided in this part.

22174. "Provisional vesting" means the right of the member upon the completion of the minimum number of years of credited service and attainment of the minimum specified age after which the member may retire at any time and be entitled to receive a monthly retirement allowance.

CHAPTER 3. RETIREMENT BOARD

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 member who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(6) Three members of the State Teachers' Retirement System, as follows:

(A) Two members who, at time of appointment, are classroom teachers in kindergarten or grades 1 through 12.

(B) One member, 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

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Colleges.

(7) A retirant of the system.

(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 member representing the public, appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(11) The members of the board provided by paragraphs (1) and (5) and subparagraph (A) of paragraph (6) shall be appointed by the Governor for four-year terms from a list submitted by the Superintendent of Public Instruction.

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

22201. (a) The board shall set policy and make rules and it has the sole power and authority to hear and determine all facts pertaining to application for benefits under the system or any matters pertaining to the administration of the system.

(b) The board shall meet at least once every calendar quarter.

22202. The board has exclusive control of the administration of the funds. No transfers or disbursements of any amount from the funds shall be made except upon the authorization of the board for the purpose of carrying into effect the provisions of this part.

22203. The board has exclusive control of the investment of the Teachers' Retirement Fund. Except as otherwise restricted by the California Constitution and by law, the board may in its discretion invest the assets of the fund through the purchase, holding, or sale thereof of any investment, financial instrument, or financial transaction when the investment, financial instrument, or financial transaction is prudent in the informed opinion of the board.

22204. Each member of the board may administer oaths and affirmations to witnesses and others transacting the business of the system.

22205. The board has the authority to negotiate, and enter into agreements with other states of the United States on the subject of the transfer of members' contributions and regular interest between the retirement systems of California and other states.

22206. As often as the board determines necessary, it may audit or cause to be audited the records of any public agency.

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

22208. The board may appoint a committee of two or more of its members to perform any act within the power of the board itself to perform. The board may also delegate authority to the chief executive officer to perform any such act. Except where the board, in delegating that authority, provides that the committee or the chief executive officer may act finally, all acts of the committee or the chief executive officer shall be reported to the board at its next regular meeting and shall be subject to review, ratification, or reversal by the board.

22209. The office of chief executive officer shall be filled by appointment by the board and the appointee shall serve at the pleasure of the board.

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22210. (a) Reversal by the board of any act of the committee or the chief executive officer shall be effective on the date fixed by the board.

(b) Payment of benefits prior to the board's action of reversal may not be affected by such an action, except for the recovery of the amounts paid, from the beneficiary receiving the amounts, as the board may direct.

22211. The board shall establish an ombudsman position to serve directly under the chief executive officer.

22212. The board shall appoint such employees as are necessary to administer the system.

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

22214. The board may take any action it deems necessary to ensure the continued right of retirants, disabilitants, or beneficiaries of members or retirants, to receive monthly payments.

22215. The board shall determine the service performed by members to be credited toward qualification for retirement, and shall fix retirement allowances and modify the allowances.

22216. (a) The board shall determine annually the rate of credited interest to be credited to members' accumulated retirement contributions for service performed after June 30, 1935, and the accumulated annuity deposit contributions excluding all accumulated contributions while being paid as allowances under Sections 23804, 24006, and 24007.

(b) The board shall credit interest to all other accumulated reserves at the actuarially assumed interest rate.

22217. (a) The board shall employ a certified public accountant or public accountant, who is not in public employment, to audit the financial statements of the system. The costs of the audit shall be paid from the income of the retirement fund. The audit shall be made annually commencing with the fiscal year ending June 30, 1974. The board shall file a copy of the audit report with the Governor, the Secretary of the Senate, and the Chief Clerk of the Assembly.

(b) These audits shall not be duplicated by the Department of Finance or the Auditor General. The system shall be exempt from a pro rata general administrative charge for auditing.

22218. The board shall establish and maintain an adequate system of records and accounts following recognized accounting principles and controls.

22219. (a) The board may in its discretion hold a hearing for the purpose of determining any question presented to it involving any right, benefit, or obligation of a person under this part.

(b) When a hearing is held, the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, relating to administrative adjudication; and the board shall have all of the powers granted in that chapter. However, the provisions of Section 11508 of the Government Code relating to the location of the hearing shall not apply, and the hearing shall be held at the time and place determined by the board.

22220. The board shall subpoena witnesses and compel their attendance to testify before it.

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 any of the following:

(a) Permit valuation of the assets and liabilities of the system.

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(b) Make any determination or calculation necessary to carry out this part.

22222. The board may adjust the amounts of the death benefits 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.

22223. The members of the board who are not members of the system 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.

22224. Members of the system, 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 panel of the system, shall be granted, by that member's employer, sufficient time away from regular duties, without loss of income or other benefits to which the member is entitled by reason of employment, to attend meetings of the board, or any meetings of any committee or subcommittee of the board of which the member is a member, or to serve as a member of a panel of the system, and to attend to the duties imposed on the member.

22225. (a) The compensation of the members of the system 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 the employing agency by which the members are regularly employed for any absence from service occasioned by attendance upon the business of the board, pursuant to Section 22224.

(b) Each employing agency that employs a member appointed pursuant to Section 22224 and that employs a person to replace the member during attendance at meetings of the board, or meetings of committees or subcommittees of the board, or when serving as a panel member of the system, thereof, 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.

CHAPTER 4. FIDUCIARY DUTIES

22250. The board and its officers and employees shall discharge their duties with respect to the system solely in the interest of the members, retirants, and beneficiaries as follows:

(a) For the exclusive purpose of the following:

(1) Providing benefits to members, retirants, and their 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.

22251. (a) Except as provided in subdivision (b), the assets

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of the system shall never inure to the benefit of a school district or other employing agency and shall be held for the exclusive purposes of providing benefits to members, retirants, and beneficiaries and defraying reasonable expenses of administering the system.

(b) In the case of a contribution that is made by a school district or other employing agency 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.

22252. Except as otherwise provided by law, the board and the officers and employees 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, retirant, or beneficiary for less than adequate consideration, or from a member, retirant, 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, retirant, or beneficiary without the receipt of adequate security and a reasonable rate of interest, or from a member, retirant, 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, retirant, 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, retirant, or beneficiary of any assets of the system for less than adequate consideration.

(e) Acquisition, on behalf of the system, of any school district or other employing agency security, real property, or loan.

22253. The board and its officers and employees 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 system or the interests of its members, retirants, and beneficiaries.

(c) Receive any consideration for their personal account from any party dealing with the system in connection with a transaction involving the assets of the system.

22254. (a) Any member of the board or its officers who breaches any of the responsibilities, obligations, or duties imposed upon them by Section 22251, 22252, or 22253 shall be personally liable to make good to the retirement fund 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 of the board member or officer.

(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.

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

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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 members of the board 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 system for breach of fiduciary duty pertaining to the administration of retirement benefits, including the granting, denial, or withdrawal of benefits.

22256. A board member or officer shall be liable for a breach of fiduciary responsibility of another board member or officer with respect to the system in the following circumstances:

(a) If the board member or officer knowingly participates in, or knowingly undertakes to conceal an act or omission of the other board member or officer knowing that the act or omission is a breach.

(b) If the board member's or officer's failure to comply with his or her responsibilities as set forth in Section 22251, 22252, or 22253 has enabled another board member or officer to commit a breach.

(c) If the board member or officer has knowledge of a breach unless the board member or officer makes reasonable efforts under the circumstances to remedy the breach.

22257. (a) Notwithstanding Section 22203, the board may contract with or appoint one or more investment managers to manage the assets of the retirement fund. If the board has acted with care, skill, prudence, and diligence in meeting the requirements of Sections 22252 and 22253 in selecting and monitoring the investment managers, then, notwithstanding Sections 22250, 22252, 22253, 22254, and 22256, no board member shall be liable for the acts or omissions of the investment managers or be under any obligation to invest or otherwise manage any assets of the retirement fund that are subject to the management of the investment managers.

(b) Incorporation of the fiduciary duty set forth in Section 22250 into the terms of a contract between the system and an investment manager shall be admissible as evidence that the board has acted with care, skill, prudence, and diligence in the selection of the investment manager.

22258.

Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the retirement fund to the board, the amount necessary to pay for any insurance obtained pursuant to Section 7511 of the Government Code. These payments shall be made upon warrants drawn by the Controller upon demands made by the board.

22259. (a) All members of the board and its officers and employees 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 member or employee.

(b) All members of the board and its 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.

CHAPTER 5. ADMINISTRATION

22300. The chief executive officer is the chief administrative officer of the system. The chief executive officer may administer oaths.

22301. The chief executive officer has the authority and responsibility for the administration of the system pursuant to the policies and rules adopted by the board. He or she may

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delegate to his or her subordinates any act or duty unless the board by motion or resolution recorded in its minutes has required him or her to act personally.

22302. (a) The duties of the ombudsman position established pursuant to Section 22211 shall include reviewing and making recommendations regarding complaints by school employees, members, retirants, employee organizations, Members of the Legislature, or members of the public regarding actions of the staff 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 in reduction in interest payments on delinquent benefits to members, and through a more efficient and improved public relations program.

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 employing agency to provide retirement counseling, employing retired public employees 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.

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

22305. Any rules and regulations adopted by the board for the purpose of the administration, and not inconsistent with this part, have the force and effect of law.

22306. (a) Data filed by any member or beneficiary with the board is confidential. No official or employee who has access to the individual records shall divulge any information concerning the records to any person other than the member to whom the information relates or his or her authorized representative, the governing board of the school district or agency by which he or she is employed, or any state department or agency. They shall be used by the board for the sole purpose of carrying this part into effect.

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

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 retirants, disabilitants, 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.

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, retirant, or any beneficiary of any member or retirant, 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.

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(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, retirant, 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 this system 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 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.

22309. The board shall issue to each member, after the close of the school year, a statement of his or her individual account.

22310. (a) Whenever a refund cannot be made under Section 23103; or a benefit cannot be paid because the member cannot be found, all accumulated contributions credited to the member's account shall be transferred to the retirement fund.

(b) If a member whose entire accumulated contributions were transferred to the retirement fund returns to a position requiring membership is located, or applies for a benefit or a refund of contributions, the system shall return all his or her contributions to the member's account with interest that would have been credited to the account had the accumulated contributions not been transferred.

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

(b) In periods not to exceed six-year intervals, the board shall make an actuarial investigation into the mortality, service, and other experience of members and beneficiaries and shall make an actuarial valuation of the assets and liabilities of the system. 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 system and the best estimate by the actuary of the future experience of the system. 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

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valuation, the board shall adopt for the system any rates of return on investments, rates of contribution to the retirement fund, mortality, service, and other tables it deems necessary.

22312. (a) The periodic actuarial valuation report required by Section 22311 shall contain, to the fullest extent possible, an analysis of the cost and unfunded accrued liability that results from the enactment of Chapter 23 (commencing with Section 23850) and Chapter 26 (commencing with Section 24100).

(b) This section shall apply only to the valuations scheduled for the June 30, 1993, data and the June 30, 1995, data.

(c) This section shall remain operative 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.

22313. (a) No adjustment shall be included in new rates of annuity 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 annuity at the time of retirement, shall change the annuity payable to a retirant retired prior to the date the action is taken.

22314. The system shall inform a member, upon retirement, that future tax liabilities may occur as the result of the pending retirement allowance.

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 system 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.

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 under this system, determined without regard to any amendment to the system 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.

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).

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(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.

22318. (a) The initial payment to a disabilitant or a disability retirant 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 disabilitant or disability retirant shall be placed on the final roll and issued a retroactive payment, if one is due, within 45 days of receipt by the system of all necessary information.

22319. (a) The initial payment to a retirant 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 a certified death certificate. Monthly payments shall continue thereafter. Payments may be based on a good faith estimated amount pending receipt by the system of all necessary employment information.

(b) The retirant or option beneficiary shall be placed on the final roll and issued a retroactive payment, if one is due, within 45 days of receipt by the system of all necessary information.

22320. The death benefits provided pursuant to Chapter 22 (commencing with Section 23800), Chapter 23 (commencing with Section 23850), and Chapter 24 (commencing with Section 23880) shall be paid to the beneficiary or estate within 45 days of receipt by the system of all necessary information.

22321. The system shall pay the retirant, option beneficiary, disabilitant, beneficiary, or estate 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 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.

22322. The system shall make a report to the board of all late payments at each regularly scheduled meeting.

22323. The system shall report monthly to the board concerning outstanding death benefits that have not been paid within six months of the notification of the death of the member.

22324. (a) The board shall file annually with the Governor and with the Senate and Assembly a report 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, and any comments on trends and developments in the field of retirement.

(b) The report shall be filed with the Governor at least 30 days prior to the first day of each year and shall be filed with the Senate and Assembly within the first five days of each year.

22325. (a) The annual report of the board required under Section 22324 shall include a description of all securities held and a comprehensive report of transactions involving the

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investment of the retirement fund similar to that required of a life insurance company licensed to do business in California.

(b) In the matter of stock exchange commission fees and other fees paid to persons not employed by the state for services in connection with investments under this chapter, the names of those persons to whom those fees are paid and the amounts paid shall be clearly identified in the report.

(c) The board shall also submit by November 1 of each year to the Assembly and the Senate a report of the unaudited data compiled for the preparation of the report required by this section.

22326. The board shall include in the annual report required by Section 22324, a brief summary of the costs or savings resulting from the enactment of Chapter 1314 of the Statutes of 1982.

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 allowance or disability retirement allowance from the system. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving benefits for a disability allowance or disability retirement allowance from the system. 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 allowances and disability retirement allowances that earnings information from the Employment Development Department's records will be released upon request by the board.

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.

22328. (a) Upon termination of a retirement 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 allowance, less the sum of all payments made under paragraph (1) 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.

22329. In order to provide equitable telephone assistance to all members, beneficiaries, and retirants, regardless of their location in California, the system shall install a toll-free, "800" prefix, line.

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 system, or the benefit structure of the system. 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

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to pay all costs arising from subdivision (a), but not to exceed fifty thousand dollars (\$50,000) in any one fiscal year.

22331. The system may offer a tax-sheltered annuity plan to all employees of any state agency who are members of the system or any employee of a local public agency or political subdivision of this state that employs persons in positions requiring or allowing membership in the system. This plan may be operated either directly by the system or by one or more qualified third-party carriers that shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination thereof. The type and number of investment vehicles offered by the carriers shall be determined by the board. The features of plan design and operation shall be in accordance with that allowed by 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 to the plan.

22332. (a) There is hereby established in the State Treasury a special trust fund known as the Teacher Tax-Sheltered Annuity Fund. There shall be deposited in that fund tax-sheltered annuity contributions together with interest earnings on the fund. All moneys in the fund are continuously appropriated to the board for disbursement for the purposes of the tax-sheltered annuity plan under this part.

(b) Return on investments of the fund shall be collected by the Treasurer and together with other moneys received for the Teacher Tax-Sheltered Annuity Fund shall be immediately deposited to the credit of that fund and reported immediately to the system. Money in whatever form received directly by the system dedicated to the Teacher Tax-Sheltered Annuity Fund shall be deposited immediately in the State Treasury to the credit of that fund.

(c) The board may provide by board rule for optional forms of payment from the Teacher Tax-Sheltered Annuity Fund.

(d) Disbursement of money from the Teacher Tax-Sheltered Annuity Fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds.

(e) Notwithstanding any other provision of this section, if the board elects to operate the plan through one or more third-party carriers, the tax-sheltered annuity contributions to the plan may be made directly from the employer to the carriers. All funds contributed shall be held by the carriers under custody and any return on investment shall be credited to plan participant accounts by the carrier. Under third-party carrier operation, the forms of payment and disbursement procedure shall be determined by the board.

22333. (a) Any tax sheltered annuity plan advertised, promoted, offered, or operated by the system, either directly or through one or more third-party carriers, shall provide for recovery of all costs and expenses of its own operation including, but not limited to, advertising, promotion, legal, accounting, recordkeeping, and investment costs and expenses, and the plan shall not be subsidized, in any respect whatsoever, by the retirement fund.

(b) The system shall not utilize its member mailing list for the purpose of transmitting information dedicated solely to advertising or marketing this program.

22334. (a) The board shall develop an alternative retirement plan to be known as Plan II. For the purposes of this section, Plan I refers to the retirement plan set out in this part.

(b) The benefits to be included in Plan II shall provide a member, when coupled with Social Security, with an adequate

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retirement benefit.

(c) Plan II shall be actuarially sound and funded within the rates presently being contributed by the school employer and the employee.

(d) The Legislature reserves the right to modify the benefits contained in Plan II at any future date if the cost of the plan increases as a result of changes in actuarial assumptions.

(e) The board shall submit a recommendation to the Legislature by March 1, 1989.

CHAPTER 6. INVESTMENTS

22350. The Legislature finds and declares that changing economic conditions and increasing complexity in the investment market make it necessary and desirable that the system obtain the best possible investment expertise.

22351. It is the intent of the Legislature that the board secure investment advisors with the composite expertise necessary for the investment of the retirement fund portfolio.

22352. (a) Upon a finding by the board that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board, the board may contract with qualified investment managers having demonstrated expertise in the management of large and diverse investment portfolios to render service in connection with the investment program of the board.

(b) The board shall report to the Governor, the Legislature, the Joint Legislative Budget Committee, and the Joint Public Pension Fund Investments Committee on the nature, duration, and the cost of investment contract services used. The report shall first be submitted in April 1987, and annually in April of every year thereafter.

22353. (a) Notwithstanding any other provision of law, the board shall by contract retain not less than two separate individual investment advisers.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from this section.

(c) No costs arising from this section shall be paid from the General Fund.

22354. (a) The board shall, pursuant to the state civil service statutes, either contract with, or establish and fill full-time positions for, investment managers who are experienced and knowledgeable in corporate management issues to monitor each corporation any of whose shares are owned by the system and to advise the board on the voting of the shares owned by the system and on the responses of the system to merger proposals and tender offers and all other matters pertaining to corporate governance.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the fund, an amount sufficient to pay all costs arising from this section.

22355. In no event shall the board employ through interagency agreement any investment personnel who would also serve during the term of the agreement as investment staff to the Board of Administration of the Public Employees' Retirement System.

22356. The board may apply to reduce the book value of securities purchased, all or part of the excess of the proceeds of the sale or redemption prior to maturity of securities over the book value of the securities sold or redeemed provided the

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purchase of securities is made with those proceeds and provided that the terms of both securities from the date of sale, redemption, or purchase, as the case may be, to the respective dates of maturity, do not differ by more than five years. All applications of excess of sales or redemption proceeds, even with greater difference in terms, made by the board before October 1, 1949, are hereby validated and confirmed.

22357. The board shall submit an annual report to the Legislature, which shall include all of the following:

(a) A copy of the annual audit performed pursuant to Section 22217.

(b) A review by a consultant, a summary of any changes in actuarial assumptions from the previous year, a review of the system's asset mix strategy, a market review of the economic and financial environment in which investments were made, and a summary of the system's general investment strategy.

(c) A description of the investments of the system, including the concentration of stocks and bonds, at cost and market value, including dividends and coupons, and a summary of major changes that occurred since the previous year.

(d) The following information regarding the rate of return of the system by asset type:

(1) Time-weighted return on a five-year, three-year, two-year, and one-year basis.

(2) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(3) Book valuation return on a five-year, three-year, two-year, and one-year basis.

(4) Portfolio return comparisons that compare investment returns with an alternative theoretical portfolio of comparable funds, universes, and indexes.

(5) Returns as credited to employer accounts.

(6) Returns as reported in annual reports.

(7) Returns as reported by the Controller.

(e) A transaction summary which shall adequately review the system's custodial relationship and daily cash management, purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations.

(f) A report on the use of outside investment advisers and managers and any participation in corporate annual meetings and shareholder voting.

(g) A statement of actuarial gains and losses, including the components of the employer contribution rate, and the sensitivity of the statement information to changes in the economic or noneconomic actuarial assumptions.

(h) A discussion of the system portfolio of the system containing the following information:

(1) Concentration, current holdings at cost and market value, risk characteristics (R-squared, Beta, standard error), fundamentals (P/E, dividend yield, measures of growth, size, earnings quality, debt/equity) of equities.

(2) Concentration, current holdings at cost and market value, maturity, duration, quality, coupon, and current yield of fixed income instruments.

(3) Current holdings at cost and market value of real estate equities.

(4) Current holdings at cost and market value of mortgages.

(5) Securities lending activity.

(6) Options and forward commitments.

(7) Cash and cash equivalents.

(i) A performance review of asset allocation, of equities due to market timing, sector selection, stock selection, and

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trading, of fixed income instruments due to interest rate anticipation skills, credit analysis, sector trading and swapping, and of value added over indexing (alpha).

(j) A review of the system's custodial relationship and daily cash management and a summary of the system's investment transactions, including purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations.

(k) A review of the role of any outside managers and advisers, stockholder voting, and changes in investment staff or reorganization.

22358. The board shall submit a review of the system's assets to the Legislature on a quarterly basis, which shall do all of the following:

(a) Discuss the system's portfolio and contain the following information:

(1) Concentration, current holdings at cost and market value, of equities.

(2) Concentration, current holdings at cost and market value, of fixed income instruments.

(3) Current holdings at cost and market value of real estate equities.

(4) Current holdings at cost and market value of mortgages.

(5) Options and forward commitments.

(6) Cash and cash equivalents.

(b) Disclose the following information on the rate of return of the fund by type of asset:

(1) Time-weighted return on a five-year, three-year, two-year, and one-year basis.

(2) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(3) Summary of performance of an alternative theoretical portfolio containing all investments and performance of comparable universes and other indexes.

22359. Notwithstanding any other provision of law, the board may retain a bank or trust company to serve as custodian for safekeeping, delivery, securities valuation, investment performance reporting, and other services in connection with investment of the retirement fund.

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 system members currently employed in positions requiring or permitting membership in the system, inactive members, disabilitants, and retirants, through financing, to obtain homes in this state.

(b) The terms and conditions of the correspondent agreements shall address all of the following:

(1) That home loans be made available to eligible currently employed members, inactive members, disabilitants, and retirants 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, inactive members, disabilitants, and retirants 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.

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 retirants 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 member or retirant 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 member or retirant 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 member or retirant. 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 member or retirant 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 system 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.

22362. (a) Notwithstanding any other provision of law, the board shall give first priority to investing not less than 25 percent of all funds 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

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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.

(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 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

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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.

CHAPTER 7. SYSTEM HEADQUARTERS

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 system, 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.

22376. All buildings acquired or improvements constructed by the board under the provisions of this chapter may contain space in excess of immediate requirements. The board may contract with the Department of General Services to handle the rentals of any excess space over and above that required by the board and to furnish general supervision and maintenance of buildings and improvements constructed under the provisions of this chapter.

22377. The board may contract with the Department of General Services or any other state agency for assistance in the acquisition of real property and any construction thereon of buildings or improvements authorized by this chapter.

22378. In the event that condemnation of the property selected is necessary, the board may elect to deposit with the treasurer funds it deems necessary, and that are appropriated, for purchase of the selected property subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

22379. Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to bidding procedures set forth in the State Contract Act (Chapter 1 (commencing with Section 10100) of Division 2 of the Public Contract Code).

22380. (a) The board shall establish a building account for the transfer of money appropriated for that purpose from the retirement fund for the construction or remodeling of buildings and improvements thereon, maintenance, repair, and improvement thereof. For accounting purposes, the board shall pay rental to the building account in an amount sufficient to repay all costs of acquisition, construction, and maintenance of space used by the board plus interest to the retirement fund.

(b) The board may contract with the Department of General Services for the purchase of insurance against loss of, or damage to, the property or the loss of use or occupancy of the building, liability insurance, and other insurance that is customarily carried on state office buildings. Premiums for this insurance shall be paid from the building account.

(c) The land, building, equipment, and improvements thereon, shall constitute an investment, in lieu of facilities operations cost, in the retirement fund and shall be carried on the books thereof as such in accordance with generally accepted accounting practices.

CHAPTER 8. ESTABLISHMENT AND CONTROL OF FUNDS

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 system and its predecessors, consisting of employee contributions, employer

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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.

22401. Return on investments shall be collected by the Treasurer, and together with any other moneys received for the retirement fund shall be immediately deposited to the credit of that fund and reported immediately to the system. Money in whatever form received directly by the system shall be deposited immediately in the State Treasury to the credit of that fund.

22402. Earned interest not credited to accounts and other income shall be used to provide the benefits under this part.

CHAPTER 9. MEMBER AND EMPLOYER DUTIES

22450. Each member and beneficiary shall furnish to the board any information affecting his or her status as a member or beneficiary of the system the board requires.

22451. (a) Each member shall file a statement with the board, at the option of, and upon the form furnished by, the board, giving the following information:

- (1) His or her date of birth.
- (2) All service previously performed by him or her in a position requiring membership in the system or its predecessors.

(b) Each person becoming a member on or after January 1, 1983, shall include in the health resume 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 a person applies for a disability allowance.

22452. (a) All members who enter the system on or after January 1, 1975, shall submit to the system proof of their date of birth after they attain five or more years of credited service. This proof shall meet the standards of the administrative procedure to establish record of birth, except for military records, as prescribed by the State Department of Health Services.

(b) Members of the system prior to January 1, 1975, shall not be required to furnish proof of date of birth if the birth dates in their retirement records have been consistent during the period of membership unless at time of retirement they elect an optional form of retirement when proof of date of birth of both member and beneficiary is required.

(c) Persons required to furnish proof of date of birth because of a discrepancy in date in the retirement record shall not be paid any allowance from the system until that proof has been received and accepted by the system.

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member or retirant shall be required on any application for, or cancellation of, an

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unmodified allowance, the election 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 or retirant in which a spousal interest may be present, unless the member or retirant declares, in writing, under penalty of perjury, that one of the following conditions exists:

(1) The member or retirant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(2) The spouse is incapable of executing the acknowledgement because of an incapacitating mental or physical condition.

(3) The member or retirant and spouse have executed a marriage settlement agreement pursuant to Chapter 2 (commencing with Section 1600) of Part 5 of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(4) The member or retirant 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 or retirant.

22454. If a spouse refuses to sign an application, as set forth in Section 22453, the member or retirant 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 11101 of the Family Code to determine the rights of the party.

22455. The county superintendent and other employing agencies shall furnish any further information concerning any member or beneficiary the board may require.

22456. At any time upon the request of the system, the employing agency shall furnish a statement of the amount of contributions deducted from salary payments of any member, the services performed and the salary earned by him or her since the end of the period covered by the last report of the superintendent or 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.

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 in a position requiring membership in the system, by the county or by a school district in the county.

(b) Every other employing agency shall give similar notice with respect to each person employed by it in a position requiring membership in the system.

22458. Each employing agency shall provide the system with copies of documents respecting the compensation to be paid to employees in that school year. The documents 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.

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 system, or to pay amounts due from the members to the system.

(b) The salary shall be withheld by the county superintendent or employing agency upon his or her own knowledge, if any, of

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the failure or upon notice from the board of the failure of the teacher 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.

22460. Employing school districts and other employing agencies 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. Employing school districts and other employing agents shall transmit the information to the member as part of the usual separation documents.

22461. (a) Upon retaining the services of a retirant as an employee under Section 24116, 24214, or 24215, the school district, community college district, county superintendent of schools, California State University, or other employing agency shall do both of the following:

(1) Advise the retirant of the earnings limitation set forth in Sections 24116, 24214, and 24215.

(2) Maintain accurate records of the retirant's earnings and report those earnings monthly to the system and the retirant 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 retirant in excess of the earnings limitation under any circumstance, including the failure to inform the retirant that continuation of service would exceed the limitations.

CHAPTER 10. MEMBERSHIP

22500. All persons who were members of the California State Teachers' Retirement System on June 30, 1944, are members of the system.

22501. All teachers employed in the public schools of this state are members of the system unless excluded from membership under Chapter 11 (commencing with Section 22600).

22502. Certificated librarians in elementary, secondary schools, or community colleges, or persons who serve partly as librarians and partly as teachers, are members of the system.

22503. All other employees in the public schools of this state who hold valid and unrevoked credentials issued by the State Board of Education, the Commission on Teacher Credentialing, the Board of Governors of the California Community Colleges, or who are employed in community college districts pursuant to minimum standards adopted by the Board of Governors of the California Community Colleges, and who are employed for at least 50 percent of each school month in work authorized by their credentials, or pursuant to minimum standards, are members of the system.

22505. Persons employed in the public schools or in county superintendents' offices of this state to perform duties usually performed by counselors, coordinators, and research directors, are members of the system.

22506. Superintendents, their deputies, and certificated employees under the direction of county superintendents are members of the system.

22507. Persons who are members on account of previous school

employment as provided by this chapter and who are employed by an independent data-processing center formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of Division 1 of Title 1, as it read on December 31, 1990, are members of the system.

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

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

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 as a member of this system.

22511. Members eligible to elect under Section 22510 and who elect to retain membership in this system shall be eligible only for those benefits available for all other members of this system, and not 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.

22512. If a member elects membership in the Public Employees' Retirement System under Section 22510, this election shall not be counted as a break in service if employment is continuous.

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 system until they qualify for the similar benefits in the Public Employees' Retirement System.

22514. Persons who have not achieved plan vesting shall qualify for eligibility for benefits under this system when total service under both systems equals the minimum required under Sections 23800 and 23804. These persons shall retain vested rights to survivor and disability benefits until they qualify for the similar benefits in the Public Employees' Retirement System.

22515. Persons excluded from membership in Sections 22602 and 22604 may elect membership in the system at any time while employed in a substitute or part-time position that does not qualify for membership in this system. The election is

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irrevocable, shall be in writing, and shall be filed in the office of this system prior to submission of contributions.

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in this system any member who accepts a position requiring membership in this system in which he or she has the right to elect membership in this or another retirement system and who elects membership in the other retirement system, or who enters a position that does not require membership in this system, but in which time served is included in this part.

(b) Time served after becoming a member of the other system shall not be credited to the member under this system, nor shall contributions or benefits under this system be based upon that time or the salary received by the member during that time, except as provided in the definition of "final compensation" contained in Section 22133.

CHAPTER 11. EXCLUSIONS FROM MEMBERSHIP

22600. Persons employed in a position requiring membership in this system, but who are members of a local system or a county retirement system are excluded from membership in the system. A person so excluded shall retain the right to receive a retirement allowance for nonlocal service that is creditable in the system unless he or she withdraws his or her contributions for that allowance.

22601. Persons serving as exchange teachers or sojourn teachers from outside of this state are excluded from membership in the system:

22602. (a) Persons employed on a substitute basis, who are not already members when they become employed and who perform less than 100 complete days of service during the school year are excluded from membership in the system.

(b) Persons employed on a substitute basis who have performed 100 or more complete days of substitute service in one school district or county superintendent's office in that school year shall become members on the first day of the following pay period during which the additional service was performed.

22603. Persons not already members who are employed as instructors of adult education classes that have a duration of less than one school semester, or less than one school quarter of 12 weeks, if the district operates its adult education program on that basis, are excluded from membership in the system.

22604. (a) Persons employed on a part-time basis who are not already members when they become employed, and who perform less than 60 hours of service per pay period or less than 10 days of service in a pay period on a daily basis, are excluded from membership in the system.

(b) Persons employed on a part-time basis who have performed 60 or more hours of service in a pay period, or 10 days or more of service in a pay period on a daily basis in one school district or county superintendent's office shall become members on the first day of the following pay period during which the additional service was performed.

22605. Persons not already members who are employed as part-time teachers and who are concurrently employed in full-time positions as members of another retirement system, or a system administered and supported by the United States government, supported wholly or in part by public funds are excluded from membership in the system.

22606. (a) Persons not already members who are employed for less than full time in positions requiring health and development credentials, a standard credential in designated

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services for health, or a designated services credential with a specialization in health, are excluded from membership in the system.

(b) The provisions of this section shall not apply to nurses employed in schools for at least 50 percent of a pay period.

22607. A person employed as a student teacher pursuant to Section 44926 is excluded from membership in the system and the Public Employees' Retirement System.

22608. Persons in the following categories are excluded from membership in the system:

(a) A student teacher under Section 44320.

(b) A participant in the New Careers Program under Section 44523.

(c) An instructional aide under Section 45343.

(d) A teacher aide under Section 45360.

CHAPTER 12. COMMUNITY PROPERTY

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 system and establishes and defines the rights of nonmember spouses in the system.

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 of the member or the benefits of a retirant. A nonmember spouse who is awarded a separate account of service credit and accumulated retirement contributions is not a member of the system. A nonmember spouse who receives a retirement allowance or is awarded an interest in a retirement allowance of a retirant is not a retirant of the system.

22652. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the accumulated retirement contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit or accumulated retirement contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse, including, but not limited to, the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated retirement contributions which are eligible for redeposit by the member under Sections 23200 to 23203, inclusive, and the shares of the member and the nonmember spouse of the eligible redeposit amount.

(4) The right to purchase additional service credit which is eligible for purchase by the member under Sections 22800 to 22810, inclusive, and the shares of the member and the nonmember spouse of the service credit eligible for purchase.

22653. The nonmember spouse who is awarded a separate account pursuant to Section 22652 is not a member of the system. The nonmember spouse is entitled only to rights and benefits explicitly established by this chapter.

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22654. The nonmember spouse is entitled to no benefits or rights from the separate account except as otherwise provided in this chapter. However, this section shall not be construed to limit any right arising from the account of a nonmember with the system which exists because the nonmember spouse is employed in a position requiring membership in the system.

22655. Upon the legal separation or dissolution of marriage of a retirant, 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 retirant consistent with this section. Upon election under subdivision (d) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

(a) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving a retirement allowance under any section other than Section 24300, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(b) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving an allowance which has been actuarially modified pursuant to Section 24300, the court shall order only one of the following:

(1) The retirant shall maintain the retirement allowance without change.

(2) The retirant shall cancel the retirement allowance 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, his or her community property share of the retirement allowance of the retirant, the option beneficiary, or both.

(3) The retirant shall cancel the retirement allowance pursuant to Section 24305 and select an unmodified retirement benefit and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(c) If the option beneficiary, other than the nonmember spouse, dies before the retirant, the court shall order the retirant to select a new option beneficiary pursuant to Section 24306 and shall order the system to pay the nonmember spouse, by separate warrant, his or her share of the community property interest in the retirement allowance of the retirant or the new option beneficiary, or both.

(d) The right of the nonmember spouse to receive his or her community property share 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 accumulated retirement contributions in the event that accumulated retirement contributions become payable.

22656. No judgment or court order issued pursuant to this chapter is binding on the system until the system has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

22657. (a) The following provisions shall apply to a nonmember spouse as if he or she were a member or service retirant: 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,

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inclusive, and Sections 22658 to 22665, inclusive.

22658. (a) All separate accounts of a nonmember spouse shall be administered separately. Accumulated contributions, service credit, and final compensation attributable to a separate account of a nonmember spouse shall not be combined in any way and for any purpose with the accumulated contributions, service credit, and final compensation of any other separate account of the nonmember spouse.

(b) In addition, accumulated contributions, service credit, and final compensation in the separate account of a nonmember spouse shall not be combined in any way and 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 in a position requiring membership in the system.

22659. Upon being awarded a separate account or an interest in the allowance of a retirant, 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.

22660. (a) The nonmember spouse who is awarded a separate account shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance attributable to the separate account which is unpaid on the date of the death of the nonmember spouse.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance under Section 24300.

22661. The nonmember spouse who is awarded a separate account shall have the right to a refund of accumulated retirement contributions in the separate account of the nonmember.

(a) The right of the nonmember spouse to a refund of accumulated retirement contributions is subject to Section 23105.

(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.

(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 balance of the account without an application from the nonmember spouse.

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 required by Section 22652.

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(a) The nonmember spouse may redeposit only those accumulated retirement contributions that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember spouse in the accumulated retirement contributions.

(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 the 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. 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 Sacramento office of the system 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.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall have no 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.

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 required by 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 the election form and the 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 Sacramento office of the system 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

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spouse.

(2) The contributions shall be based on the compensation earnable of the member 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 have no right to purchase additional service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember spouse.

(e) The member has no 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.

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 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.

(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 by the system in Sacramento and the effective date is after the date the judgment was entered.

(c) Upon service retirement, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments upon retirement at normal retirement age or over, 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

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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 a position requiring membership 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 a position requiring membership, or the termination of the disability allowance and the employment or self-employment of the member. 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 retirant. 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.

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

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for a service retirement, disability 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 service retirement or disability allowance of a member shall be calculated based on the service credit in the account of the member on the effective date of disability or retirement.

22666. It is the intent of the Legislature to abolish any remaining application of the terminable interest doctrine in California relating to the division of public retirement benefits of a member in the event of dissolution of marriage or death if the division is made under this chapter.

CHAPTER 13. SERVICE CREDIT

22700. This chapter governs the computation of service to be credited to a member for the purpose of determining whether the member qualifies for retirement, the amount of contributions required of the member, and the amount of benefits paid to a retiree.

22701. (a) Service performed prior to July 1, 1972, shall be credited according to the provisions of the law in effect at the time service was performed.

(b) Service performed on or after July 1, 1972, by a member shall be 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.

22702. Persons employed on a part-time basis, including persons employed in night schools and adult education programs, 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. When a person is employed on an hourly or daily basis, full-time employment shall be considered as the number of days of service required by the district to be performed by its full-time employees in a school year and employees employed on an hourly or daily basis shall receive credit for time served in the proportion that the total hourly or daily service performed in a school year bears to the full-time employment for that school year.

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 service performed during any one school year in a position requiring membership in this system 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.

22704. In any school district that is conducting a year-round school operation or a continuous school program, service shall be credited to the school year in which the service began.

22705. No time shall be included for which a member is entitled to receive a pension in a lump sum or installment payments, for other than naval or military service from any

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source 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 retirement system. If a retirant becomes entitled to such a pension, his or her retirement allowance shall be reduced thereafter to exclude the time upon which the pension is based, without other change in his retirement status.

22706. No time shall be included during which a person is a retirant or receiving disability allowance from this system.

22707. Except as otherwise specifically provided in this part no member shall receive credit for service performed outside this state.

22708. The calculations of retirement allowances for state' employees in the personal leave program shall include credit for service that would have been credited had the employee not been in the personal leave program. The costs that result from the increased service credit shall be paid for by the employer in a manner prescribed by the system.

22709. A member shall receive credit for time during which he or she is prevented from performing service in a position requiring membership, 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, he or she 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 a position requiring membership in the State Teachers' Retirement System, he or she shall be given by the system four years of service credit in the system.

22710. Service shall be credited, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of duties and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the compensation paid to the member bears to the compensation earnable by the member. The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of that absence.

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 service in a position requiring membership in this system 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 employing agency contributes to the Teachers' Retirement Fund an amount based upon the salary that would have been paid to the member had the member been employed full-time and at a rate specified by the board.

(b) The maximum amount of credit earned by a member for service as an elected officer of an employee organization shall not exceed 12 calendar years.

22712. A member shall receive credit for time served as an exchange teacher in any location.

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 of

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this system to reduce his or her workload from full-time to part-time duties, and receive the service credit the member would receive if the member was 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 salary that the member would have received if employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option of part-time employment 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 in a position requiring membership in this system for at least 10 years of which the immediately preceding five years were full-time employment.

(3) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full-time in a position requiring membership in this system for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time 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 reduction in workload.

(5) The period of part-time employment shall not exceed 10 years.

(6) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the member's contract of employment during his or her final year of service in a full-time position.

(7) The member shall be paid a salary that is the pro rata share of the salary the member would be earning had he or she not elected to exercise the option of part-time employment.

(c) Prior to the reduction of an employee's workload under this section, the district personnel responsible for the administration of this program, in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the eligibility of the applicant 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 an amount based upon the salary that would have been paid to the member had the member been employed full-time and at the rate specified by the board.

(f) The employer shall maintain the necessary records to separately identify each member receiving credit pursuant to this section.

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

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Governor's executive order specifying that period.

(2) The appointing power, as defined in Section 18524 of the Government Code, transmits to the retirement fund an amount determined by the board that is equal to 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 will be realized were the additional service credit towards retirement 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 retired pursuant to this section.

(d) Any member who qualifies under this section, upon subsequent reentry to the system, shall forfeit the service credit acquired 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.

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 credits acquired under former Section 22732, as it read on June 29, 1993.

22717. (a) A member shall be credited at service retirement for each day of accumulated and unused leave of absence for illness or injury for which full salary is allowed that the member was entitled to on the final day the member performed service for the school district or other employing agency by

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which the member was last employed in a position requiring membership in the system.

(b) The number of years 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 required by the member's contract of employment during the final year of service in a position requiring membership in the system. In no event shall the divisor be less than 175.

(c) When the member has made application for service retirement under this part, the school district or other employing agency 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 employee is 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 of the system on or after July 1, 1980, whether or not the person was ever a member prior to that date.

22718. (a) The Teachers' Retirement Board shall establish rules and regulations for the purpose of billing school employers for service credit awarded 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 for members of the State Teachers' Retirement System.

(2) The employer shall be billed only for the present value of sick leave greater than one day per pay period of at least four weeks that is granted to members of the State Teachers' Retirement System.

(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.

22719. If a retirant returns to active service, the employing school district or other employing agency shall not reinstate sick leave for which retirement credit has been given.

A retirant who reinstates to membership in the system on or after July 1, 1980, and subsequently retires shall not receive service credit for the unused sick leave accrued after reinstatement.

22720. The benefits accorded pursuant to Section 22717 shall not be used in the calculation of final compensation under this system.

22721. Except as provided in Section 22717, no credit toward retirement shall be granted for any payment made for accumulated sick leave upon transfer from one district to another, upon termination of service, upon death, or retirement.

No contributions shall be taken from those payments. Payments for accumulated sick leave shall not be included in any payroll warrant paid to the teacher but shall be paid by separate warrant. The payments shall not be included in the computation for the purposes of determining "final compensation." No continued leave of absence shall be granted a member solely for

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the purpose of allowing the member to receive compensation for accumulated sick leave for which the member could otherwise have elected to receive payment.

CHAPTER 14. PERMISSIVE AND ADDITIONAL SERVICE CREDIT

22800. (a) Claims for creditable service shall be corroborated by a statement from the superintendent of schools or custodian of records of the employing agency or public school where 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.

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 currently employed in a position requiring membership in this system, 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 currently employed in a position requiring membership in this system, 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. 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.

(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 the monthly unpaid balance if the member pays in installments.

22802. A member who was previously excluded from membership in this system may elect to receive credit for:

(a) Substitute service excluded under Section 22602.

(b) Part-time service excluded under Section 22604.

(c) Adult education service excluded under Section 22603.

(d) Service as a school nurse excluded under Section 22606.

(e) Service performed in a position prior to the date the position was made eligible for membership in this system.

(f) Service performed in a position requiring membership in this system 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. A member who elects to receive credit for service performed while excluded from membership shall pay for all such service.

22803. (a) A member may elect to receive credit for any of the following:

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(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 in a position requiring membership in this system within one year prior to entering the service and returned to a position requiring membership in this system 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 ~~24-month period~~, for family care leave purposes, as defined by Section 12945.2 of the Government Code, 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 another retirement system.

22804. For the purposes of this chapter, war with a foreign power exists under any of the following conditions:

(a) Whenever Congress has declared war and peace has not been formally restored.

(b) Whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared.

(c) Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to maintain or restore international peace and security.

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 in a position requiring membership in this system 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

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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.

22806. (a) A member who is a state employee or a retirant 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 or a retirant 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 retirant shall have retired immediately following service as a member who was at retirement a state employee. The retirement allowance of a retirant 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 or retirant 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 retirant or to provide the name or address of any retirant, agency, or entity for the purpose of notifying those persons.

22807. (a) A member who voluntarily requests or agrees to an extension of his or her original term of enlistment, service, or tour of duty shall not receive credit for time served during the extension of military service after December 31, 1958.

(b) In no event shall a member receive credit for more than four years of military service performed after June 30, 1968.

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 a position requiring membership in this system 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 a position requiring membership in this system 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

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returned to a position requiring membership in this system 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 a position requiring membership in this system 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, the school districts, community college districts, or other agencies employing those members shall not be required to make the contributions required by Chapter 16 (commencing with Section 22950).

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 entering membership in this system.

(b) The member received 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.

22810. (a) Any member, who was a member of this system 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 require membership in this system.

(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 the same service in another retirement system.

CHAPTER 15. EMPLOYEE CONTRIBUTIONS

22900. Acceptance of employment in a position requiring membership in the system is consent to have deductions from salary taken for the system.

22901. Each member of this system shall contribute to the retirement fund an amount equivalent to 8 percent of the member's compensation.

22902. Members' accumulated retirement contributions and those other contributions required for credited service shall be in the amounts required based on rates of contribution applicable for the years included in that period.

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

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retirement made by members of the State Teachers' Retirement System.

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the normal contributions required to be paid by a state employee who is a member of the State Teachers' Retirement System. The pick up of member contributions shall be through a salary reduction program pursuant to Section 414(h)(2) of the Internal Revenue Code. These contributions shall be reported as employer-paid member contributions, and shall be credited to member accounts.

22905. Contributions made by a member and member contributions made by an employer pursuant to Section 22903 and 22904 shall be credited by the board to the individual account of the member.

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 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.

22907. Accumulated 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 system plus regular interest from the end of the school year in which the contributions were underpaid to the date of payment.

22908. (a) Subject to rules prescribed by the board, any member may elect to make annuity deposit contributions for the purpose of providing additional retirement income. However, on and after January 1, 1983, the system shall not accept any annuity deposit contributions.

(b) Accumulated annuity deposit contributions may be withdrawn as provided in Section 23107.

CHAPTER 16. EMPLOYER AND STATE CONTRIBUTIONS

22950. The school districts and other agencies employing members of the State Teachers' Retirement System shall contribute monthly to the Teachers' Retirement Fund 8 percent of the total of the salaries upon which members' contributions are based.

22951. In addition to any other contributions required by this part, the school districts and other agencies employing members of the State Teachers' Retirement System shall contribute monthly to the Teachers' Retirement Fund 0.25 percent of the total of the salaries upon which members' contributions are based.

22952. Effective January 1, 1980, the school districts and other employing agencies in the state, in addition to all other contributions required by this part, on account of liability for benefits pursuant to Section 24407, shall contribute monthly to the Teachers' Retirement Fund 0.307 percent of the total of the salaries upon which members' contributions are based.

22953. (a) Effective January 1, 1981, the school districts and other employing agencies in the state, in addition to all other contributions required by this chapter, on account of liability for benefits pursuant to Section 24408, shall contribute monthly to the Teachers' Retirement Fund 0.108 percent of the total of the salaries upon which members'

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contributions are based.

(b) 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.

22954. (a) In addition to any other contributions required by this part, on July 1, 1990, and on July 1 of each subsequent year, the Controller, subject to Section 24414, shall transfer, based on estimated payroll data provided by the board, the following percentages of the total of the prior year salaries upon which members' contributions are based to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund, for the purpose of funding the supplemental payments authorized under Section 24415:

- (1) For the fiscal year ending June 30, 19910.50%
- (2) For the fiscal year ending June 30, 19921.00%
- (3) For the fiscal year ending June 30, 19931.50%
- (4) For the fiscal year ending June 30, 19942.00%
- (5) For the fiscal year ending June 30, 1995, and each fiscal year thereafter2.50%

These transfers shall be based upon estimated payroll data provided to the Director of Finance by the board and shall be adjusted in January of that same fiscal year to reflect actual payroll data.

(b) The board may deduct from the annual state contributions made pursuant to this section an amount necessary for the administrative expenses to implement Section 24415, subject to the annual Budget Act.

(c) Notwithstanding any other provision of law, it is the intent of the Legislature, in establishing the Supplemental Benefit Maintenance Program embodied in this section and Sections 22400, 24414, and 24415, to manifest a contractually enforceable promise to repay the Teachers' Retirement Fund in full, with interest, as provided in subdivision (b) of Section 24414, for all transfers or advances made from the Teachers' Retirement Fund pursuant to subdivision (a) of Section 24414 and for any funds appropriated by Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments.

(d) Except as provided in subdivision (c), the Legislature reserves the right to reduce or terminate the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section and to reduce or terminate the distributions required by Section 24415.

It is intended that any legislative reduction or termination of the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section or any reduction or termination of distributions required by Section 24415, shall be effectuated by a separate statute rather than by the annual Budget Act.

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1991, a continuous appropriation is hereby made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 4.3 percent of the total of the salaries of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit when the unfunded obligation has been deemed to be eliminated by the board based upon a recommendation from its actuary. If a rate increase or

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decrease is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer exceed 4.3 percent of the total of the salaries of the immediately preceding calendar year upon which members' contributions are based.

(b) The funds transferred pursuant to subdivision (a) shall first be applied to meeting the normal cost deficit, if any, for that fiscal year.

(c) The transfers made pursuant to this section are in lieu of the state contributions formerly made pursuant to Sections 23401 and 23402.

(d) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, and (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the salaries upon which member contributions are based to determine the dollar amount of the normal cost deficit for the year.

(e) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. The Legislature recognizes that the system shall, pursuant to this act, receive less funds in the short term than it would have received under former Sections 23401 and 23402 (Chapter 282 of the Statutes of 1979). However, it is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(f) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(g) This section shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate that occurs after July 1, 1990.

(h) The amendments to this section during the 1991-92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

22956. Employer and state contributions made to the system are to finance the employer obligation for all of the members of the system and, therefore, shall not be credited to the individual accounts of the members of the system. These contributions shall be held in the reserves of the system to finance the employers' share of the cost of all benefits payable by the system. Under no circumstances shall employer contributions be allocated or awarded to individual members, retirants, their spouses, or beneficiaries.

22957. (a) Any employer, other than the state, on behalf of any group of members or any member, may elect to make tax-sheltered annuity contributions for the purpose of providing additional benefits. An election by an employer to make these contributions does not require any member to make contributions.

These contributions shall continue in effect for the period specified in the election filed with the board. A member shall acquire no right by reason of his or her employment while the election is in effect to a continuation of the contributions beyond the period specified in the election.

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(b) Whenever in this part provision is made with respect to accumulated tax-sheltered annuity contributions of a member, that term shall include contributions made by an employer pursuant to this section.

(c) Contributions made by an employer under this section are excluded from the definitions of "compensation" and "salary" as provided in Section 22114.

CHAPTER 17. EMPLOYER COLLECTION AND REPORTING PROCEDURES

23000. The governing board of each school district, the county superintendent of schools, the county auditor, and any other employing department or agency shall deduct from the salary of employee members of this system the contributions required by this part and shall pay to the system those contributions plus the employer contributions required by this part and Section 44987.

23001. The 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.

23002. Member and employer contributions required by this part and Section 44987 are due in the office of the system five working days immediately following the period covered by the monthly report upon which the salary earned during the period is being reported and from and upon which the contributions are due. Payments shall be delinquent on the sixth working day thereafter and regular interest on delinquent payments shall begin to accrue as of that day. The board shall authorize estimated payments of not less than 95 percent of the contributions due, and, in that case, the balance of contributions payable shall be due in the office of the system no more than 15 working days following the period covered by the monthly report upon which the contributions are based. This additional payment shall be delinquent on the 16th working day thereafter, and regular interest shall begin to accrue as of that day.

23002.5. Member and employer contributions from school districts conducting a year-round school operation or a continuous school program shall be reported as part of the school year in which the service began.

23003. (a) If a county superintendent of schools or employing agency other than a school district or community college district fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions until they have been paid to the system.

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 system.

23005. Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the salary being reported was earned, and are delinquent 15 calendar days immediately thereafter.

23006. (a) If a county superintendent of schools or employing agency other than a school district or community college district submits monthly reports late or in unacceptable

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form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars (\$500), whichever is greater.

23007. Should any county superintendent fail to make payment of any assessment by the board, the Controller shall, upon order of the board, withhold subsequent payments from the State School Fund to the county for deposit in the county school service fund or, upon the request of a county superintendent of schools to the county auditor, he or she shall withhold payments to a school district for deposit in the district general fund until the contributions and report are received in acceptable form in the office of the system and the board directs the Controller to make those payments less the amount of the assessments to the county that would have been paid had no payments been withheld. The Controller shall thereupon pay to the system the amount of the assessments withheld for deposit in the State Treasury to the Teachers' Retirement Fund.

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system 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.

(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 22142. 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 based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the system in full for the amount of the disbursement. Reimbursement shall be made immediately upon notification by the system.

23009. The board, if in the interest of the system, 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.

CHAPTER 18. REFUND OF CONTRIBUTIONS

23100. (a) Upon the termination of a member's employment by any cause other than death or retirement there shall be paid to the member, pursuant to this part, both of the following:

(1) The accumulated retirement contributions made after June 30, 1935.

(2) The accumulated annuity deposit contributions.

(b) Accumulated contributions include credited interest through the date of payment.

23101. When a member's contributions are returned to him or her, as provided in Section 23100, all rights to benefits pertaining to the service credits 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 contributions, and paid the regular interest thereon as provided in Chapter 19 (commencing with Section 23200).

23102. Prior to the system paying a refund of contributions, the employer or superintendent of schools shall certify that the member's employment has been terminated.

23103. Refunds to a member shall be made upon request of the

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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 system to qualify for receipt of a retirement benefit.

23104. (a) Deposit in the United States mail of an initial warrant drawn in favor of a member as a refund of contributions upon termination of employment, and addressed to the latest address on file for the member, shall constitute a return of the member contributions.

(b) If a person to whom the warrant is mailed returns the warrant to the system's office for cancellation, within 30 days from the mailing date, the refund shall be canceled and the person shall be reinstated to membership with all the rights and privileges restored.

23105. The board shall deduct 4 percent of the refundable balance or twenty-five dollars (\$25), whichever is less, from each refund made upon termination of service. The amounts deducted are appropriated to the State Teachers' Retirement System and shall be credited to the support appropriation provided for in Section 22304 as reimbursements for the fiscal year during which those amounts are deducted.

23106. If a member ceases to be entitled to credit for service in this system because he or she 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, he or she 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.

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 contribution.

CHAPTER 19. REDEPOSIT OF CONTRIBUTIONS

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the system he or she 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 contributions that were previously refunded. The redeposit shall also include the amount deducted for administration expense under Section 23105.

(b) For time prior to July 1, 1944, regular interest shall be at 21/2 percent compounded annually.

23201. Any person whose accumulated contributions were refunded to him or her and who has received, or will qualify for the receipt of, 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 contributions that were refunded, with regular interest from the date of refund to the date of payment, without being employed in a position requiring membership in this system. A person who elects to redeposit pursuant to this section shall not receive credit for service that might otherwise be creditable under Section 22810.

23202. (a) An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the date of the retirement of the member.

(b) An election to redeposit refunded contributions shall be considered as an election to repay all contributions previously refunded.

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(c) If any payment due because of this election is not received at the Sacramento office of the system 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) In the event of cancellation of the election the member may at any time prior to the date of the retirement of the member, 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.

23203. Repayment of withdrawn 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).

CHAPTER 20. BENEFICIARY DESIGNATION

23300. (a) A member or retirant may at any time designate 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. Any change 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 at the pleasure of the person making the nomination, and a different beneficiary designated in the same manner as provided in this section.

23301. A corporation, trust, eleemosynary, parochial institution, or public entity may be designated as a beneficiary. However, they may not be designated as option beneficiaries.

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 and system by reason of the member's death.

23303. (a) The board, if the whereabouts of the nominated beneficiary cannot be determined, or if the beneficiary is the estate of the deceased person, 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 system, 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 and system up to the amount paid.

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,

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identity or other facts relating to entitlement of persons under this section shall constitute a complete discharge of and release of the system from liability for the benefit.

CHAPTER 21. PRE-1972 BENEFITS

23400. (a) If, prior to attaining the age of 55 years, a person who is entitled to receive a retirement allowance because of his or her retirement for disability prior to July 1, 1972, engages in a gainful occupation, the board shall reduce the portion of his or her monthly retirement allowance that is not provided by his or her accumulated contributions, to an amount, which when added to the compensation earned monthly by him or her, does not exceed the amount of the compensation that would be earnable by a person holding the same or an equal position as or to that which he or she held at the time of his or her retirement, and in the same salary step or rating, or if no such position then exists, the compensation earnable immediately prior to its abolition.

(b) If his or her earnings are further altered, the board shall further alter that portion of his or her retirement allowance to the lower of the following amounts:

(1) The amount of that portion of his or her retirement allowance as it would be if not reduced under this section.

(2) An amount that, when added to the compensation earned by him or her, equals the amount of the compensation that would be earnable by a person holding the same or an equal position as or to that which he or she held at the time of his or her retirement, and in the same salary step or rating, or if no such position then exists, the compensation earnable immediately prior to its abolition.

(c) For purposes of this section, the retirement allowance subject to adjustment is the unmodified allowance irrespective of the option elected.

(d) When he or she attains the age of 55 years, his or her retirement allowance shall be made equal to the amount it would be if not reduced under this section, and may not again be modified under this section. Section 24015 does not apply to those persons affected by this section.

23401. The board may require any disability retirant who retired, 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 he or she is no longer disabled, his or her retirement allowance shall cease, and he or she shall be reinstated to membership in the system. Should any retirant refuse to submit to medical examination, as provided in this section, payments to the retirant under disability retirement shall be discontinued and all rights of the retirant in the disability retirement allowance shall be revoked.

23402. Benefits payable on account of deaths that occurred prior to July 1, 1972, and provided under former Section 14193, as it read prior to July 1, 1972, shall be continued. Former Sections 14195 and 14196 as they read prior to that date shall continue to apply to these payments.

23403. Survivor benefits payable on account of deaths that occurred prior to July 1, 1972, shall be continued in the amounts and under the conditions stated in Sections 23804 and 23811, as they read prior to July 1, 1972.

23404. Upon termination of the retirement allowance that began to accrue prior to July 1, 1972, the member's individual account shall be credited with amounts that are the actuarial equivalents at that time, as based on the disabled life, where

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retirement had been for disability, or on the active life where the retirement had been for service of the allowance and annuities being paid from accumulated retirement contributions, accumulated annuity deposit contributions, or accumulated tax-sheltered annuity contributions. These credited amounts shall not exceed the amount of his or her accumulated contributions as they were in those accounts at the date of retirement.

CHAPTER 21.5. ELECTION OF DISABILITY AND DEATH BENEFIT COVERAGE

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 system, 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.

23701. (a) The election of disability and death benefit programs shall be made during the 180-day period commencing on October 16, 1992, and ending on April 13, 1993. All elections made during this period shall be effective as of October 16, 1992.

(b) If a member has made an election and subsequently becomes disabled or dies, the benefits shall be paid under the elected program provisions as though the election had been executed on October 16, 1992.

23702. (a) All members of the State Teachers' Retirement System 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 benefit programs.

(b) The member's eligibility to participate in the election shall be based on the member's status with the system on October 15, 1992, only, and not on prior or subsequent events.

23703. A member's election of disability or death benefit coverage shall meet all of the following requirements:

(a) The member is eligible to participate in the election pursuant to Section 23702.

(b) The election is filed on a form provided by the system.

(c) Except as provided in Section 23704, the election document contains the signature of the spouse of the member, 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 acknowledgement because of an incapacitating mental or physical condition.

(3) The member and spouse have executed a marriage settlement agreement pursuant to Chapter 2 (commencing with Section 1600) of Part 5 of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

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(4) The member is not married.

(5) The current spouse has no identifiable community property interest in future benefits.

(d) The election document is signed and dated during the 180-day election period specified in Section 23701.

(e) The signatures of the member and the member's spouse on the election document are witnessed by a third party who is at least 18 years of age.

(f) The election document is received in the system's office in Sacramento within 30 days after the date of signature, but no later than May 1, 1993.

23704. If a spouse refuses to sign the election document, 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.

23705. After receipt of a member's election document, the system shall mail an acknowledgement notice to the member that indicates the member's choice of disability and death benefit programs. If the member does not agree with the system's recording of his or her election choice, the member has 30 days from the date of the acknowledgement notice to notify the system in writing.

23706. (a) Failure to file an election pursuant to this chapter shall be deemed to be an election to retain coverage under the disability allowance and family allowance programs.

(b) Failure to meet all of the requirements for submitting an election pursuant to this chapter shall be deemed to be a failure to file an election.

CHAPTER 22. ACTIVE DEATH BENEFITS: FAMILY ALLOWANCE

23800. 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 disabilitants on October 15, 1992, and all persons who were members of the system on October 15, 1992, who elected, pursuant to Chapter 21.5 (commencing with Section 23700), to retain coverage under the death benefit provisions of this chapter.

23801. (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 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 active employment.

(2) While disabled, if the disability had been continuous from the last day for which compensation had been paid.

(3) Within four months after terminating employment.

(4) Within four months after termination of a disability allowance if no service was performed after the termination.

(5) 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 reinstatement from service retirement pursuant to Section 24208.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.

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23802. (a) Upon receipt of proof of death of a member who has no preretirement option in effect, and who has no eligible survivors for a family allowance, there shall be paid to the beneficiary both of the following:

(1) The accumulated retirement contributions after July 1, 1935.

(2) The accumulated annuity deposit contributions.

(b) Accumulated contributions include credited interest through the date of payment.

23803. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code, or any other provision of law, death payments and return of contributions pursuant to Sections 23801 and 23802, if any, may be requested by the beneficiary and paid by the system as soon as practicable after receipt of proof of death.

23804. (a) A family allowance is payable upon the death of a member or a disabilitant 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 a 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 retirement.

(c) The family allowance is 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.

23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the member's or disabilitant's surviving spouse who has financial responsibility for at least one child, an amount equal to 40 percent of the deceased member's final compensation or the disabilitant's projected final compensation plus 10 percent of the deceased member's final compensation or the disabilitant's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each child, an amount equal to 10 percent of the deceased member's final compensation or the disabilitant's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at age 60 or over without children, an amount equal to Option 3 as provided under this part computed on the member's or disabilitant's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member or disabilitant would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The benefit calculation shall include credit for the unused sick leave that had accrued to the member as of the date of the member's death.

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(d) If there is no surviving spouse or children upon the member's or disabilitant's death, to the dependent parent age 60 years or over, an amount equal to Option 3 as provided under this part computed on the member's or disabilitant's projected final compensation and projected service to normal retirement age. The benefit calculation shall include credit for the unused sick leave that had accrued to the member as of the date of the member's death. If there are two dependent parents, a single family allowance shall be computed on the assumption that the younger parent is the beneficiary and the allowance shall be divided equally for as long as there are two dependent parents. Thereafter, the allowance shall be payable to the surviving dependent parent.

(e) If there are no children who qualify under Section 22111, a spouse or the dependent parent or parents may elect, prior to the receipt of the first payment under subdivision (c) or (d), to receive the accumulated contributions in a lump sum subject to a reduction for any payments made from the account for any prior qualified persons.

23806. (a) If there are eligible dependent children who are not in the care of the surviving spouse, they shall be included in the calculation of the family allowance.

(b) An allowance increment payable for an eligible dependent child shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child. In the case of a child age 18 years or older, the child's share of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

23807. To determine eligibility for benefits payable under family and disability allowances as a full-time student, all of the following shall apply:

(a) An individual shall be deemed to be a full-time student during any normal period of vacation or holiday of the institution involved, and there is sufficient evidence to satisfy the board of the intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) If the individual fails to return to full-time attendance following vacation or holiday, the allowance ceases as of the first of the month in which return to full-time attendance was required.

(c) An individual does not qualify as a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension.

(d) An individual shall not qualify as a full-time student if attendance at an educational institution is paid for and provided by the employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time course of study which is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United State of America.

23808. A stepchild or adopted child acquired subsequent to the death of the member shall not be entitled to any allowance and shall be excluded in the determination of allowances under this chapter.

23809. The family allowance payable to the surviving spouse

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who has financial responsibility for at least one child, or payable to the children, shall be reduced by an amount equal to the unmodified benefits paid or payable from other public systems for the same event which qualified the member or disabilitant for the family allowance.

23810. If the person or persons to whom a family allowance is payable dies or no longer qualifies for the allowance, the allowance shall be terminated on the day of that event except as provided in Section 24600.

23811. (a) Upon termination of family allowances under this part and prior to the payment of allowances equal to the amount of the member's accumulated retirement contributions at the time of death, the balance shall be paid to the member's beneficiary.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date family allowances were last paid or from the date of death, if no family allowance payments were made, to the date the balance is paid.

CHAPTER 23. ACTIVE DEATH BENEFITS: SURVIVOR BENEFITS

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 became members of the system on and 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.

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 a 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 active employment.
- (2) Within four months after terminating employment.
- (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 reinstatement from service retirement pursuant to Section 24208 or during the calendar six months commencing with the effective date of reinstatement from disability retirement 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.

23852. Upon receipt of proof of death of a member who has no preretirement option in effect:

(a) The surviving spouse may elect to receive either of the following:

- (1) The member's accumulated retirement contributions in a lump sum.
- (2) The survivor benefit allowance pursuant to Sections 23854 and 23855.

(b) If there is no eligible surviving spouse, the member's accumulated retirement contributions shall be paid to the member's beneficiary in a lump sum.

(c) The member's accumulated annuity deposit contributions

shall be paid to the member's beneficiary in a lump sum.

The payment of accumulated contributions in a lump sum shall include credited interest through the date of payment.

23853. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other provision of law to the contrary, death payments and return of contributions pursuant to Sections 23851 and 23852, if any, may be requested by the surviving spouse or beneficiary and paid by the system as soon as practicable after receipt of proof of death.

23854. (a) A survivor benefit allowance is payable upon the death of a member, as defined in Section 23850.

(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 active employment.

(B) Within four months after termination of employment.

(C) Within four months after reinstatement from 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, 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 is in lieu of the return of the member's accumulated retirement contributions.

23855. (a) The survivor benefit allowance is a monthly allowance equal to one-half of the modified retirement allowance the member would have received at age 60 years, if the member had elected an Option 3 naming the spouse as the option beneficiary.

(b) The Option 3 allowance shall be based on the member's actual service credit and final compensation at time of death, the age 60 retirement factor, and the member's and spouse's ages as of the member's 60th birthday anniversary. If death occurs after the member attained age 60 years, the actual final compensation, retirement factor, and the member's and spouse's ages as of the date of death shall be used in the Option 3 allowance calculation.

(c) The allowance calculation shall include service credit for the unused sick leave that the member was entitled to on the date of the member's death. Eligibility for the use of sick leave and calculation of service credit shall be determined pursuant to Section 22717.

(d) The surviving spouse may elect to begin receiving the survivor benefit allowance immediately as of the date of the member's death or to defer receipt of the allowance to the date the member would have attained age 60 years. If the payments to the surviving spouse commence prior to the date the member would have attained age 60 years, the allowance payable shall be subject to a reduction as periodically determined by the board.

(e) If the spouse elects, pursuant to Section 23852, to receive the survivor benefit allowance, an additional increment

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of 10 percent of final compensation is payable for each eligible dependent child up to the attainment of age 21 years, up to a maximum of 50 percent of final compensation for the children's increment. The children's increment shall begin to accrue on the day following the member's date of death and shall be payable even if the spouse elects to postpone receipt of the base survivor benefit allowance until the member's 60th birthday anniversary.

23856. (a) If there are eligible dependent children who are not in the care of the surviving spouse, they shall be included in the calculation of the children's increment portion of the survivor benefit allowance.

(b) Allowances payable to the eligible dependent children shall be paid to the guardian of the estate of the child, the natural or adoptive parent having custody of the child, or if none, then to the trustee of the trust established for the benefit of the child. In the case of a child who is age 18 years or older, the child's share of the allowance shall be paid to the guardian of the estate of the child, trustee of the trust established for the benefit of the child, or if none, then to the child.

23857. A stepchild or adopted child acquired subsequent to the death of the member shall not be entitled to any allowance and shall be excluded in the determination of allowances under this chapter.

23858. If the person or persons to whom a survivor benefit allowance is payable dies or no longer qualifies for the allowance, the allowance shall be terminated on the day of the event except as provided in Section 24600.

23859. (a) Upon termination of a survivor benefit allowance pursuant to this chapter and prior to the payment of allowances equal to the amount of the member's accumulated retirement contributions at the time of death, the remaining balance 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 survivor benefit allowances were last paid or from the date of death of the member, if no survivor benefit allowance payments were made, to the date the balance is paid.

CHAPTER 24: RETIRED DEATH BENEFITS

23880. (a) A death payment of five thousand dollars (\$5,000) shall be paid to the beneficiary upon receipt of proof of death of either of the following:

(1) A retirant.

(2) A member, if the death payment pursuant to Section 23801 would have otherwise been payable or if the conditions specified pursuant to paragraph (3) of subdivision (b) of Section 23854 are met, and if the member's death occurs within one of the following periods:

(A) One year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

(B) Six months commencing with the effective date of reinstatement from disability retirement pursuant to Section 24117.

(C) Six months commencing with the date of reinstatement from disability allowance.

(b) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index.

23881. (a) Upon receipt of proof of death of a retirant who

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retired after June 30, 1972, and of the retirant's option beneficiary, prior to the time the total retirement allowance paid or payable equals the accumulated retirement contributions at retirement, the difference 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 retirement allowances were last paid to the date the balance is paid.

23882. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other provision of law, death payments and return of contributions pursuant to Sections 23880 and 23881, if any, may be requested by the beneficiary and paid by the system as soon as practicable after receipt of proof of death.

CHAPTER 25. DISABILITY ALLOWANCE

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 in a position requiring membership in the system. 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 was reinstated to membership 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 this system commenced and 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 less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

(c) A member shall not be eligible for disability under this system 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.

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application by the member, the guardian or conservator, or the employer, if the application is made during any one of the following periods:

(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 his or her duty and the incapacity has been continuous from the last day for which compensation was paid 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 his or her duty, and within four

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months after the last day of employment for which compensation was paid to the member, or within 12 months while on an official district leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment in a position requiring membership in the system, if the application was not made under subdivision (b) and was not made more than four months after the last day for which compensation was paid to the member.

(e) A member with children who becomes disabled prior to normal retirement age, and whose sick leave will extend beyond normal retirement age, may be awarded a disability allowance with an effective date after normal retirement age, if application is filed prior to attaining normal retirement age.

(f) The member is not applying for a disability allowance because of a physical or mental condition that existed at the time the most recent membership in this system commenced and that remains substantially unchanged at the time of application.

24003. (a) The member shall provide medical documentation related to the impairment qualifying him or her 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 further 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 the state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be disallowed, 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 22125, 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 too mentally or physically incapacitated to comply.

(d) If the board determines that a member who has applied for a disability allowance may perform his or her usual duties or those of 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) In the event that 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.

24004. In those cases of willful substance abuse or where the board determines a member qualifying for a disability allowance pursuant to Section 24001 has mental, physical, or vocational rehabilitation potential, the board may limit the

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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 extended by the board.

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 salary 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 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 in a position requiring membership in the system 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 he or she 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.

24006. Upon qualification for disability, a member shall receive a disability allowance equal to 50 percent of final compensation payable in monthly installments. The allowance shall be increased by 10 percent of the final compensation for each child, to a maximum of four children.

24007. A member who qualifies for a disability allowance under this chapter and who has reached age 45 years, but who is not yet age 60 years, shall have his or her own allowance also calculated upon service with each year of credited California service providing 5 percent of final compensation. The disabilitant shall receive the lesser of this benefit or that provided by Section 24006 for the disabilitant's own allowance. The benefits for dependent children shall be as specified in Section 24006.

24008. To determine eligibility for benefits payable under family and disability allowances as a full-time student, all of the following shall apply:

(a) An individual shall be deemed to be a full-time student during any normal period of vacation or holiday of the institution involved, and there is sufficient evidence to satisfy the board of the intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) If the individual fails to return to full-time attendance following vacation or holiday, the allowance ceases as of the first of the month in which return to full-time attendance was required.

(c) An individual does not qualify as a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension.

(d) An individual shall not qualify as a full-time student if attendance at an educational institution is paid for and provided by the employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time

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course of study which is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America.

24009. Allowances payable under Sections 24006 and 24007 on account of children shall be reduced when children become ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the member's disability allowance shall not be less than it would have been if there had never been any eligible children.

24010. Allowances payable under Sections 24006 and 24007 shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems for the same impairment or impairments that qualify the member for a disability allowance.

24011. Any member qualifying for disability allowance pursuant to this chapter with a disabling impairment amenable to treatment that could be expected to restore ability to perform the member's usual duties or those of a comparable level position shall participate in a treatment program prescribed by the member's treatment sources. 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.

24012. (a) Any member qualifying 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 ability to perform the member's usual duties or those of a comparable level position shall participate in an appropriate 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 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.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system.

24013. The board may require any member receiving a disability allowance to undergo medical examination at such times as it deems necessary. The system may request the treating physician, upon authorization by the disabilitant, to complete a medical reevaluation questionnaire. The system shall reimburse the disabilitant for all reasonable costs related to this questionnaire if the cost of the questionnaire is no greater than two hundred fifty dollars (\$250) and the disabilitant has no other health coverage for the costs of the medical questionnaire. The board may authorize any subsequent medical examination to be conducted by the treating source of the disabilitant at the expense of the disabilitant 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 disabilitant. If the examination, together with other available information, shows to the satisfaction of the board that the disabilitant is no longer disabled, the disability allowance shall cease. Should the disabilitant refuse to submit to medical examination, as provided in this section, the disability allowance payments shall be discontinued and all rights of the

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disabiltant in the disability allowance shall be revoked.

24014. A disabiltant may be employed in a position requiring certification qualifications. The employment does not operate to terminate or suspend the disability allowance except as provided in Sections 23401 and 24015, and no deduction shall be made from the disabiltant's salary as contributions to this system.

24015. If 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 662/3 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.

24016. (a) For any one or more months in which a disabiltant's allowance, exclusive of amounts payable on account of minor children or full-time students, and earnings exceed 100 percent of indexed final compensation, 100 percent of the amount in excess shall be considered overpaid and recovery shall be made.

(b) This action does not apply to disabiltants who have allowances terminated under Section 24015 or who are enrolled in an approved rehabilitation program.

24017. If a person who began receiving a disability allowance after June 30, 1972, is enrolled in an approved rehabilitation program and the disability allowance, exclusive of amounts payable on account of minor children or full-time students, and earnings exceed 100 percent of indexed final compensation, 50 percent of the amount in excess shall be considered as overpayment and recovery shall be made.

24018. Where a disabiltant returns to work 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 be restored as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of compensation provided the member complies with the provisions in Section 24003.

CHAPTER 26. DISABILITY RETIREMENT

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 system on and after October 16, 1992, all persons who reenter membership on and after October 16, 1992, following 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.

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 in a position requiring membership in the system. 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.

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(3) At least one year (1.00) of credited service was earned subsequent to the date on which the member was reinstated to membership under Section 24208.

(4) At least one year (1.00) of credited service was earned subsequent to the date on which the member's disability allowance was terminated.

(5) At least one year (1.00) 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 this system 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 less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

(c) A member shall not be eligible for disability under this system 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.

24102. The board may authorize payment of a disability retirement allowance to any member who is qualified upon application by the member, the guardian or conservator, or the employer, if the application is made during any one of the following periods:

(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 his or her duty and the incapacity has been continuous from the last day for which compensation was paid 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 his or her duty, and within four months after the last day of employment for which compensation was paid to the member, or within 12 months while on an official district leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment in a position requiring membership in the system, if the application was not made under subdivision (b) and was not made more than four months after the last day for which compensation was paid 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 this system commenced and that remains substantially unchanged at the time of application.

24103. (a) The member shall provide medical documentation related to the impairment qualifying him or her 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 further 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

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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 disallowed, unless this requirement is waived by the board. If the member is too ill to comply with this examination, the system shall postpone the examination until a time that the member can attend. 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 22125, 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 too incapacitated mentally or physically to comply.

(d) If the board determines that a member who has applied for disability retirement may perform his or her usual duties or those of 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.

24104. In those cases of willful substance abuse or where the board determines a member qualifying 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 extended by the board.

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 salary 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 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 acknowledgement notice is mailed pursuant to Section 24301, the member's application for disability retirement shall be rejected.

(c) If the member is employed in a position requiring membership in the system at the time the disability retirement is approved, the member shall notify the system in writing,

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within 90 days, of the last day on which he or she 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.

24106. Upon retirement for disability pursuant to this chapter, a member shall receive a retirement allowance which shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each eligible dependent child, up to a maximum of 40 percent of final compensation.

(c) An annuity which shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

24107. A disability retiree may elect an option pursuant to Sections 24301 and 24304 to modify the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

24108. Retirement allowances payable pursuant to Section 24106 on account of eligible dependent children shall be reduced when children become ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the retiree's allowance shall not be less than it could have been if there had never been any eligible dependent children.

24109. Retirement allowances payable pursuant to subdivision (a) of Section 24106 shall be reduced by an amount equal to the unmodified benefits paid or payable under a workers' compensation program for the same impairment or impairments that qualify the member for a disability retirement allowance.

24110. Any member qualifying for disability retirement pursuant to this chapter with a disabling impairment amenable to treatment that could be expected to restore ability to perform the member's usual duties or those of 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 medical condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

24111. (a) Any member qualifying 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 ability to perform the member's usual duties or those of a comparable level position shall participate in an appropriate 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 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 medical condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

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(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system.

24112. The board may require any disability retiree receiving an allowance to undergo medical examination at such times as it deems necessary. The system may request the treating physician, upon authorization by the disability retiree, to complete a medical reevaluation questionnaire. The system shall reimburse the disability retiree for all reasonable costs related to this questionnaire if the cost of completing the questionnaire is no greater than two hundred fifty dollars (\$250) and the disability retiree has no other health coverage that pays for the cost of completing the medical questionnaire. The board may authorize any subsequent medical examination to be conducted by the treating source of the retiree at the expense of the retiree 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 disability retiree receiving the disability retirement allowance. If the examination, together with other available information, shows to the satisfaction of the board that the retiree is no longer disabled, the disability retirement allowance shall cease. Should the retiree refuse to submit to medical examination, as provided in this section, payments to the member under the disability shall be discontinued and all rights of the member in the disability retirement allowance shall be revoked.

24113. A disability retiree may be employed in a position requiring certification qualifications. The employment does not operate to terminate or suspend the disability retirement allowance and no deduction shall be made from the disability retiree's salary as contributions to this system.

24114. A member who begins to receive a disability retirement allowance after October 15, 1992, may be employed or self-employed in any capacity. In any one calendar year, the retiree may earn not more than the maximum amount earnable as determined by the board pursuant to Section 24214. The earnings limitation shall not be applicable to a disability retiree who is participating in an approved rehabilitation program pursuant to Section 24111.

24115. (a) In any calendar year in which a disability retiree's earnings from all employment exceeds the earnings limit established pursuant to Section 24114, the allowance of the retiree shall be reduced by the amount of the excess.

(b) This section does not apply to a disability retiree who is enrolled in an approved rehabilitation program.

24116. Any disability retiree whose last employment was in the California State University, as a member of this system 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).

24117. (a) Any retiree who is retired for disability pursuant to this chapter may be reinstated to membership by the board upon receipt of the retiree's written request to terminate the disability retirement allowance and reinstate to membership in the system.

(b) The allowance of a disability retiree who is determined by the board to no longer be eligible to receive a disability retirement allowance pursuant to this chapter shall be terminated and the disability retiree shall be reinstated to

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membership in the system.

24118. (a) Upon termination of a disability retirement allowance that was payable pursuant to this chapter, the individual account of the member shall be credited with the amount of the member's accumulated retirement contributions as they were on the effective date of disability retirement, less the sum of all payments made under subdivisions (a) and (b) of Section 24106. The reduction shall not be greater than the total of the accumulated retirement contributions.

(b) Upon the termination of a disability retirement, the accumulated annuity deposit contribution account of the member shall be credited with the amounts of those contributions as they were on the date the annuity became payable because of that retirement less the sum of all payments made pursuant to subdivision (c) of Section 24106.

24119. Where a disability retiree returns to work 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 be restored as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of compensation, provided the member complies with Section 24103.

CHAPTER 27. SERVICE RETIREMENT

24201. (a) Any member who comes within any of the following descriptions may be retired for service at his or her option upon written application for retirement to the board, subject to the following conditions:

(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 a local system.

(b) In the calculation of allowances of members who qualify for retirement under paragraph (1) of subdivision (a) and who are not qualified for retirement under paragraph (2) of that subdivision, there shall be excluded any service performed in other states of the United States, its territories and possessions, or in Canada.

(c) Application for retirement under paragraph (2) of subdivision (a) may be made at any time, and those applicants are not subject to Section 24220.

24202. (a) Upon retirement for service that became effective after June 30, 1972, a member shall receive a retirement allowance that shall consist 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 retirement of a member is effective at less than normal retirement age and between early retirement age and normal retirement age, this 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

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accumulated annuity deposit contributions standing to the credit of his or her account at the time of his or her retirement.

(b) In computing the amounts described in subdivision (a), the age of the member at 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.

24203. (a) Members with 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 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 between early retirement age and normal retirement age.

(b) In computing the amounts described in subdivision (a), the age of the member at 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.

24204. A retirement allowance shall become effective upon any date designated by the member, subject to all of the following conditions:

(a) An application for retirement allowance is filed on a form provided by the system, which 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 credited service for which salary 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 by the system 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 member was reinstated to membership from disability allowance or was reinstated 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.

24205. (a) The board shall, in consultation with members, develop, adopt, and implement an additional optional retirement plan that will allow an employee to receive a minimum retirement allowance prior to normal retirement age if the employee has at least attained early retirement age. Under the plan, the member shall continue to receive the minimum retirement allowance past normal retirement age until the amounts paid prior to normal retirement age equal the difference between the minimum retirement allowance and the benefits that would have been provided to the member under regular service retirement at normal retirement age, and thereafter shall be paid the regular service retirement allowance for normal retirement age. 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 amount that would have been provided to the member under regular service retirement at normal retirement age. The board shall integrate the optional plan adopted under this section with the other retirement options that a member may elect under this part.

(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

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assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

(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.

24206. The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit contributions payable for service retirement, shall not be less than ten dollars (\$10) per month multiplied by the years of credited service. This guaranteed amount shall be reduced by the amount of an unmodified allowance payable from a local system based on service credited by this system. If the retirement is 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 will elapse until the member would have reached age 60 years.

24207. If a service retirant reenters the system as a member and subsequently retires, the minimum retirement allowance is the allowance provided by Section 24206.

24208. Any retirant who is retired for service may be reinstated to membership by the board upon receipt of the retirant's written request to terminate the retirement allowance and reinstate to membership in the system.

24209. Upon retirement for service following a prior service retirement and subsequent reinstatement to membership in the system, the member shall receive a service retirement allowance that shall equal the sum of both of the following:

(a) An amount equal to the monthly allowance the member was receiving immediately preceding the most recent reinstatement, 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 reinstated.

(b) An amount calculated pursuant to Section 24202, 24203, or 24206 on service credited subsequent to the most recent reinstatement, the member's age at retirement, and final compensation.

24210. Upon retirement for service following a prior disability retirement granted pursuant to Chapter 26 (commencing with Section 24100) and subsequent reinstatement to membership in the system, 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 reinstatement from disability retirement, the member's age as of the effective date of service retirement, and final compensation.

24211. When a member who has been granted a disability allowance after June 30, 1972, returns to employment requiring membership in the system and performs:

(a) Less than three years of credited service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date

of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, exclusive of increments added for children.

(b) Three or more years of credited service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, exclusive of increments added for children.

24212. If a disability allowance granted after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment pursuant to Section 22131, the service retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance exclusive of increments added for children.

24213. (a) When a member who has been granted a disability allowance after June 30, 1972, attains normal retirement age, or at a later date when there are no children, the disability allowance shall be terminated and the member is eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

24214. (a) Any service retiree may be employed by a school district or other employing agency and earn not more than fifteen thousand dollars (\$15,000) in any one school year and the rate of pay for that employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties. The employment shall not operate to reinstate the retiree as a member of this system, or to terminate or suspend his or her retirement allowance, and no deduction shall be made from his or her salary as contributions to this system.

(b) The maximum amount earnable under this section shall be adjusted by the board on July 1, 1991, and on each July 1, thereafter, by the annual amount of increase in the All Urban California Consumer Price Index using December 1989 as the base.

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24215. Any service retirant whose last employment was in the California State University, as a member of this system 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).

24216. If a service retirant receives payment in excess of the limitation set forth in Section 24214 or 24215, the allowance of the service retirant shall be reduced by the amount of that excess.

24217. A person who was a member on June 30, 1972, and had five or more years of service and who had attained age 55 years, shall have the option of receiving the allowance payable under Section 14245, as it read on that date in lieu of the allowance payable under subdivision (a) of Section 24202.

24218. For the purpose of calculating retirement allowances, credit for service performed between June 30, 1956, and July 1, 1968, on a part-time basis in each school year shall be based on the ratio that service performed bears to the minimum full-time service required for credit for a year of service.

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 the State Teachers' Retirement System, for the allowance that existed for local system service performed prior to July 1, 1972, shall have that part of the retirement allowance computed under the law in effect on June 30, 1972, whenever they retire in the future.

24220. (a) If the last day of a member's service was performed prior to July 1, 1935, he or she shall have the right to make application for retirement only after performing additional service in a status requiring membership in this system, of not less than two years, after June 30, 1950.

(b) Subdivision (a) shall not be applicable if a member performed at least three schooldays of service on or after July 1, 1935, and prior to July 1, 1950, even though compensation for that service was not paid out of any public funds, and if that person taught for 15 years or more before July 1, 1935. This provision became effective on November 10, 1969.

(c) Insofar as subdivision (b) creates any rights to a retirement or disability allowance under this chapter, that allowance shall only be payable for periods commencing with November 10, 1969.

CHAPTER 28. OPTIONS

24300. (a) Any member prior to the effective date of the member's retirement may elect an option that is an actuarially modified retirement allowance payable throughout the life of the member and his or her option beneficiary as follows:

(1) Option 2. Upon the retirant's death, the modified retirement allowance equal to the modified amount the retirant was receiving shall be paid to the option beneficiary.

(2) Option 3. Upon the retirant's death, one-half of the modified retirement allowance the retirant was receiving shall be paid to the option beneficiary.

(3) Option 4. The modified retirement allowance shall be paid to the retirant so long as both the retirant and the option beneficiary are living. Upon the death of either the retirant or the option beneficiary, two-thirds of the modified retirement allowance shall be paid to the surviving retirant or the surviving option beneficiary.

(4) Option 5. The modified retirement allowance shall be paid to the retirant so long as both the retirant and the option beneficiary are living. Upon the death of either the retirant or the option beneficiary, one-half of the modified retirement allowance shall be paid to the surviving retirant or surviving option beneficiary.

(5) Option 6. Upon the retirant's death, the modified retirement allowance equal to the modified amount the retirant was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retirant, the retirement allowance without modification for the option shall be payable to the retirant.

(6) Option 7. Upon the retirant's death, one-half of the modified retirement allowance the retirant was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retirant, the retirement allowance without modification for the option shall be payable to the retirant.

(b) The option beneficiary, for purposes of this section, shall have been designated by the retirant by written designation duly executed and filed with the system at the time of the member's retirement.

(c) A member may revoke or change his or her election of an option at any time prior to the effective date of the member's retirement.

24301. (a) Any 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 acknowledgement notice to the member. A 30-day period shall commence with the mailing of the notice, during which time the member may change the option election made on the disability retirement application.

(b) The option shall be 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 disability retirant and the named option beneficiary as of the effective date of the disability retirement.

(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 acknowledgement notice pursuant to this section.

(d) If a member dies prior to electing an unmodified allowance or an option, the member will be considered to have died while in active status, regardless of whether the disability retirement application is or would have been approved.

24302. Upon a member's reinstatement to membership pursuant to Section 24208, any option elected at the time of retirement pursuant to Section 24300 shall be considered to be a preretirement election of an option elected as of the effective date of the prior retirement and shall be subject to the same provisions as an option elected under Section 24307.

24303. Reinstatement to membership pursuant to Section 24208 does 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 retirement.

24304. Upon reinstatement of a retirant to membership from disability retirement pursuant to Section 24117, any option elected at the time of retirement pursuant to Section 24301 shall be voided as of the effective date of the reinstatement.

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The preretirement election of option subsequent to reinstatement pursuant to Section 24117 is subject to the following:

(a) Members may not make a preretirement election of option pursuant to Section 24307 prior to attaining 55 years of age.

(b) Any member who was receiving an unmodified disability retirement allowance prior to reinstatement may not make a preretirement election of option earlier than six months following the date on which the member reinstated pursuant to Section 24117.

(c) Any member who is 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 member reinstated pursuant to Section 24117. The member shall elect the same option and retain the same option beneficiary as made under Section 24301 when making the election during the six-month period following the date of reinstatement from disability retirement.

24305. (a) A retirant may cancel the option elected as provided in Section 24300 if the option beneficiary is the retirant's spouse or former spouse in the event 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 retirant may make the cancellation before or after the first retirement allowance check.

(b) The retirant shall notify the board in writing, and notification shall not be sooner than the effective date of the 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 retirant may elect (1) to receive the unmodified retirement benefit from the date of receipt of notification; or (2) a new joint and survivor option under Section 24300, naming a new option beneficiary. The modification of the retirement allowance under the new option elected shall be based on the ages of the retirant and the nominated option beneficiary at the date the election was received. However, a retirant may not elect a joint and survivor option that would result in any additional liability to the fund. The election shall be consistent with the final judgment or property settlement agreement.

24306. (a) (1) A retirant who elected Option 2, Option 3, Option 4, or Option 5 may name a new beneficiary and select a second joint and survivor option described in Section 24300 if the option beneficiary designated at the time the option was elected predeceases the retirant.

(2) The effective date of the election of the new joint and survivor option shall be one year following the date notification is received by the board, provided both the retirant and the designated option beneficiary are then living. The notification shall include a certified copy of the death certificate of the predeceased beneficiary and a properly executed form for the new joint and survivor option.

(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 retirant 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 preretirement election of an Option 6 or 7 pursuant to Section 24307 dies prior to the member's retirement, preretirement election shall be automatically canceled as of the day following the date of

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death pursuant to Section 24309 and the member's subsequent retirement allowance shall be subject to the allowance reduction prescribed in that section.

(c) If the option beneficiary designated in the election of an Option 6 or 7 pursuant to Section 24300 or 24307 dies after the member's retirement, the retirement allowance without modification for the option shall be payable to the retirant upon notification to the board and shall commence to accrue to the retirant as of the day following the date of the death of the option beneficiary. Notification to the board shall include a certified copy of the death certificate of the predeceased beneficiary.

24307. (a) Any member who has qualified to make application for retirement allowance under Section 24201 may elect, as provided in Section 24300, and except as provided in Section 24305, without right of revocation or change after the effective date of his or her retirement, to receive an actuarially modified service retirement allowance as of the date of retirement, of the retirement allowance payable to the member when and if the member retires for service. If the death of the member occurs after the date upon which the election has been signed, the election shall be in full force and effect. The election shall be void if not 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 subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in paragraphs (1) and (2) of subdivision (a) of Section 23852, except that if the beneficiary dies before all accumulated 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 designated 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) Any member reinstated to membership pursuant to Section 24208 is not eligible to file a preretirement election of an option until one year after the date of reinstatement.

(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.

24308. (a) The election of an option as provided in Section 24307 shall preclude the payment of a disability allowance or family allowance to the member or any beneficiary. Members receiving a disability allowance under Section 24006 or 24007 may not file an election of option as provided in Section 24307.

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(b) The preretirement election of an option made by the member pursuant to Section 24307 shall be voided by the board as of the effective date of an approved disability retirement. Members receiving a disability retirement allowance pursuant to Chapter 26 (commencing with Section 24100) may not file an election of option as provided in Section 24307.

24309. If a member cancels the election of an option made pursuant to Section 24307, written cancellation shall be received by the board on or before the day preceding the effective date of retirement or during the period between reinstatement pursuant to Section 24208 or Section 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 one-half of 1 percent for each year or partial year that Option 3, Option 5, or Option 7 is in effect, or by six-tenths of 1 percent for each year or partial year that Option 4 is in effect, or by three-fourths of 1 percent for each year or partial year that Option 2 or Option 6 is in effect.

24310. If a member cancels an election under Section 24307, the member may again elect an option under the provisions of that section. 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 is applicable.

24311. (a) A member who has a preretirement election of an option in effect on December 31, 1990, may change his or her preretirement election of Option 2, Option 3, Option 4, or Option 5, to either Option 6 or Option 7 without the allowance reduction prescribed in Sections 24309 and 24310, provided the change is made on or after January 1, 1991, and prior to the earlier of January 1, 1992, or the member's retirement.

(b) If the member elects to change his or her option under this section, then the member shall retain the same option beneficiary as named in the prior preretirement election. The election to change the preretirement election under this section shall be void if not received in the system's office in Sacramento at least 30 days prior to the death of the option beneficiary.

CHAPTER 29. BENEFIT MAINTENANCE

24400. The Legislature recognizes that inflation erodes the purchasing power of benefits paid under the State Teachers' Retirement System. 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 under the State Teachers' Retirement System. The board shall indicate the amount of supplementary increases in retirement allowances required to preserve the purchasing power of benefits provided by the system. The board shall also determine and report on the increases.

24401. This chapter does not give any retirant, or his or her successors in interest, or his or her beneficiary, any claim against the system for any increase in any allowance paid or payable prior to July 1, 1972.

24402. (a) Service retirement allowances, disability allowances, disability retirement allowances, family allowances, and survivor benefit allowances payable pursuant to this part shall be increased by application of the benefit improvement factor.

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(b) Allowances payable to beneficiaries on account of options elected under Section 24300, 24301, or 24307 shall be increased by application of the improvement factor. This factor shall be applicable on the same date when it would have been applied to the allowance of the deceased person.

(c) The benefit improvement factor shall not be applied to an annuity that is the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of a service or disability retirement.

24403. The allowances that commenced to accrue prior to July 1, 1972, and payable on August 1, 1972, exclusive of annuities from the Annuity Deposit Fund and tax-sheltered annuities payable under former Sections 14193, 14280 and 14284, as those sections read on June 30, 1972, shall be increased by application of the benefit improvement factor on September 1, 1973, and annually thereafter.

24404. (a) Effective July 1, 1973, the benefits of persons eligible for survivor benefits pursuant to Section 23804 as it read on June 30, 1972, shall be increased as follows:

(1) Those eligible for ninety dollars (\$90) per month shall be increased to one hundred five dollars (\$105) per month.

(2) Those eligible for one hundred eighty dollars (\$180) per month shall be increased to two hundred ten dollars (\$210) per month.

(3) Those eligible for two hundred fifty dollars (\$250) per month shall be increased to two hundred ninety-five dollars (\$295) per month.

(b) These benefits shall be subject to the provisions of Section 22139 and 24403 with the first annual improvement to occur on September 1, 1974, and annually thereafter.

24405. The first three hundred dollars (\$300) of the monthly allowances payable by the system to retirants, disabilitants, 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.

24406. The first three hundred dollars (\$300) of the monthly allowances payable by the system to retirants, disabilitants, 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.

24407. (a) The monthly allowances payable by the system to retirants, disabilitants, 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:

Period During Which Retirement or Death Occurred	Percentage
On or before June 30, 1958	180.4

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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 retirants, disabilitants, 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.

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 by this system. 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 retirant would have reached age 60 years. If the retirant elected to have his or her allowance modified under Option 2 or 3, the increase in the retirant'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.

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 retirant 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 retirant elected to have his or her allowance modified under Option 2 or 3, the increase in the retirant's allowance shall be modified under the option selected.

24410. (a) If the 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 smaller of the two allowance

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calculations under Section 24213 or 24212, 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.

24411. (a) (1) Annual cost-of-living adjustments for retirants, disabilitants, and beneficiaries in excess of the 2-percent adjustment authorized by Section 22139 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 retirants, disabilitants, and beneficiaries as follows:

(1) The proceeds shall be allocated among those retirants, disabilitants, and beneficiaries whose allowances, after applying the 2-percent adjustment authorized by Section 22139, 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 retirants, disabilitants, 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 retirement allowance, and shall be available only as appropriated annually in the annual 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 22139.

(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 retirement allowance. It is the present intent of the Legislature that until adequate funds are available to fulfill the ultimate intent, those persons whose retirement 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

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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.

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 distributed annually in quarterly supplemental payments commencing on September 1 of each year to retirants, disabilitants, 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 retirants, disabilitants, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Section 22139 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 retirants, disabilitants, 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 retirement allowance.

24413. Notwithstanding Section 24412, revenues from school lands or lieu lands related to the claim of the State of California to the school lands within the area referred to as the Elk Hills Naval Petroleum Reserve, shall be deposited in the School Land Bank Fund established by Section 8711 of the Public Resources Code. Interest earnings from this source of revenue deposited in the School Land Bank Fund shall be transmitted to the retirement fund pursuant to Section 6217.5 of the Public Resources Code and shall be distributed pursuant to Section 24412.

24414. (a) Beginning in the 1989-90 fiscal year, and until the first fiscal year in which the Supplemental Benefit Maintenance Account established by Section 22400 derives sufficient resources from the General Fund pursuant to Section 22954 to provide purchasing power of 68.2 percent as authorized by Section 24415, the board shall transfer from the retirement fund to the Supplemental Benefit Maintenance Account those funds that are necessary to provide purchasing power of 68.2 percent

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as authorized by Section 24415. This subdivision shall become inoperative in the first fiscal year following the joint determination by the board and the Director of Finance that the funds scheduled for transfer from the General Fund pursuant to Section 22954 to the Supplemental Benefit Maintenance Account are adequate to meet the purposes of Section 24415.

(b) The funds advanced pursuant to subdivision (a) and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments shall be repaid from those funds transferred pursuant to Section 22954 that are in excess of the resources required to meet the purposes of Section 24415. Repayment shall commence in any year in which those excess funds exist and shall continue until the time all funds advanced under this section and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments are repaid. Repayment shall include regular interest from the time funds are advanced or appropriated until the time of repayment. After full repayment is made, the Director of Finance shall, notwithstanding Section 22954, adjust the percentage of the General Fund transfer in the amount which causes the balance in the account to equal a three-year reserve at the end of the subsequent fiscal year. The Director of Finance may base the adjusted rate on data provided by the board for projected payments in subject years, projected payroll, projected interest accrual to the account, and any other factors deemed relevant by the board.

(c)

Notwithstanding Section 24415 or any other provision of law, if the state's contributions to the retirement fund provided by Section 22954 are, for any reason whatsoever, reduced or terminated before the retirement fund is fully repaid, as provided in subdivision (b), for all advances or transfers made pursuant to subdivision (a) and for any appropriations made by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments, all duties of the board to make the advances or transfers required by subdivision (a) and to make the distributions required by Section 24415 shall immediately cease and shall have no further force or effect.

(d) It is the intent of the Legislature, in enacting the Supplemental Benefit Maintenance Program embodied in this section and Section 22400, subdivision (b) of Section 22954, Section 24415, subdivision (b) of Section 44929, and subdivision (b) of Section 87488, not to manifest any promise, except as provided in subdivision (c) of Section 22954, that, when accepted, would create a contract, express or implied. Notwithstanding any other provision of this part, nothing in the sections establishing the Supplemental Benefit Maintenance Program shall be construed as a basis for any implied contractual obligation, or as an element of exchange of consideration by a private party for consideration offered by the state, or as an intent to grant private rights of contract, or as conferring any vested right whatsoever on any present or future member, present or future annuitant, present or future surviving spouse of a present or future member or a present or future annuitant, surviving child of a present or future member or a present or future annuitant, or present or future beneficiary of the system.

(e) Upon the mandatory inclusion of all members of the system within the Social Security system, the board shall review the benefit structure established by Section 24415 and the funding mechanism provided therefor by this section and Section 22954

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and shall be prepared to provide an alternate benefit structure similar to those set forth in the report of the system entitled "Development of an Alternative Retirement Plan," dated March 1, 1989, and prepared pursuant to Section 22334.

(f) The board shall report annually to the Director of Finance and the appropriate fiscal and policy committees of the Legislature upon the benefits paid pursuant to Section 24415 and all actions taken pursuant to Section 22954 and this section.

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 retirants, disabilitants, 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 retirants, disabilitants, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22139 and 22140, 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 retirants, disabilitants, 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 retirement 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 22139 and 22140.

CHAPTER 30. SUBROGATION

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 system, an amount equal to the actuarial equivalent of benefits paid by the system because of the injury to or death of the member less any amounts the system may be obligated to pay 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

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allowances, family allowances, or survivor benefit allowances.

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 system 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.

24502. In the exercise of its rights under this part, the board or the agent under contract may commence or prosecute actions, file liens, intervene in court proceedings, join parties to the action and consolidate actions all in the same manner and to the same extent provided in Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code except that recovery shall not be made from benefits payable under this part because of the injury or death.

24503. The State Compensation Insurance Fund or Attorney General as agent for the board may compromise claims before or after commencement of suit or entry of judgment for an amount as may be approved by a person duly authorized by the board for that purpose.

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 system paid or is obligated to pay including court costs, attorney fees, and expenses.

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 is fixed. Liability of the system is fixed at the time the board approves the payment of benefits under this part.

CHAPTER 31. PROCEDURES CONCERNING PAYMENT

24600. (a) The service retirement allowance or disability allowance begins to accrue on the effective date of the retirement or disability.

(b) On the death of the retirant, a person receiving a disability allowance or a person who is reinstated to membership, the allowance ceases on the day in which the death or reinstatement occurs.

(c) Family benefits begin to accrue on the day of the month following the day the death of the member occurs and cease on the day of the event that terminates eligibility.

(d) The survivor benefit allowances payable pursuant to Chapter 23 (commencing with Section 23850) on account of surviving spouses begin to accrue on the anniversary of the member's 60th birthday or on the day following the day of the member's death, if elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(e) Option benefits begin to accrue on the day of the month following the day the retirant died and cease on the day in which the death of the beneficiary occurs.

(f) Family allowances payable on account of a full-time student begin to accrue on the day of the month following the day the death of the member occurs. Disability allowances payable on account of a full-time student begin to accrue on the effective date of the disability allowance. The allowances payable on account of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that was in progress in the month of attainment of age 22 years. However, any adjustments to a family or disability allowance on account of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the beginning of the month in which the nonattendance was initiated and again accrues on the beginning of a subsequent

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month in which reattendance occurs.

(g) Disability retirement allowances payable pursuant to Chapter 26 (commencing with Section 24100) on account of dependent children begin to accrue on the effective date of the retirement allowance and shall terminate on the earlier of termination of the child's eligibility or termination of the disability retiree's eligibility for reasons other than death.

(h) The survivor benefits payable pursuant to Chapter 23 (commencing with Section 23850) on account of dependent children shall begin to accrue on the day of the month following the member's date of death and shall terminate upon termination of the child's eligibility.

24601. Whenever the system determines that payments in the correct amount due cannot be made when payable because required information or documentation is not yet on file in the system, payment of estimated allowances based on preliminary information in the possession of the system may be made, the system may present claims therefore, and the Controller shall draw warrants in payment of the claims.

24602. The board may establish a special account and procedures to pay, on an emergency basis, allowances, death payments and up to 75 percent of the return of the balance of the accumulated retirement contributions as a result of termination of employment or death. Disbursements under the special account shall be by checks issued by the system and subject to the auditing requirements of the Controller. Payments under the special account shall be deducted from allowances, death benefits, and payment of accumulated retirement contributions, otherwise due.

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 retiree, disabilitant, or beneficiary, pursuant to Section 12419 of the Government Code.

24604. (a) Upon the receipt of a request from any retiree, disabilitant, or beneficiary, the board may transmit payments to a bank, savings and loan association, or credit union for deposit in the retiree's, disabilitant's, or beneficiary's account by electronic fund transfer or by mail. The transmittal of the payment shall fully discharge the board and the system from any claim resulting from actions taken under this section.

(b) The board shall send a copy of the benefit payment information to any retiree, disabilitant, or beneficiary who has payments transmitted directly by electronic fund transfer or by mail to a financial institution.

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 system, has been lost or that payment transmitted electronically cannot be 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.

24606. (a) Whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under this system 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 reinstate the membership of the

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claimant in this system.

(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.

24607. Any warrant in an amount less than two thousand dollars (\$2,000) paid by the system, for the month in which a retirant or disabilitant dies, shall not be invalidated by the system, except upon the request of the beneficiary of the retirant or disabilitant.

24608. (a) Persons entitled to receive allowances under this system 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.

24609. Any retirement allowance payable to a retirant, 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 retirant if the member has not chosen an optional settlement.

24610. Any disability allowance that has accrued and remains unpaid to a disabilitant 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.

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 the system. In applying Part 5 (commencing with Section 220) of Division 2 of the Probate Code with respect to proceeds payable to a beneficiary, membership in the system shall be considered as having the same status as an insurance policy issued after December 31, 1984.

24612. (a) If any person entitled to a benefit from the system 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 and system.

(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.

24613. (a) Payment pursuant to the board's determination in

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good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the system 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 system from all adverse claims thereto unless, before payment is made, the system has received at its office in Sacramento a written notice of adverse claim..

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 plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System 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 the State Teachers' Retirement System.

(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.

24615. If the board determines that contributions are due the system from a retirant, disabilitant, 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 retirant, disabilitant, 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,

24616. Any overpayment made to or on behalf of any member, former member, beneficiary, disabilitant, or retirant, 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 by the system. These deductions shall be 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..

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 system staff, 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.

24618. Losses or gains resulting from overpayment or underpayment of contributions or other amounts within the limits set by the State Board of Control for automatic writeoff, and losses or gains in greater amounts specifically approved for

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writeoffs by the State Board of Control, shall be debited or credited, as the case may be, to the appropriate reserve in the retirement fund.

24619. The system shall annually report to the board the following information:

(a) The amount of underpayment made to recipients.

(b) The amount to be recovered because of overpayments and the number of overpayments.

(c) The actions taken by the board and the system to reduce the number and amount of overpayments and underpayments.

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 the system, 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 the system.

(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

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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.

CHAPTER 32. SAN FRANCISCO LOCAL SYSTEM

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 in positions requiring membership in the system 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 system.

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 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.

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 State Teachers' Retirement System directly to the retirant, 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 State Teachers' Retirement System, including the percentage update calculated under Sections 14332, 14333, and 14334 of the Education Code, 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.

24703. Persons who select to be covered only by the State Teachers' Retirement System and already have credit for classified or other noncertificated service in the San Francisco local system shall not have that credit transferred to the State Teachers' Retirement System.

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 State Teachers' Retirement System after June 30, 1972.

(b) Persons who were members of both retirement systems 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 but not both systems, provided he or she qualifies for and redeposits prior to retirement.

24705. Notwithstanding the provisions in Section 24201, a member of the San Francisco local system may retire concurrently and receive credit for service performed in other states of the United States, its territories and possessions, and in Canada provided that person is eligible under Section 22707.

24706. The system shall pay 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.

CHAPTER 33. LOS ANGELES UNIFIED SCHOOL DISTRICT PLAN

24750. 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 have former Permanent Fund contributions only on deposit related to former local system service shall have those accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit the contributions required to bring the account into full balance with regular interest prior to retirement.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

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, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System, 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.

CHAPTER 34. ADMINISTRATION OF THE DISTRICT RETIREMENT SALARY PLAN

24800. (a) All payments from the district retirement fund shall be made in the same manner as payments from school district funds but shall be subject to approval of the district retirement board. Warrants drawn on the fund shall be signed by at least one member of the district retirement board who shall be designated by the board.

(b) The duties imposed upon the county treasurer shall be a

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part of his or her official duties, for the faithful performance of which he or she shall be liable upon his or her official bond.

24801. (a) Any other provisions of law to the contrary notwithstanding, whenever any retirement benefits under a district retirement system payable solely by reason of death of the retired member to his or her estate, heir or beneficiary have been unclaimed for a period of four years from the date of notification, by the district retirement system, by means of United States mail, to the estate, heir or beneficiary, such funds shall revert to and become a part of the contributions of the district and shall be applied to reduce the cost to the taxpayers of the district maintaining the retirement system.

(b) The district retirement system may at any time after reversion of these benefits to the district and upon receipt of proper information satisfactory to it, return from district contributions, an amount equal to that which had, on account of the deceased member, reverted to the district.

24802. (a) Notwithstanding any other provision of law, whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under a district retirement system, remains unclaimed or the claimant cannot be found, the proceeds of the warrant shall be redeposited in the respective fund, or funds, from which they were derived, and held for the claimant, without further accumulation of interest, and the redeposit shall not operate to reinstate the membership of the claimant in the district retirement system. If the proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the contributions of the district and shall be applied to reduce the cost to the taxpayers of the district maintaining the retirement system and on account of which the contributions were made.

(b) The provisions of this section shall apply to warrants drawn under a district retirement system and that would become void under Section 85270.

(c) The district retirement system may at any time, after the reversion of proceeds to the district maintaining the retirement system, and upon receipt of proper information satisfactory to it, return from district contributions, an amount equal to those proceeds, to the credit of the claimant to be administered in the manner prescribed under the district retirement system.

(d) The deposit in those funds of the proceeds of unclaimed and unpaid warrants prior to September 7, 1955, in accordance with the procedure specified in this section, is hereby validated, ratified, and confirmed.

24803. (a) If any benefit is payable by a district retirement system to the estate of a deceased person, whether because the estate is the beneficiary of the person or because no beneficiary was designated or because an allowance payable to the person had accrued and remained unpaid at the date of the death, and the estate would not be administered if no amount were due from the system, then the benefit shall be paid directly without procuring letters of administration to the surviving next of kin of the deceased, or the guardians of the survivors' estates, share and share alike. The payment shall be made in the same order in which the following groups are listed:

- (1) Husband or wife.
- (2) Children and issue of deceased children by right of representation.
- (3) Father and mother.
- (4) Brothers and sisters.

(5) Nieces and nephews.

(b) Payment may also be made to persons in the groups listed in subdivision (a) to the extent those persons are the only beneficiaries under the last will and testament of a deceased former member of a district retirement system, without the probate of the will.

24804. Except in the case where the deceased former member of a district retirement system leaves a will, no payment shall be made to persons included in any group specified in subdivision (a) of Section 24803, if at the date of death of any person or persons to whom any benefit is payable by a district retirement system there are living persons in any of the groups preceding it, as listed. Payment to the persons in any group, upon receipt from them of an affidavit upon a form supplied by the system, that there were no surviving individuals in the groups preceding it, or that they are one of the beneficiaries in any group specified in subdivision (a) of Section 24803 under the will of the deceased former member, and that the estate of the deceased will not be administered, is in full discharge of the liability of the board and system on account of the death.

24805. (a) Notwithstanding any other provision of law, whenever any member of the district retirement system dies while in active membership status, including those on a deferred membership status, or within four months after the termination of the member's employment in a status requisite for membership in the retirement system, benefits payable at death, unless a claim by someone other than the designated beneficiary or beneficiaries is filed with the retirement system during the period provided in this section, shall be paid to the beneficiary or beneficiaries designated by him on a form provided by the retirement system and on file in the office of the retirement system prior to the death of the member.

(b) Payment to a beneficiary or beneficiaries designated in the form on file in the retirement system at the date of death by a warrant drawn prior to any claim under a will or under community property rights, shall constitute full discharge of any and all liability of the district retirement board and retirement system by reason of the member's death. The retirement system shall provide a 30-day claim period subsequent to notification of death before drawing a warrant in favor of the designated beneficiary or beneficiaries.

24806. (a) A district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts, in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be discontinued by the governing board of the district or districts, with the consent of the majority of the active members of the system expressing their desires with respect to the discontinuance of the plan evidenced in the manner as the governing board may prescribe. However, no discontinuance of any retirement plan shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivisions (b), (c), (d), and (e).

(b) (1) Active and retired employees of the district or districts who otherwise would be members of the plan, other than teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the employees, together with any other assets of the plan as may be

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determined.

(2) With respect to persons who are members of the plan at its discontinuance, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution under the system shall be based on the age at the nearest birthday on July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who failed to redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration of the Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed by the system to the member's latest address on file in the office of the system, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his or her accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, that would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of discontinuance of the plan at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes the contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at its discontinuance and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees, who are made members of the Public Employees' Retirement System, prior to the assumption by the district or districts of the function under which the service was rendered, such as, but not limited to, cafeterias and student body activities, shall be credited under the employees' system, provided the service qualified for credit under the discontinued plan.

(5) The contract making the active employees members of the Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with respect to service rendered in a status in which they

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are eligible for membership, but that is no longer credited under the retirement system, and the service shall be credited in the same manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the discontinued plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the districts, effective at the discontinuance of the plan, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of discontinuance, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system that apply to active employees who are made members thereof. The changed allowances shall be paid to beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) Notwithstanding paragraph (1), the contract making active employees members of the Public Employees' Retirement System, shall include teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System, with respect to service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code. Contributions deducted from salary earned by the employees in that service, together with credited interest, and standing to the credit of the employees at the effective date of discontinuance of the plan, shall be subject to paragraph (1), in the same manner as they would have been so subject if the employees had been employed at the date of the discontinuance, in a status which was not requisite for membership in the State Teachers' Retirement System. The employees shall be members of the Public Employees' Retirement System with the same effect, but only with respect to that service, as if they had been employed in a status that would have qualified them for membership under other paragraphs of this section. The employees shall continue in membership and shall be entitled to benefits in the same manner as if they individually were credited with at least five hundred dollars (\$500) in accumulated contributions. In the computation of the members' benefits under the Public Employees' Retirement System, their compensation earnable while they are members of the State Teachers' Retirement System shall be taken into consideration.

(c) Notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of

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Part 19, and Part 25 (commencing with Section 44000), contributions to the discontinued district retirement plan made by teachers and other persons employed by the district or districts in a status requisite for membership in the State Teachers' Retirement System standing to their individual credit at the date of discontinuance of the district retirement plan shall be deposited in the Retirement Annuity Fund with credited interest, to be applied on the amount due from the teachers, but not to exceed the amount due. Likewise an amount equal to the actuarial equivalent of the annuity portion of the retirement allowance to which the respective retired teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System were entitled under the plan, based on the interest rate and mortality tables used in its determination, shall be deposited in the Retirement Annuity Fund, to be applied on the amount due from the respective retired teachers, but not to exceed the amount due. Any excess of the contributions with credited interest or the actuarial equivalents, as the case may be, over the respective amounts due under those sections, shall be paid to the respective active and retired teachers and other persons. Further amounts, if any, due under those sections after the deposits, shall be paid to the Retirement Annuity Fund by the respective active and retired teachers and other persons. If any of the teachers or other persons who is not retired, is not entitled to credit under the State Teachers' Retirement System for all or part of his or her service credited under the plan, or if any of the retired teachers or other persons is not entitled to a retirement allowance from the system, either before or after the discontinuance, the provisions of this subdivision about contributions and credited interest or about the actuarial equivalent of annuity portions of retirement allowances, as the case may be, shall not apply to him or her with respect to service that is not credited under the state system, until and unless he or she becomes entitled to credit for that service or to an allowance from the state system, based on service that was credited to him or her under the discontinued plan. The balance of the assets held in the various funds of the discontinued district retirement plan after the transfers, deposits, and payments required by this section, or after establishment of reserves from which the transfers, deposits, and payments shall be made, shall be delivered to the district or districts in which the plan is discontinued.

(d) The district or districts in which the district retirement plan is discontinued shall pay monthly to teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System 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 was entitled under the plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System resulting from the discontinuance. If the amount payable to any teacher or other person, under the previous sentence, is less than two dollars (\$2), the district or districts may pay, in lieu of that amount, one amount which shall be actuarially equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table used in the determination of the teacher's or other person's retirement allowance under the district retirement plan. The payment of the actuarially equivalent amount shall discharge fully the district's liability to the teacher or other person under this subdivision. The arrangement

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under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 19 (commencing with Section 23200), inclusive, and Chapter 21.5 (commencing with Section 23700), nor shall the amount be taken into account in the calculation of retirement allowances under the State Teachers' Retirement System. If any of the teachers or other persons is not entitled to a retirement allowance from the State Teachers' Retirement System, either before or after discontinuance, the district or districts shall pay monthly to him or her, an amount equal to his or her retirement allowance under the plan prior to the discontinuance. If any teacher or other person has left the service of the district or districts, and is in a status under the plan, which if continued would qualify him or her for a retirement allowance without his or her return to that service, but is in a status which would otherwise not qualify him or her for retirement under the state system, the district or districts shall pay monthly to the teacher or other person, beginning at the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified if the plan had not been discontinued. If any teacher or other person has credit under the plan for service that does not qualify for credit under either the State Teachers' Retirement System or Public Employees' Retirement System, the district or districts shall pay monthly to the teacher or other person, beginning on the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified on the basis of that service if the plan had not been discontinued. If the individual at a later date becomes entitled to a retirement allowance from the state system, based on service that was credited to him or her under the discontinued plan, the monthly payments shall cease, and he or she shall become subject to subdivision (c), and the first four sentences of this subdivision, in the same manner as he or she would have been subject, if he or she had been entitled to a retirement allowance at the date of discontinuance, but calculation of actuarial equivalents and amounts payable shall be made as of the later date.

(e) If any person who was retired prior to the discontinuance from a position requisite for membership in the State Teachers' Retirement System, under a district retirement salary plan that is discontinued pursuant to this section, elected either under the plan or under the system, but not under both, to have the retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide a benefit for his or her beneficiary, the person shall have the right, to be exercised not later than 60 days after the discontinuance of the plan, to change his or her election under the State Teachers' Retirement System with respect to the options. Any computations of actuarial equivalent under a changed election shall be made as of the date of discontinuance of the plan, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

24807. The balance of the assets delivered to the district pursuant to subdivision (c) of Section 24806, after the transfers, deposits and payments required by that section, or after establishment of reserves from which those deposits and payments shall be made, shall be allocated and distributed as follows:

(a) Sixty-five percent of the balance shall be distributed to the undistributed reserve of the general fund of the district

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to be reduced to cash as necessary and appropriated in any year by majority vote of the governing board. Until the balance of the assets has been reduced to cash, the governing board may invest and reinvest the assets in securities legal for the investment of funds of the State Teachers' Retirement System when in the judgment of the governing board any sale and reinvestment is advisable. Ten percent of this amount shall be used only for maintenance operation.

(b) Twenty percent of the balance shall be transferred to a special account in the undistributed reserve of the district's general fund to be reduced to cash as necessary in order to be used only for the purpose of reducing the tax collected pursuant to former Section 23401, as it read on January 1, 1979, in order to provide the contributions required by Section 22950 to the Teacher's Retirement Fund. In the event that the special account is not wholly distributed for the purpose of making the contribution, the balance in the special account shall be released to the undistributed reserve. Until the balance of the assets has been reduced to cash, the governing board may invest and reinvest the assets in securities legal for the investment of funds of the State Teachers' Retirement System when in the judgment of the governing board any sale and reinvestment is advisable.

(c) (1) Fifteen percent of the balance shall be held intact by the district in an annuity reserve fund from which shall be provided a supplementary annuity at time of retirement under any California public retirement system to or on behalf of those members of the local district retirement system who were on the active roll or members on the retired roll of such local district retirement system as of June 30, 1972, and those members added to the active and retired rolls between June 30, 1972, and any later date of discontinuance, and those probationary or permanent certificated employees of the district holding memberships in California public retirement systems other than the local district retirement system who are making contributions to those systems on June 30, 1972, or on any later date of discontinuance. The supplement annuity may be paid in lump sum or in installments for the life of the person eligible, or his or her beneficiary, after his or her retirement.

(2) No participant in the annuity reserve fund shall have vested rights to the benefits of this annuity reserve fund until he or she has continued in active service for a period of five years from the date of discontinuance of the local district retirement system, except participants who have separated from service by reason of retirement, including deferred retirement, or death.

(3) An account shall be opened in the name of each person eligible to participate in the benefits of the annuity reserve fund to which shall be credited his or her share of the annuity reserve fund. The individual participant's share of this fund shall bear the same ratio to the total of this fund as his or her annuity savings contributions, including interest earned, to the retirement system, to which he or she is making annuity contributions as of June 30, 1972, or any later date of discontinuance, or, if a retired member, the date of retirement prior to June 30, 1972, bears to the total annuity savings contributions, including interest earned, of all such participants in the retirement systems to which they are making contributions at the date of discontinuance, including total contributions to the local district retirement system previously made by living members on the retired roll. The fund shall include principal and interest in the account of any participant forfeited because the participant separated from service, except by reason of retirement, including deferred retirement,

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or death, within five years from June 30, 1972, or other date of discontinuance. The forfeiture shall be treated as earnings of the fund.

(4) As of June 30 each year, and on any other dates the annuity reserve fund board may determine, the earnings of the fund less administrative expense shall be credited to the accounts of the remaining participants in the annuity reserve fund on the ratio that the participant's individual account balance bears to the total balance of the annuity reserve fund. The cost of administering the fund shall be charged against the assets of the fund, as approved by the governing board of the school district.

(5) When a participant separates from service, the earnings since the preceding date on which the earnings of the fund, less administrative expenses, were credited to the accounts of the participants, shall remain in the fund. Any member whose accumulated contributions to the local retirement system exceed the amount required by law to be deposited by the member in the State Teachers' Retirement System's Annuity Fund upon discontinuance of the local system may deposit to his or her credit all or part of the excess amount in the annuity reserve fund.

(6) The governing board of the school district that maintained the discontinued local district retirement system shall establish an annuity reserve fund board of not more than seven members, the majority of whom shall be composed of certificated employees who are participants in the annuity reserve fund. The certificated employees on the annuity reserve fund board shall be elected by participants in the annuity reserve fund. The annuity reserve fund board shall have the authority to make rules and regulations necessary for the management of the annuity reserve fund in accordance with modern business practice. The local district retirement board shall continue to function as the annuity reserve board pending its establishment.

(7) Except as otherwise restricted by the California Constitution or by law, the annuity reserve fund board may, in its discretion, invest or reinvest the assets of the fund through the purchase, holding, or sale thereof of any investment, financial instrument, or financial transaction, if the investment, financial instrument, or financial transaction is prudent in the informed opinion of the annuity reserve fund board.

(8) All securities and cash of the annuity reserve fund shall be held in a trust fund in the county treasury. The county treasurer, as one of his or her official duties, shall be a member ex officio of the annuity reserve fund board established to invest the assets of this fund.

(9) Any funds raised for the support of the local district retirement system and not appropriated to any specific account shall be transferred to the annuity reserve fund. All payments from the district's annuity reserve fund shall be made in the same manner as payments from school district funds. The annuity reserve fund board may, at its discretion, request the district governing board to hold an election among existing annuity reserve fund participants as to whether the board should distribute existing funds in the annuity fund. The annuity reserve fund board may prescribe all rules and regulations regarding such an election and may distribute the funds if a majority of the members so elect.

24807.5. Any certificated employee of a district having an annuity reserve fund may enter into an amendment of his or her employment contract for the purpose of effecting a reduction in salary. The reduction shall be deposited by the employer, at

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the employee's request, in the district's annuity reserve fund. The deposits shall be used to provide the employee an annuity within the meaning of Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 403(b)).

24807.7. Notwithstanding Section 24807, the annuity reserve fund board may adopt rules allowing participants who have reached 70 years of age to withdraw their benefits.

24808. The governing board may provide that members of the annuity reserve fund board be paid one hundred dollars (\$100) for each meeting, not to exceed one meeting each month, if they are not being paid by the governing board for any other assignment at the time of the meeting. The compensation shall be a charge against the annuity reserve fund.

24810. (a) Notwithstanding Section 24806, persons other than teachers and other persons employed in a status requisite for membership in the State Teachers' Retirement System, who are active or retired members of a district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be transferred by the governing board of the district or districts, with the consent of the majority of the active members of the plan expressing their desires with respect to the transfer evidenced in the manner the governing board prescribes. However, no transfer of the active and retired members shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivision (b).

(b) (1) Active and retired employees, including future employees, of the district or districts who otherwise would be members of the plan, persons who are members of the district's retirement salary plan, and persons who were employees on June 30, 1957, and who attained age 65 years or over during the 12 months immediately preceding July 1, 1957, other than teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to the provisions of Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the members, together with the other assets of the plan as may be determined. However, the total of the other assets transferred shall not be greater than the portion of the reserves of the plan that is allocable to the active and retired employees, as determined by actuarial valuation. In the valuation the portion of the reserves allocable to the active and retired employees proposed to be transferred shall be determined as an amount which bears the same ratio to the total reserves under the plan as the liabilities under the plan on account of the active and retired employees bear to the total liabilities under the plan on account of all active and retired employees under the plan. On the effective date of the contract making the active employees members of the Public Employees' Retirement System, the employees shall cease to be members of the plan, and neither they nor retired persons who are made beneficiaries of the state system, shall be paid or have any right to any allowance or other benefit under the plan for time beginning with the effective date.

(2) With respect to persons who are members of the plan at the transfer, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution under the plan shall

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be based on the age at the nearest birthday at July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who, while employed in a status not requisite for membership in the plan, was a member of the State Teachers' Retirement System and was contributing to that system, or who did not redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration of the Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed by the system either to the member's latest address on file in the office of the system, or to the office of the governing board of the district or districts, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his or her accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, that would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had been a member of the plan during the time he or she was a member of the State Teachers' Retirement System and was contributing to the system, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of transfer, at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes the contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for service rendered while he or she was contributing to the State Teachers' Retirement System, provided the service is no longer credited under the teachers' system, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at the transfer and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees who are made members of the Public Employees' Retirement System prior to or after the assumption by the district or districts of the function under which the service was rendered, but prior to the effective date of the contract making active employees members, and the compensation for which was paid wholly or in part from funds other than the funds of the district or districts, shall be credited under the employees' system, provided the service qualified for credit under the plan.

(5) The contract making the active employees members of the

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Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with respect to service rendered in a status in which they are eligible for that membership, but that is no longer credited under the teachers' retirement system, and the service shall be credited in the manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the district, effective at the transfer, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of transfer, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system that apply to active employees who are made members of the employees' system. The changed allowances shall be paid to the beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) The contract making these active employees members of the Public Employees' Retirement System shall provide that the service included in the calculation of the completed years of service as a basis for the portion of the basic death benefit provided in subdivision (b) of Section 21361 of the Government Code for persons who were members of the plan at transfer, shall not be limited to service under the Public Employees' Retirement System, but instead that service rendered as members of the plan shall also be included.

24811. If two or more districts have been included in one contract between the Board of Administration of the Public Employees' Retirement System, and the governing board of the districts, as provided in paragraph (7) of subdivision (b) of Section 24810, and if, since that inclusion, two or more of the districts have been combined into a unified district, the unified district, by amendment to the contract, may, notwithstanding Section 20580 of the Government Code, be substituted for the districts so combined, and for all purposes of the contract.

24812. If two districts, one of which is a community college district, have been included in one contract between the Board of Administration of the Public Employees' Retirement System and the governing board of the districts, as provided in paragraph (7) of subdivision (b) of Section 24810, and thereafter members of the governing board of the community college district are precluded by law from serving as members of the governing body of the other district, the contract shall be deemed a separate contract as to each district. The Board of Administration of the Public Employees' Retirement System shall determine the

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accumulated contributions held for or as having been made by each district and its employees, and shall credit the contributions to the respective contracts. Benefits based on all service of an employee to the districts prior to the date upon which employees' elections to serve the respective districts are effective shall be a liability of the contract of the district employing the person on the effective date. A person retired prior to the effective date shall, for all purposes of this section, be deemed an employee of the district other than the community college district.

24813. (a) The contract executed under Section 24810, and making persons other than teachers and other persons employed in a status requisite for membership in the State Teachers' Retirement System, who are active or retired members of a district retirement salary plan established under Sections 24800 to 24812, inclusive, members and beneficiaries of the Public Employees' Retirement System, shall be amended to include as members or beneficiaries, teachers and other persons who were employed in a status requisite for membership in the State Teachers' Retirement System, who ceased to be members of the plan if it was discontinued, or if the plan was not discontinued, who resign instead of retiring and are refunded their accumulated contributions under that plan, or who retire or have retired under the district plan and relinquish or have relinquished their right to allowances from the plan with credit for service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, but only if the service qualified for credit under the plan and is not credited under any other retirement system.

(b) The service of a person who ceased to be a member, or resigns or has resigned instead of retiring, or who relinquishes or has relinquished, shall be administered under the contract in exactly the same manner as that applied to service of persons who were retired under the local retirement system at the effective date of that contract, and were made beneficiaries, or who were not retired and were made members of the system on that date. The retirement allowances being received by the relinquishing persons, on account of service that would have been credited under the Public Employees' Retirement System as stated, shall be adjusted in the same manner that allowances were adjusted under paragraph (6) of subdivision (b) of Section 24810. Any member who is credited with service in accordance with this section, shall pay to the Public Employees' Retirement System, at times and in the manner fixed by the board of administration of that system, an amount equal to contributions with interest, that the member received as a refund from the plan, and that were based on service credited, plus interest from the date of refund to the date of the payment, at the interest rate in effect under the system at the date of payment.

Contributions required of the district or districts shall be determined by proper valuation, and the contributions set forth in the contract shall be adjusted accordingly.

(c) A retirement allowance based on the credited service shall be payable and retirement shall become effective, under the Public Employees' Retirement System beginning on the first day of the month next following the effective date of this section, in the case of a person who then is retired under the State Teachers' Retirement System, or otherwise on the later effective date of the member's retirement under the teachers' system. The allowance shall be based on the person's age when the allowance begins, and on the same average salary as that

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upon which his or her allowance under the State Teachers' Retirement System, is based.

CHAPTER 35. JOINT DISTRICT SALARY RETIREMENT PLAN
Article 1. Establishment of Plan

24900. The governing boards of two or more school districts, in none of which the employees are entitled to the benefits of a pension or retirement system maintained by a city, city and county, or county in which the district, or a part thereof, is located, meeting in joint session, may in their discretion, submit to the qualified electors of the districts, and upon petition signed by not less than 10 percent of the qualified electors of each district the governing boards shall submit to the qualified electors of the districts the proposition of establishing a joint plan for a retirement salary to be paid by the districts to all teachers fulfilling the requirements of the plan in the public schools of the districts and to other employees of the districts as the governing boards may determine, or, in the case of a petition, other employees specified in the petition, and to provide, out of funds of the districts, a portion of the cost thereunder, including expenses incident to the administration of the plan.

24901. The proposition of establishing the plan may be submitted to the electors of the districts at any general or special election called and held in the districts, as the governing boards of the districts may determine. The governing boards of the school districts may order the elections that shall be called and held in accordance with the provisions of Chapter 3 (commencing with Section 5300) of Part 4.

24902. The governing boards calling the election shall consolidate the election and submit to the electors of the respective districts on the same day the question of whether a district retirement plan shall be established in the districts. Within the territory affected by the order of consolidation, the election precinct polling places and voting booths shall, in every case, be the same. There shall be only one set of election officers in each precinct. The propositions to be voted upon within the respective districts may be set forth on one ticket or ballot. All proceedings had in the premises shall be recorded in one set of election papers, and the election shall be held in all respects as though there were only one election.

24903. The election may be consolidated with any other election pursuant to Part 2.5 (commencing with Section 23300) of Division 14 of the Elections Code.

24904. The election shall be called by posting notices, signed by a majority of the governing board of each district, not less than 10 days before the election. If there is a newspaper of general circulation published in any of the districts, notice shall be published in such a newspaper at least once, and at least 10 days prior to the election.

24905. In all respects not otherwise specified the election shall be called and held, and returns canvassed and the result announced in the manner provided for the holding of elections for the purpose of authorizing bonds of the school districts, so far as the provisions of the laws are applicable. The governing boards of the school districts in which the election is held shall, for the purposes of this section, be considered as one board.

24906. There shall be printed on the ballots to be used at the election the proposition: "Shall the governing boards of (here insert the names of the districts under the control of the boards submitting the proposition) school districts be

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authorized to establish a plan for a joint district retirement salary for the teachers and such other employees of the districts as the governing boards or the petition determines." To the right of the proposition shall be printed the words "Yes" and "No" with voting squares.

24907. If, at the election, a majority of the voters in each district voting on the proposition cast their ballots in favor of the proposition, the governing boards shall establish a joint district retirement salary plan for the teachers and for such other employees of the districts as the boards or the petition determine.

24908. If a majority of the votes cast in each district on the proposition is in the negative, the governing boards shall not submit the proposition again within a period of six months after the date of the election.

Article 2. Administration of the Plan

24920. Every teacher and every other employee of the school districts for which the plan for district retirement is adopted, who is employed by the districts at the time of the adoption of the plan, and who signs an agreement to be subject to the burdens of the district retirement plan, shall be entitled to the benefits and subject to the burdens of the plan and of this chapter. Every teacher employed in the public schools of the districts after the adoption of the provisions of this chapter by the governing boards of the districts, and any other employees the boards or the petition determines, shall be bound by the benefits and burdens of this chapter.

24921. Any plan shall not be adopted or established until the governing boards, after any inquiry and hearing they may direct, find that the respective contributions of the teachers and other employees and the districts provided for in the plan, are substantially in accordance with the more recent generally prevailing rates of contributions in public institutions that have established retirement systems, and that the plan is in accordance with sound business practice and with recognized actuarial methods.

24922. The plan may provide that the retirement salary shall be a stipulated monthly sum, or that all benefits under the retirement feature of the plan shall be based upon the monthly salary for each year of future active service in the district earned by the employee up to the date of retirement and upon the average monthly salary earned by the teacher or other eligible employee during the year immediately preceding the adoption of the plan and the number of years of past active service of the employee in the district, and subject to those provisions made in the plan for minimum benefits. No employee with less than 15 years' service in the district prior to normal retirement age shall receive the benefit of the minimum. In no instance shall the retirement benefits be based upon or allowed for any amount of salary in excess of the sum of five hundred dollars (\$500) per month.

24923. In lieu of the authorizations or requirements provided for in Sections 24920 and 24922, the plan may provide only that the retirement salary shall be based on service rendered prior to the effective date of the plan or prior to July 1, 1944, and shall be an amount which, when added to the retirement allowance the respective member is entitled to receive under the State Teachers' Retirement System, shall equal a sum of not less than one hundred dollars* (\$100) per month and Sections 24920 and 24922 shall not be applicable thereto. The costs of the benefits under such a plan may be met by the contributions of the districts alone, notwithstanding Sections

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35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), and only teachers who have credit for service rendered prior to that date shall be subject to the plan.

24924. (a) A plan established under this chapter that is intended to provide supplemental benefits only on account of service rendered before July 1, 1944, may be discontinued by the governing board of the district, subject to the following conditions:

(1) Notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1, Article 2 (commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), any teacher who is not retired on July 1, 1956, shall be entitled to the contributions made by him or her to the discontinued plan with interest credited in accordance with the rules and regulations of the local retirement plan up to and including June 30, 1957. Likewise, a teacher who retired prior to July 1, 1956, shall be entitled to a refund equal to the actuarial equivalent, at his or her attained age, of the annuity that would have been provided by the total contributions required of the member under the system, based on interest and mortality tables currently in use, less the amount of any contributions remaining unpaid on the date of discontinuance. The amount to which any teacher is entitled under this section shall be paid to him or her within 90 days of his or her request in writing on a form provided by and filed with the local retirement system. All requests shall be filed prior to July 1, 1959.

(2) The district in which the plan is discontinued shall pay monthly to teachers, 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 these retired teachers was entitled under the plan exceeds the increase in the teacher's retirement allowance under the State Teachers' Retirement System after the discontinuance. In lieu of the monthly payment, the district may elect to pay in a single sum the amount that shall be the actuarial equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table currently in use under the plan. Payment of the amount shall discharge fully the district's liability to the teacher under this subdivision. The arrangement under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 31 (commencing with Section 24600), inclusive, nor shall the amount be taken into account in the calculation of the retirement allowances under the State Teachers' Retirement System.

(b) Any person who was retired prior to July 1, 1956, from a position requisite for membership in the State Teachers' Retirement System, under a district supplemental retirement salary plan which has been discontinued pursuant to this section, and elected either under the plan or under the system, but not under both, to have a portion of his or her retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide for a benefit for his or her beneficiary, that person shall have the right, to be exercised not later than 60 days after July 5, 1956, to change

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his or her election under the State Teachers' Retirement System with respect to those options. Any computations of actuarial equivalents under a changed election shall be made as of the effective date, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

(c) When any local retirement plan is discontinued under this section, all funds remaining in the district retirement fund of the local system shall be transferred to the general fund of the school district in which the plan is discontinued. Thereafter any payments to meet continuing obligations of the district arising from the establishment or discontinuance of the plan shall be paid from the general fund of the district.

24925. The governing boards, after the adoption of the plan, shall at regular intervals, each not exceeding a period of five years, secure a general survey and actuarial report of the plan, and the boards shall from time to time amend the plan in any manner found to be advisable to meet changed conditions, or, in the light of experience, considered necessary.

24926. A plan under which the districts establishing it agree to pay to employees who become entitled to retirement salaries within a specified period, not exceeding 15 years, after the establishment of the plan, a specified sum that, during the life expectancy of the employees, will be approximately equal, in the aggregate, to the aggregate difference, during the life expectancy, between the maximum salary paid to employees in the respective classes of the retiring employees, and the salaries paid to beginning employees in the classes, shall be construed to comply with the provisions of this chapter requiring the plan to be in accordance with sound business practices and recognized actuarial methods.

24927. For the purpose of providing funds that may be necessary to make the payments required by any joint district retirement plan, district taxes shall be levied and collected annually by the respective districts at the same time and in the same manner as other district taxes are levied and collected. The tax shall be in addition to any other district tax now or hereafter authorized by law, and shall not be considered in fixing maximum rates of tax for school district or community college district purposes.

24928. Every joint district retirement plan shall provide that only those teachers and other employees who have served as teachers or employees of the districts for at least 20 years of service immediately preceding retirement, and who have reached a minimum age specified in the joint district retirement plan, which shall not be less than 55 years, shall be entitled to a district retirement salary.

24929. The plan may provide for the retirement of teachers or other employees on account of disability after 10 years of service immediately prior to the retirement; the proportion of the disability retirement salary to the full retirement salary to be specified in the plan.

24930. Absence from service by reason of a leave of absence granted by the governing board of an employing district shall not be construed as a break in the continuity of service or by any district retirement plan adopted pursuant to the provisions hereof, but the period of leave shall not be counted as time served toward retirement unless the period is so counted under the State Teachers Retirement Act.

24931. Time of service may be counted in the aggregate and fractions of years amounting to whole years may be counted as whole years when payments by the teacher or other employee have been made for all of the time counted.

24932. The governing boards of the districts shall in all cases determine the teachers and other employees who are entitled to retirement salaries, and make and keep a list of the teachers and other employees, known as the retired list. For the purpose of making the retired list the boards may take testimony and examine witnesses under oath, which may be administered by any member of the board.

24933. The governing boards of the districts may make all necessary and proper rules and regulations in aid or furtherance of the provisions of this chapter and in order to carry out and administer the provisions.

24934. When a joint district retirement plan is established there shall be created in the treasury of the county in which the districts are located, or, if the districts are located in more than one county, in the treasury of the county selected by the governing boards of the districts meeting in joint session, and open upon the books of the auditor and treasurer of the county, a trust fund account designated as the "joint district retirement fund." All moneys, whether from contributions by teachers or other employees, or by the districts, or from any source, properly belonging to the joint district retirement fund shall be placed in the fund. Upon approval of the joint district retirement board all incidental expenses, including actual and necessary clerical or other help, incurred in carrying out the provisions of this chapter shall be paid out of the fund and in the same manner as other expenditures are paid from district funds.

24935. Members of governing boards shall discharge the powers, duties, purposes, responsibilities, and jurisdiction conferred or imposed upon the governing boards under this chapter without extra or additional compensation.

24936. The governing boards of the districts establishing the retirement plan shall provide for the administration of the funds and the payment of retirement salaries by a joint district retirement board composed of three persons not officers or employees of any of the districts, one representative of each district, one representative of the teachers of each district and one representative of the other employees of each district, who shall serve without compensation. The representatives chosen by the teachers and other employees shall be chosen by secret ballot. The county treasurer of the county in the county treasury of which the joint district retirement fund is created shall be ex officio a member of the joint district retirement board. All members of the retirement board shall serve for such terms as may be specified by the governing boards in establishing a plan. The joint district retirement board shall have such further powers and duties as may be prescribed by the governing boards of the districts.

24937. (a) The joint district retirement board shall have charge and control of the district retirement fund of the district and of the payment of all retirement salaries and annuities payable from the fund. The joint district retirement board shall invest the funds in securities that are legal for the investment of funds of savings banks in this state and shall sell the securities and reinvest the proceeds in securities legal for investment of funds of savings banks when in the judgment of the joint district retirement board the sale and reinvestment is advisable. No investment in or sale of securities shall be made except upon authorization of the joint district retirement board at a meeting of the board.

(b) The board also shall collect the income from the securities and pay it into the joint district retirement fund.

24938. The joint district retirement board may sue in its own name when necessary to carry out the powers and duties.

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conferred upon it. The district attorney, or, if there is a county counsel, the county counsel of the county in which are employed the largest number of employees entitled to the benefits and subject to the burdens of the joint district retirement plan shall act as attorney for the joint district retirement board without additional compensation.

24939. All securities purchased by the joint district retirement board shall be deposited with the county treasurer for safekeeping.

24940. (a) All payments from the joint district retirement fund shall be made in the same manner as payments from school district funds but shall be subject to approval of the joint district retirement board. Warrants drawn on the fund shall be signed by at least one member of the joint district retirement board who shall be designated by the board.

(b) The duties imposed upon the county treasurer shall be a part of his or her official duties, for the faithful performance of which he or she shall be liable upon his or her official bond.

24941. The county auditor of the county in the county treasury of which the "joint district retirement fund" is created shall audit the accounts of the joint district retirement board at least once every 12 months and report upon the financial condition thereof to the governing boards of the districts.

24942. The retirement salaries provided for in this chapter shall be in addition to any other retirement salaries received by any person under Chapter 1 (commencing with Section 22000) to Chapter 31 (commencing with Section 24600), inclusive, or as may be otherwise provided by law.

24943. The retirement salaries provided for in this chapter for all other employees, shall be in addition to any other retirement salaries that may be provided by law.

24944. Whenever by the provisions of this chapter, the governing boards of two or more school districts are required, or authorized, to perform any act, the act may be done only at joint meetings of the boards, and no action shall be taken by the boards except upon the affirmative vote of a majority of the members of a majority of the boards.

SEC. 3. It is the intent of the Legislature in enacting this act to reorganize and 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. Thus, if, in the opinion of any court or administrative officer, a different result under any provision of the State Teachers' Retirement Law as it read on December 31, 1993, would occur because of the enactment of this act, the provision as it read on December 31, 1993, shall be followed and the result shall be as it would have been on December 31, 1993. Further, it is the intent of the Legislature that no new or additional rights vest in any member, retirant, or beneficiary as a result of the enactment of this act. No provision of this act may be interpreted to vest any such new or additional right. No dollar amount of any current or future benefit under this act shall be revised in any way because of the enactment of this act.

SEC. 4. Any section of any act enacted in 1993 at the 1993-94 Regular Session of the Legislature that amends, adds, or repeals any section of the State Teachers' Retirement Law (Part 13 (commencing with Section 22000) of the Education Code) and that is chaptered either before or after this act is chaptered shall prevail over this act.

BILL NUMBER: SB 858 CHAPTERED 03/15/94

CHAPTER 20

FILED WITH SECRETARY OF STATE MARCH 15, 1994
 APPROVED BY GOVERNOR MARCH 15, 1994
 PASSED THE SENATE MARCH 10, 1994
 PASSED THE ASSEMBLY MARCH 7, 1994
 AMENDED IN ASSEMBLY MARCH 1, 1994
 AMENDED IN ASSEMBLY FEBRUARY 28, 1994
 AMENDED IN ASSEMBLY FEBRUARY 22, 1994
 AMENDED IN ASSEMBLY FEBRUARY 17, 1994
 AMENDED IN ASSEMBLY FEBRUARY 2, 1994
 AMENDED IN ASSEMBLY JANUARY 20, 1994

INTRODUCED BY Committee on Public Employment and Retirement
 (Senators Hughes (Chairman), Johnston, McCorquodale, and Wright)

MARCH 4, 1993

An act to amend Sections 14502 and 84040.5 of, and to add Sections 22714, 44929, and 87488 to, the Education Code, relating to the State Teachers' Retirement System, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 858, Committee on Public Employment and Retirement. STRS: additional 2 years' credit.

Existing statutes generally limit receipt of service credit in the State Teachers' Retirement System (STRS) to time actually served in the performance of duties.

This bill would permit members of the STRS to receive an additional 2 years of service credit, under specified conditions, if the employer, by formal action taken prior to January 1, 1999, makes specified determinations, makes specified certifications, transmits to the STRS the system's related administrative costs and specified amounts of money, and pays certain other related state administrative costs. This bill would require the preparation of annual cost analyses by the Controller and the Chancellor of the California Community Colleges based on specified related post audit reports of the employers. Since certain funds would be required to be deposited in the continuously appropriated Supplemental Benefit Maintenance Account, this bill would make an appropriation.

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

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14502 of the Education Code is amended to read:

14502. (a) The Controller, in consultation with the Department of Finance and the State Department of Education, shall develop a plan to review and report on financial and

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compliance audits. The plan shall commence with the 1984-85 fiscal year for audits of school districts and the offices of county superintendents of schools. The Controller, in consultation with the Department of Finance and the State Department of Education, shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop an audit guide to carry out the purposes of this chapter. Prior to the issuance of the audit guide, the Controller shall submit a copy of the audit guide to the Department of Finance for review to ensure all compliance requirements are properly included.

(b) For the audit of school districts or county offices of education electing to take formal action pursuant to Sections 22714 and 44929, the audit guide shall be in such form and require such information as is prescribed by the Controller, including, but not limited to, the following:

(1) The number and type of positions vacated.

(2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714 and 44929.

(3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement cost, including interest, if any, and postretirement healthcare benefits costs, incurred by the employer.

(c) The Controller shall annually prepare a cost analysis, based on the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by school districts and county offices of education pursuant to Sections 22714 and 44929, and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(d) All costs incurred by the Controller to implement subdivision (b) shall be absorbed by the Controller.

SEC. 2. Section 22714 is added to the Education Code, to read:

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 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 the retirement of certificated employees or academic employees 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,

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1994.

(2) The employer transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals 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 that equals 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 that shall not exceed four years, that are acceptable to the Teachers' Retirement Board. The employer shall make the payment with respect to all eligible employees who retired 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

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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 service credit made available pursuant to this section shall be available to all members 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. 3. Section 44929 is added to the Education Code, to read:

44929. (a) Whenever the governing board of a school district or a county office of education, by formal action taken prior to January 1, 1999, determines that because of impending 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 the retirement of certificated employees 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 as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement System to a certificated employee pursuant to Section 22714 if all of the following conditions exist:

(1) The employee is credited with five or more years of service under the State Teachers' Retirement System 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 district or county superintendent of schools 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 district or county office of education transmits to the retirement fund an amount determined by the Teachers'

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limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under clause (B) of paragraph (1) 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 district for all administrative costs that result from the certification.

(c) The service credit made available pursuant to this section shall be available to all members employed by the community college district who meet the conditions set forth in this section.

(d) The amount of service credit shall be two years.

(e) Any employee who retires with service credit granted under this section and Section 22714 and subsequently reinstates into the State Teachers' Retirement System, shall forfeit the service credit granted under this section and Section 22714.

(f) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement System.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that school districts, county superintendents of schools, and community college districts may be permitted to obtain savings through early retirement of certificated employees and faculty at the earliest possible time, it is necessary that this act take effect immediately.

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BILL NUMBER: AB 2554 CHAPTERED 09/16/94

CHAPTER 603

FILED WITH SECRETARY OF STATE SEPTEMBER 16, 1994

APPROVED BY GOVERNOR SEPTEMBER 15, 1994

PASSED THE SENATE AUGUST 23, 1994

PASSED THE ASSEMBLY MAY 9, 1994

AMENDED IN ASSEMBLY MAY 5, 1994

AMENDED IN ASSEMBLY APRIL 18, 1994

AMENDED IN ASSEMBLY MARCH 21, 1994

INTRODUCED BY Assembly Member Solis

JANUARY 20, 1994

An act to add Section 22455.5 to the Education Code, relating to the State Teachers' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

AB 2554, Solis. State Teachers' Retirement System: provision of information to potential members.

The State Teachers' Retirement Law prescribes criteria for membership in the system and makes membership optional to certain part-time and substitute certificated employees.

This bill, in response to a federal law, would require employing agencies to make available criteria for membership, including optional membership, in a timely manner to all certificated employees and to inform part-time and substitute certificated employees, within specified time periods, that they may elect membership at any time while employed. This bill would also make employing agencies liable for employee and employer contributions, interest, administrative costs, and audit costs, if an audit or member's complaint reveals noncompliance.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22455.5 is added to the Education Code, to read:

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) Employing agencies shall make available criteria for membership, including optional membership, in a timely manner to all certificated employees and shall inform part-time and substitute certificated employees, within 30 days of hire date, or by March 1, 1995, whichever is later, that they may elect membership in the system at any time while employed. Written acknowledgment by the employee shall be maintained in employer files on a form provided by this system.

(c) Employing agencies shall be liable to the system for employee and employer contributions and interest 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

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liable for employee contributions for service performed prior
to January 1, 1995.

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BILL NUMBER: AB 3171 CHAPTERED 09/28/94

CHAPTER 933

FILED WITH SECRETARY OF STATE SEPTEMBER 28, 1994

APPROVED BY GOVERNOR SEPTEMBER 27, 1994

PASSED THE ASSEMBLY AUGUST 31, 1994

PASSED THE SENATE AUGUST 27, 1994

AMENDED IN SENATE AUGUST 24, 1994

AMENDED IN ASSEMBLY AUGUST 8, 1994

AMENDED IN ASSEMBLY JUNE 14, 1994

INTRODUCED BY Assembly Member Napolitano

FEBRUARY 23, 1994

An act to amend Sections 22200, 22302, 22305, 22306, 22309, 22310, 22311, 22317, 22319, 22354, 22357, 22360, 22450, 22453, 22454, 22514, 22661, 22715, 22719, 22800, 22803, 22903, 22904, 23104, 23304, 23403, 23702, 23703, 23804, 23805, 23807, 24003, 24101, 24103, 24106, 24107, 24207, 24212, 24301, 24304, 24306, 24307, 24308, 24309, 24404, 24407, 24414, 24604, and 24806 of, to amend and renumber Sections 22137.5, 22401.1, 22401.2, 23013, and 24200.3 of, to amend and repeal Sections 22221, 23800, 23801, 23851, 23854, 23880, 24201, 24204, and 24600 of, to add Section 22115 to, to repeal Sections 22004.2, 22114, 22129, 22143, 22211, 22228, 22252, 22253, 22253.5, 22400, 22401.6, 22401.7, 22452, 22513, 22655, 22662, 23000.1, 23000.5, 23101.5, 23701, 23804.3, 23900, 23903.5, 23911.2, 24152.5, 24155, 24156, 24200.2, 24203, 24205, 24220, 24600.1, 24609, and 24612 of, and to repeal and add Chapter 2 (commencing with Section 22100) of Part 13 of, the Education Code, relating to public retirement systems, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3171, Napolitano. State Teachers' Retirement Law.

(1) The State Teachers' Retirement Law sets forth the provisions pursuant to which members of the State Teachers' Retirement System are provided specified benefits.

This bill would make various revisions to these provisions, including those provisions relating to membership status, the granting of leave, eligibility for service credit and certain benefits, and reinstatement to service.

(2) Chapter 893 of the Statutes of 1993 recast and recodified the State Teachers' Retirement Law.

This bill would revise the recodified provisions to reflect changes in the State Teachers' Retirement Law enacted by other legislation in 1993, and would make other technical and conforming changes.

(3) The State Teachers' Retirement Law sets forth the definitions of certain terms for purposes of the law.

This bill would place those provisions in alphabetical order.

(4) This bill would incorporate changes in the State Teachers' Retirement Law proposed by AB 3832 (Chapter 193 of the Statutes of 1994), to become operative on January 1, 1995, the effective date of AB 3832.

(5) This bill would incorporate additional changes in Section 23104 of the Education Code proposed by AB 2550, to become

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operative only if AB 2550 and this bill are both chaptered on or before January 1, 1995, and this bill is chaptered last.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22004.2 of the Education Code, as amended by Section 1 of Chapter 1082 of the Statutes of 1993, is repealed.

SEC. 2. Chapter 2 (commencing with Section 22100) of Part 13 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is repealed.

SEC. 3. Chapter 2 (commencing with Section 22100) is added to Part 13 of the Education Code, to read:

CHAPTER 2. DEFINITIONS

22100. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this part.

22101. "Accumulated annuity deposit contributions" means the sum of all the annuity deposits standing to the credit of the member's account, together with credited interest.

22102. "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.

22103. "Accumulated tax-sheltered annuity contributions" means the tax-sheltered contributions made by a member and standing to the credit of the member's account, together with credited interest.

22104. "Actuarial equivalent" means an allowance of equal value when computed upon the basis of such tables and interest rates that are adopted by the board.

22105. "Annuity" means payments for life derived from the "accumulated annuity deposit contributions" of a member.

22106. "Annuity deposit contributions" means additional contributions made by a member above those required for credited service for the purpose of providing additional retirement income.

22107. "Beneficiary" means any person or entity receiving or entitled to receive allowances and payments pursuant to this part because of the death of a member, disabilitant, or retirant.

22108. "Benefits" means any monthly payment due a retirant, disabilitant, or other beneficiary, and includes lump-sum payments due on account of death.

22109. "Board" means the Teachers' Retirement Board.

22110. "California service" means service performed in California for which credit may be given.

22111. (a) "Child" or "children" under the disability allowance and family allowance programs means any of the following:

(1) The unmarried offspring of a member under 18 years of age, not adopted by a person other than the spouse, and dependent upon the member on the effective date of disability allowance or death. Offspring shall include a child who is born within the 10-month period commencing on the effective date of the earlier of disability allowance or death.

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(2) The unmarried child, under 18 years of age, adopted by the member, and dependent upon the member on the effective date of disability allowance or death.

(3) The unmarried stepchild of the member, under 18 years of age, and dependent upon the member on the effective date of disability allowance or death.

(4) The dependent unmarried child described in paragraph (1), (2), or (3) who is under 22 years of age and who is registered as a full-time student, as defined in Section 22139, on the effective date of disability allowance or death. A dependent unmarried child who is a full-time student in the month of attaining 22 years of age, shall be deemed not to have attained that age until the first day of the month following the end of the school quarter or semester that was in progress in the month of attainment of 22 years of age.

(b) For those members receiving a disability allowance and who subsequently die, the maximum number of children for family benefits shall be those who were eligible on the effective date of disability allowance.

22112. "Child" or "children," under the disability retirement and survivor benefits programs, means any of the following:

(a) The offspring of a member up to the attainment of 21 years of age, not adopted by a person other than the spouse, and dependent upon the member on the effective date of disability retirement or death. Offspring includes a child who is born within the 10-month period commencing on the effective date of disability retirement or death.

(b) The child, up to the attainment of 21 years of age, adopted by the member, and dependent upon the member on the effective date of disability retirement or death.

(c) The stepchild of the member, up to the attainment of 21 years of age, and dependent upon the member on the effective date of disability retirement or death.

22113. "Comparable level position" means any job in which the member can earn 66 2/3 percent or more of indexed final compensation.

22114. (a) "Compensation" and "salary," for purposes of determining benefits and contributions, mean any of the following:

(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.

(2) Any member contributions paid by the employer pursuant to Section 22903 or 22904.

(3) Any amount deducted from the member's salary for participation in a deferred compensation plan, or for purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 125, 401(k), or 403(b)).

(4) Moneys derived from a salary schedule based on years of training and years of experience, as specified in Section 45028.

(5) Any other payments the board may determine to be "compensation" and "salary."

(b) "Compensation" and "salary," for purposes of determining benefits and contributions, do not mean, and shall not include, any of the following:

(1) Money paid, allocated, or reimbursed for job-related expenses.

(2) Money paid to a member for overtime service.

(3) Compensatory damages or money paid to a member in excess

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of regular salary as a compromise settlement or as severance pay.

(4) Payments for unused accumulated leave.

(5) Money paid for summer school employment.

(6) Money paid as a bonus. For purposes of this part, a bonus is a payment made only to a selected employee or employees and not to the entire class of employees on a systematic basis.

(7) Fringe benefits paid for by the employer in lieu of salary.

(8) Money not available for payment of salaries and that is paid by the employer for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 125, 401(k), or 403(b)).

(9) Money paid as a stipend to mentor teachers pursuant to subdivision (a) of Section 44494.

(10) Any other payments the board may determine not to be "compensation" and "salary."

(c) Any moneys paid under paragraphs (1) to (10), inclusive, of subdivision (b) shall not be included as a part of the member's compensation subject to contributions to the system.

(d) The system may establish procedures to ensure that information reported by employers is in compliance with this section.

(e) The Legislature finds and declares that any person who willfully reports compensation in a manner inconsistent with the definitions set forth in this section may be subject to prosecution for fraud, theft, or embezzlement under the Penal Code.

(f) No payment made to a member shall be considered to be creditable for retirement purposes if, in the opinion of the board, the payment was made with the purpose of increasing retirement benefits for the member, unless it is the result of a specific statutory benefit provision and the amount of the present value of the increase has been paid to the system.

(g) This section is designed to treat compensation for retirement purposes of members of the system according to sound funding principles that support the integrity of the fund. Some of the basic funding principles supporting the integrity of the fund include consistent treatment of compensation throughout the career of the individual member and consistent treatment of compensation for an entire classification of employees. Ad hoc adjustments to compensation should not be made when the purpose is to enhance retirement benefits, because those adjustments allow unwarranted and unearned increases in retirement benefits, allow adverse selection, and undermine the fiscal integrity of the fund.

22116. (a) "Compensation earnable," for the purposes of determining final compensation for part-time employees, means the earned salary divided by the service credit.

(b) The compensation earnable shall be limited to the highest salary on the school district salary schedule for a teacher or principal, whichever is applicable, when the service credit for any year is less than one-half of one year's service credit.

(c) The compensation earnable may be determined by the board when the service credit for any year is less than one-fifth of one year's service credit.

22117. "Contribution rate for additional service credit" means the contribution rate adopted by the board to purchase 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

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subsequent allowance increases.

22118. "County" includes "city and county."

22119. "County superintendent" means the county superintendent of schools.

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

22121. "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.

22122. "Custodian" as used in Section 22359, is 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.

22123. (a) "Dependent child" means that more than one-half of the child's support was being provided by the member at the time of the member's disability or death.

(b) The system may require that income tax records and similar substantiating data be submitted by the member or the member's representative. Failure, neglect, or refusal by the member or the member's representative to provide requested tax records or data may constitute grounds for a determination by the system that the child was not dependent at the time of the member's disability or death.

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 of his or her support from the member at the time of the member's death.

22125. "Disabilitant" means a member of the system to whom a disability allowance is payable.

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 on-the-job performance 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.

22127. "Disability allowance" means monthly amounts payable to a disabilitant.

22128. "Early retirement" and "early retirement age" means age 55 years and 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.

22129. "Educational institution" is 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.

22130. "Effective date" means the date stated in the application upon and continuously after which, should death occur, the member is considered a retirant or disabilitant.

22131. "Employer" or "employing agency" means the state or any agency or political subdivision thereof by whom a member is paid.

22132. "Employment" means employment in a position requiring

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membership in the system.

22133. "Family allowance" means amounts payable to eligible survivors provided pursuant to Chapter 22 (commencing with Section 23800) after June 30, 1972.

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive years during his or her membership in the system or time during which he or she was not a member but for which the member has received credit under the system, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For the purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who is also a member of the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or the San Francisco City and County Employees' Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this system.

(3) Retirement under this system is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23804.

(e) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this system under board rules in effect prior to that date.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and the children's increment of the survivor benefit allowances payable on and after January 1, 1978. The earnable salaries for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, "final compensation" means the highest annual compensation earnable by a member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the system. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) Section 22134, except subdivision (a) of that section, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22134 or "final compensation" with respect to a classroom teacher who retires,

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becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means any of the following:

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

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

(d) As used in this section, "classroom teacher" does not include any of the following:

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

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

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

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

(5) Classified employees.

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

(f) The written agreement shall include a mechanism to pay for all increases in benefits and allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in benefits and allowance provided by this section and related administrative costs, a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of the benefit improvement, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system the amount determined by the Teachers' Retirement Board to be equal to the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the

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allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the system, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in benefits and allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of the receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

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

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the eligibility of an employee, upon retirement or eligibility for a disability or family allowance, pursuant to the criteria set forth in this section.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payment not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

22136. (a) "Final compensation" with respect to a member whose salary has been reduced because of a reduction in school funds means the highest average annual compensation earnable by the member during any three years during his or her membership in the system 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.

22137. With respect to a state employee member who dies or retires on or after July 1, 1991, and who was a managerial or supervisory employee, as defined by subdivisions (e) and (g) of Section 3513 of the Government Code, whose monthly salary range was administratively reduced by 5 percent because of the salary range reductions administratively imposed upon managers and supervisors during the 1991-92 fiscal year, "final compensation" means the highest annual compensation the state employee member would have earned had his or her salary range not been reduced by the 5-percent reduction. This section shall only apply if the period during which the state member's salary was reduced would have otherwise been included in determining his or her final compensation for retirement purposes. The costs, if any, that may result from the use of the higher final compensation shall be paid for by the employer at the time of retirement in a manner prescribed by the system.

22138. "Final vesting" means the right of a member or a beneficiary to receive a monthly retirement allowance, disability allowance, a family benefit, or survivor benefits when the member has completed the minimum number of years of credited service, has attained the minimum specified age, has formally terminated his or her active service, has made

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application for retirement, or has been formally retired in accordance with Section 24201, after which the kind and amount of the retirement allowance is fixed and cannot thereafter be changed except as provided in this part.

22139. "Full-time student" means a child in full-time attendance at an educational institution. The final determination whether a person qualifies as a full-time student shall be made by the board in light of standards and practices of the institution involved.

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 retirement date, or the date on which monthly benefits commenced to accrue to any beneficiary other than a retirant 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 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.

22141. Notwithstanding Section 22140, "improvement factor" means an increase of 2 percent in benefits provided under Sections 24408 and 24409 for each year commencing on September 1, 1981. 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 the economic conditions dictate. No adjustments of the 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.

22142. "Indexed final compensation" means final compensation upon which a disability allowance or disability retirement allowance was based, adjusted annually from the school year in which an allowance begins to accrue by the rate of change in the average compensation earnable as determined by the board.

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.

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 system 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.

22145. "Local system" means any retirement system, exclusive of this system, in which public school teachers are members, operated by a city, county, or other political subdivision of the state.

22146. "Member" means any person included in the membership of the system.

22147. (a) "Month" means 20 days or four weeks of five days each, including legal holidays, with respect to the computation

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and crediting of service.

(b) "Month," for all other purposes, means a period commencing on any day of a calendar month and extending through the day preceding the corresponding day of the succeeding calendar month, if there is any such corresponding day, and if not, through the last day of the succeeding calendar month.

22148. "Normal retirement" and "normal retirement age" mean age 60 years and are 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.

22149. "Option beneficiary" means a person designated to receive an actuarially reduced retirement allowance upon a retirant's or a member's death.

22150. "Other public systems" means any of the following:

(a) Old age, survivors, disability, and health insurance program, other than the lump-sum death payment, provided by the Social Security Act (42 U.S.C.A. Sec. 300 and following).

(b) The federal civil service retirement program.

(c) Federal military disability.

(d) Railroad retirement.

(e) A workers' compensation program.

(f) Federal railroad retirement.

(g) Any other public retirement system, including, but not limited to, any disability programs financed from public funds.

22151. "Overtime" means 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.

22152. "Parent" means a natural parent of a member or a parent who adopted the member prior to his or her attainment of 18 years of age or to the member's marriage, whichever occurs earlier.

22153. "Part-time basis with respect to service" means a basis of service that is for less time than is required of persons serving on a full-time-day basis even though the employee may be subject to call at any time.

22154. "Pay period" means a pay period of not less than four weeks or more than one calendar month.

22155. "Payroll" includes registers, warrants, and any other documents upon which all persons receiving salary payments are listed.

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 contributions as provided in this part.

22157. "Projected final compensation" means the final compensation used in computing the disability or family allowance increased by 2 percent, compounded annually to the earlier of normal retirement age or the date the disability allowance is terminated.

22158. "Projected service" means the credited service plus the service which would have been earned had the member or disabilitant 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 disability allowance began to accrue.

22159. "Proof of death" means providing to the system any evidence of death required by the system.

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22160. "Provisional vesting" means the right of the member upon the completion of the minimum number of years of credited service and attainment of the minimum specified age after which the member may retire at any time and be entitled to receive a monthly retirement allowance.

22161. "Public school" means any day or evening elementary school, and any day and evening secondary schools, community colleges, technical schools, kindergarten schools, and prekindergarten schools established by the Legislature, or by municipal or district authority.

22162. "Regular interest" is interest that is compounded annually based upon the annual equivalent of the average rate yielded on commitments during the prior year for maturities of more than one year in length of fixed-income senior securities. For purposes of this section, "senior securities" means all investments except common stock and preferred stock investments and real estate ownership.

22163. "Reinstatement" means returning to membership from service or disability retirement, whether or not service is subsequently performed.

22164. "Retirant" means a former member who has been retired for service or disability and is receiving a retirement allowance.

22165. "Retirement" means withdrawal from membership with a retirement allowance.

22166. "Retirement allowance" means the monthly amounts payable to a retirant or the option beneficiary.

22167. "Retirement fund" means the Teachers' Retirement Fund.

22168. "Return on investments" means income received or receivable from the system's investments.

22169. "School year" means the fiscal year or the academic year.

22170. "Service" means service performed for compensation in a position requiring membership in the system, except as otherwise specifically provided in this part.

22171. "Spouse" means a person who was married to the member at least 12 months prior to the death of the member unless a child is born to the union within the 12-month period or the surviving spouse is carrying the member's unborn child.

22172. "Survivor allowance" means the allowance provided for in Section 23804 as it read under the law in effect on June 30, 1972.

22173. "Survivor benefit allowance" means the monthly allowance that a surviving spouse may elect to receive pursuant to Chapter 23 (commencing with Section 23850).

22174. "System" means the State Teachers' Retirement System.

SEC. 4. Section 22114 of the Education Code, as amended by Section 1 of Chapter 468 of the Statutes of 1993, is repealed.

SEC. 5. Section 22115 is added to the Education Code, to read:

22115. (a) "Compensation earnable" by a member means the compensation as determined by the 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.

(b) For part-time service, "compensation earnable" means the compensation that would be earnable if the employment were on a full-time basis and the member worked full time.

(c) For purposes of this part, "full-time" means service that is not less than the minimum schoolday for each day the schools of the district are maintained during the school year. If persons employed in positions requiring certification qualifications are required to serve a longer period of time in

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each schoolday than the minimum required, the longer period is recognized provided all those employees in similar grades or levels are similarly required to serve the longer periods of time, and provided that the duties required of those persons during the extended time is directly related to and restricted to their normal assignment.

SEC. 5.5. Section 22115 is added to the Education Code, to read:

22115. (a) "Compensation earnable" by a member means the compensation as determined by the 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.

(b) For part-time service, "compensation earnable" means the compensation that would be earnable if the employment were on a full-time basis and the member worked full time.

SEC. 6. Section 22129 of the Education Code, as amended by Section 1 of Chapter 860 of the Statutes of 1993, is repealed.

SEC. 6.5. Section 22137.5 of the Education Code, as added by Chapter 193 of the Statutes of 1994, is amended and renumbered to read:

22138.5. "Full-time" means service that is not less than the minimum schoolday for each day the schools of the district are maintained during the school year. If persons employed in positions requiring certification qualifications are required to serve a longer period of time in each schoolday than the minimums required, the longer period is recognized provided all those employees in similar grades or levels are similarly required to serve the longer periods of time, and provided that the duties required of those persons during the extended time is directly related to and restricted to their normal assignment.

SEC. 7. Section 22143 of the Education Code, as amended by Section 1 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 7.5. Section 22200 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 member who, at the time of appointment, is a member of the governing board of a school district or a community college district.
- (6) Three members of the State Teachers' Retirement System, as follows:
 - (A) Two members who, at the time of appointment, are classroom teachers in kindergarten or grades 1 through 12.
 - (B) One member 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) A retirant of the system.
- (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

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by the Senate.

(10) One member 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. 8. Section 22211 of the Education Code is repealed.

SEC. 9. Section 22221 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 either of 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. 10. Section 22221 of the Education Code, as amended by Section 2 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 11. Section 22228 of the Education Code, as amended by Section 2 of Chapter 861 of the Statutes of 1993, is repealed.

SEC. 12. Section 22252 of the Education Code, as amended by Section 1 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 13. Section 22253 of the Education Code, as amended by Section 72 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 14. Section 22253.5 of the Education Code, as amended by Section 73 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 15. Section 22302 of the Education Code is amended to read:

22302. (a) The board shall establish an ombudsman position to serve as an advocate for the members of the system. The duties of the ombudsman position shall include reviewing and making recommendations to the chief executive officer regarding complaints by school employees, members, retirants, employee organizations, Members of the Legislature, or members of the public regarding actions of the staff 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 in reduction in interest payments on delinquent benefits to members, and through a more efficient and improved public relations program.

SEC. 16. Section 22305 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22305. Any rules and regulations adopted by the board for the purpose of the administration of this part, and not inconsistent with this part, have the force and effect of law.

SEC. 17. Section 22306 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22306. (a) Data filed by any member, retirant, or beneficiary with the board is confidential. No official or employee who has access to the individual records shall divulge any information concerning those records to any person other than the member or retirant to whom the information relates or that person's authorized representative, the governing board of the school district or agency by which the member or retirant is

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employed, or any state department or agency, except as necessary to locate a person to whom a benefit or refund may be payable. The information shall be used by the board for the sole purpose of carrying this part into effect.

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

(c) Information filed with the board in a beneficiary designation form may be released, after the death of the member or retirant, to those persons who can provide information necessary for the distribution of benefits.

SEC. 18. Section 22309 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22309. (a) The board shall issue to each 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) (1) 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.

(2) For purposes of this subdivision, "inactive member" means a member who, by the report period ending June 30 of a school year, has performed no service during that school year.

SEC. 19. Section 22310 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22310. (a) If a benefit or refund of contributions cannot be paid because, after a good faith effort, the member or beneficiary cannot be located, the amounts payable shall be retained in the Teachers' Retirement Fund 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. 20. Section 22311 of the Education Code is amended to read:

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

(b) The board shall make an actuarial investigation into the mortality, service, and other experience of members and beneficiaries and make an actuarial valuation of the assets and liabilities of the system, 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 system and the best estimate by the actuary of the future experience of the system. 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 system any rates of return on investments, rates of contribution to the retirement fund, mortality, service, and other tables it deems necessary.

SEC. 21. Section 22317 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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

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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 or retirants 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. 22. Section 22319 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22319. (a) The initial payment to a retirant 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 or retirant. Monthly payments shall continue thereafter. Payments may be based on a good faith estimated amount pending receipt by the system of all necessary employment information.

(b) The retirant or option beneficiary shall be placed on the final roll and issued a retroactive payment, if one is due, within 45 days of receipt by the system of all necessary information.

SEC. 23. Section 22354 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22354. (a) The board shall, pursuant to the state civil service statutes, either contract with, or establish and fill full-time positions for, investment managers who are experienced and knowledgeable in corporate management issues to monitor each corporation any of whose shares are owned by the system and to advise the board on the voting of the shares owned by the system and on the responses of the system to merger proposals and tender offers and all other matters pertaining to corporate governance.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from this section.

SEC. 24. Section 22357 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22357. The board shall submit an annual report to the Legislature, which shall include all of the following:

(a) A copy of the annual audit performed pursuant to Section 22217.

(b) A review by a consultant, a summary of any changes in actuarial assumptions from the previous year, a review of the system's asset mix strategy, a market review of the economic and financial environment in which investments were made, and a summary of the system's general investment strategy.

(c) A description of the investments of the system, including the concentration of stocks and bonds, at cost and market value, including dividends and coupons, and a summary of major changes that occurred since the previous year.

(d) The following information regarding the rate of return of the system by asset type:

(1) Time-weighted return on a five-year, three-year,

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two-year, and one-year basis.

(2) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(3) Book valuation return on a five-year, three-year, two-year, and one-year basis.

(4) Portfolio return comparisons that compare investment returns with an alternative theoretical portfolio of comparable funds, universes, and indexes.

(5) Returns as credited to employer accounts.

(6) Returns as reported in annual reports.

(7) Returns as reported by the Controller.

(e) A transaction summary that shall adequately review the system's custodial relationship and daily cash management, purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations.

(f) A report on the use of outside investment advisers and managers and any participation in corporate annual meetings and shareholder voting.

(g) A statement of actuarial gains and losses, including the components of the employer contribution rate, and the sensitivity of the statement information to changes in the economic or noneconomic actuarial assumptions.

(h) A discussion of the portfolio of the system containing the following information:

(1) Concentration, current holdings at cost and market value, risk characteristics (R-squared, Beta, standard error), fundamentals (P/E, dividend yield, measures of growth, size, earnings quality, debt/equity) of equities.

(2) Concentration, current holdings at cost and market value, maturity, duration, quality, coupon, and current yield of fixed income instruments.

(3) Current holdings at cost and market value of real estate equities.

(4) Current holdings at cost and market value of mortgages.

(5) Securities lending activity.

(6) Options and forward commitments.

(7) Cash and cash equivalents.

(i) A performance review of asset allocation, of equities due to market timing, sector selection, stock selection, and trading, of fixed income instruments due to interest rate anticipation skills, credit analysis, sector trading and swapping, and of value added over indexing (alpha).

(j) A review of the system's custodial relationship and daily cash management and a summary of the system's investment transactions, including purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations.

(k) A review of the role of any outside managers and advisers, stockholder voting, and changes in investment staff or reorganization.

SEC. 25. Section 22360 of the Education Code is amended to read:

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 system members and retirants, through financing, to obtain homes in this state.

(b) The terms and conditions of the correspondent agreements shall address all of the following:

(1) That home loans be made available to eligible members and retirants for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family

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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, and retirants 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. 26. Section 22400 of the Education Code, as amended by Section 3 of Chapter 861 of the Statutes of 1993, is repealed.

SEC. 27. Section 22401.1 of the Education Code, as added by Section 3 of Chapter 920 of the Statutes of 1993, is amended and renumbered to read:

22451.5. (a) Upon request by the system, a member shall provide proof of his or her date of birth to resolve any discrepancy between the member's date of birth as originally documented on the records of the system and the member's birthdate as subsequently submitted.

(b) A member shall provide proof of the date of birth of a person designated by the member as beneficiary under an option selected pursuant to Chapter 28 (commencing with Section 24300) if the beneficiary is not also a member of the system.

(c) Documentation substantiating the birthdate of a member's child shall be provided if a disability allowance, a disability retirement allowance, a family allowance, or a survivor benefit allowance payable under this part will include an amount for that child.

(d) At the time application is made for payment of a family allowance or survivor benefit allowance to a surviving spouse or dependent parent, a member's surviving spouse or dependent parent shall provide proof of his or her date of birth.

(e) At the discretion of the board, an original document, a certified copy of the original, or a photocopy shall be

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acceptable to establish proof of the date of birth.

SEC. 28. Section 22401.2 of the Education Code, as added by Section 4 of Chapter 920 of the Statutes of 1993, is amended and renumbered to read:

22451.7. The system may withhold benefit payments until proof of the date of birth of a member, beneficiary under an option selected pursuant to Chapter 28 (commencing with Section 24300), child, surviving spouse, or dependent parent has been received and accepted by the system.

SEC. 29. Section 22401.6 of the Education Code, as amended by Section 74 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 30. Section 22401.7 of the Education Code, as amended by Section 75 of Chapter 219 of the Statutes of 1993, is repealed.

SEC. 31. Section 22450 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 system 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. 32. Section 22452 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is repealed.

SEC. 33. Section 22453 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member or retirant shall be required on any application for, or cancellation of, an unmodified allowance, the election 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 or retirant in which a spousal interest may be present, unless the member or retirant declares, in writing, under penalty of perjury, that one of the following conditions exists:

(1) The member or retirant 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 or retirant 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 or retirant 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 or retirant.

SEC. 34. Section 22454 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22454. If a spouse refuses to sign an application, as set forth in Section 22453, the member or retirant 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.

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SEC. 35. Section 22513 of the Education Code, as amended by Section 2 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 36. Section 22514 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22514. Persons who have not achieved plan vesting shall qualify for eligibility for benefits under this system when total service under both systems equals the minimum required under Sections 23801 and 23804. These persons shall retain vested rights to survivor and disability benefits until they qualify for the similar benefits in the Public Employees' Retirement System.

SEC. 37. Section 22655 of the Education Code, as amended by Section 2 of Chapter 1082 of the Statutes of 1993, is repealed.

SEC. 38. Section 22661 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22661. The nonmember spouse who is awarded a separate account shall have the right to a refund of accumulated retirement contributions in the separate account of the nonmember.

(a) The right of the nonmember spouse to a refund of accumulated retirement contributions is subject to Section 23105.

(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 balance of the account.

SEC. 39. Section 22662 of the Education Code, as amended by Section 3 of Chapter 1082 of the Statutes of 1993, is repealed.

SEC. 40. Section 22715 of the Education Code is amended to read:

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

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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, transmits to the retirement fund an amount determined by the board that is equal to 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 will be realized were the additional service credit towards retirement 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 retired pursuant to this section.

(d) Any member who qualifies under this section, upon subsequent reinstatement, shall forfeit the service credit acquired 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. 41. Section 22719 of the Education Code is amended to read:

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22719. If a retirant is reinstated, the employing school district or other employing agency shall not restore sick leave for which service credit was given at retirement. A retirant who reinstates on or after July 1, 1980, shall not receive service credit at a subsequent retirement for the unused sick leave accrued after reinstatement.

SEC. 42. Section 22800 of the Education Code is amended to read:

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 employing agency or public school where 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. 43. Section 22803 of the Education Code is amended to read:

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 in a position requiring membership in this system within one year prior to entering the service and returned to a position requiring membership in this system 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 another

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retirement system.

SEC. 44. Section 22903 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 State Teachers' Retirement System, provided that the contributions are deducted from the salary of the member.

SEC. 45. Section 22904 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the normal contributions required to be paid by a state employee who is a member of the State Teachers' Retirement System, 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. 46. Section 23000.1 of the Education Code, as amended by Section 4 of Chapter 1082 of the Statutes of 1993, is repealed.

SEC. 47. Section 23000.5 of the Education Code, as amended by Section 5 of Chapter 1082 of the Statutes of 1993, is repealed.

SEC. 48. Section 23013 of the Education Code, as added by Section 2 of Chapter 860 of the Statutes of 1993, is amended and renumbered to read:

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 in positions subject to membership in this system 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 group or class of unrepresented employees, 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 in positions subject to membership in this system 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

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group or class of nonrepresented employees who are employed in positions subject to membership in this system and have had their salaries uniformly reduced because of a fiscal emergency. A separate resolution shall be adopted for each bargaining unit and group or class of nonrepresented employees 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, "group or class of nonrepresented employees" means a number of employees considered together 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.

(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 in a position subject to membership in this system, 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. 49. Section 23101.5 of the Education Code, as amended by Section 6 of Chapter 1082 of the Statutes of 1993, is repealed.

SEC. 50. Section 23104 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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

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the address directed by the member, constitutes a return of the member's accumulated contributions.

(b) If the member 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 member's accumulated 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 within 30 days from the mailing date, the refund shall be canceled and the person shall be restored to membership with all the rights and privileges restored.

SEC. 50.5. Section 23104 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 contributions.

(b) If the member 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 member's accumulated 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 within 30 days from the mailing date, the refund shall be canceled and the person shall be restored to membership 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 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 within 30 days from the mailing date, the refund shall be canceled and the person shall be restored to membership with all the rights and privileges restored.

SEC. 51. Section 23304 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 or retirant. 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 from liability for the benefit.

SEC. 52. Section 23403 of the Education Code is amended to read:

23403. Survivor benefits payable on account of deaths that occurred prior to July 1, 1972, shall be continued in the amounts and under the conditions stated in former Sections 14186 and 14189, as they read prior to July 1, 1972.

SEC. 53. Section 23701 of the Education Code, as amended by

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Section 6 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 54. Section 23702 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

23702. (a) All members of the State Teachers' Retirement System 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 with the system on October 15, 1992, only, and not on prior or subsequent events.

SEC. 55. Section 23703 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

23703. A member's election of disability or death benefit coverage shall meet all of the following requirements:

(a) The member is eligible to participate in the election pursuant to Section 23702.

(b) The election is filed on a form provided by the system.

(c) Except as provided in Section 23704, the election document contains the signature of the spouse of the member, 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 future benefits.

(d) The election document is signed and dated during the 180-day election period specified in Section 23701.

(e) The signatures of the member and the member's spouse on the election document are witnessed by a third party who is at least 18 years of age.

(f) The election document is received in the system's office in Sacramento within 30 days after the date of signature, but no later than May 1, 1993.

SEC. 56. Section 23800 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 disabilitants on October 15, 1992, and all persons who were members of the system on October 15, 1992, who did not elect, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under Chapter 19.5 (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. 57. Section 23800 of the Education Code, as amended by Section 3 of Chapter 1144 of the Statutes of 1993, is repealed.

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SEC. 58. Section 23801 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

23801. (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 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) While disabled, if the disability had been continuous from the last day for which compensation had been paid.
- (3) Within four months after termination of service or termination of employment, whichever occurs first.
- (4) Within four months after termination of a disability allowance if no service was performed after the termination.
- (5) 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 reinstatement from service retirement pursuant to Section 24208.

(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 beneficiary may waive his or her right to the death payment in accordance with the requirements established by the system.

SEC. 59. Section 23801 of the Education Code, as amended by Section 3.5 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 60. Section 23804 of the Education Code is amended to read:

23804. (a) A family allowance is payable upon the death of a member or a disabilitant 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 a 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 is 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. 61. Section 23804.3 of the Education Code, as amended by Section 4 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 62. Section 23805 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the member's or disabilitant's surviving spouse who has financial responsibility for at least one child, an amount equal to 40 percent of the deceased member's final compensation or the disabilitant's projected final compensation plus 10 percent of the deceased member's final compensation or the disabilitant's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each child, an amount equal to 10 percent of the deceased member's final compensation or the disabilitant's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at 60 years of age or over without children, an amount equal to Option 3 as provided under this part computed on the member's or disabilitant's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member or disabilitant would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The benefit calculation shall include credit for the unused sick leave that had accrued to the member as of the date of the member's death. Eligibility for the use of sick leave and the calculation of service credit shall be determined pursuant to Section 22717.

(d) If there is no surviving spouse or child upon the member's or disabilitant's death, to the dependent parent age 60 years or over, an amount equal to Option 3 as provided under this part computed on the member's or disabilitant's projected final compensation and projected service to normal retirement age. The benefit calculation shall include credit for the unused sick leave that had accrued to the member as of the date of the member's death. Eligibility for the use of sick leave and the calculation of service credit shall be determined pursuant to Section 22717. If there are two dependent parents, only one family allowance shall be computed on the assumption that the younger parent is the beneficiary and the allowance shall be divided equally for as long as there are two dependent parents. Thereafter, the allowance shall be payable to the surviving dependent parent.

(e) If there are no children who qualify under Section 22111, a spouse or the dependent parent or parents may elect, prior to the receipt of the first payment under subdivision (c) or (d), to receive the accumulated contributions in a lump sum subject to a reduction for any payments made from the account for any prior qualified persons.

SEC. 63. Section 23807 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

23807. To determine eligibility as a full-time student for benefits payable under family and disability allowances, all of the following shall apply:

(a) An individual shall be deemed to be a full-time student during any normal period of vacation or holiday of the institution involved, if there is sufficient evidence to satisfy the board of the intention to continue in full-time attendance at the educational institution immediately following the period of vacation or holiday.

(b) If the individual fails to return to full-time attendance following vacation or holiday, the allowance ceases as of the

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first of the month in which return to full-time attendance was required.

(c) An individual shall not qualify as a full-time student during any period of nonattendance if the nonattendance is due to expulsion or suspension.

(d) An individual shall not qualify as a full-time student if attendance at an educational institution is paid for and provided by the individual's employer or is in the course of on-the-job training, unless the on-the-job training is part of the regularly established school training for which credit toward a diploma, certificate, or graduation is given. An individual shall not qualify as a full-time student for any full-time course of study that is directly paid for and sponsored under the Job Corps of the Economic Opportunity Act of 1964 (Public Law 88-452), as amended, or paid for or sponsored by any armed forces for this state or the United States of America.

SEC. 64. Section 23851 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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 a 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 reinstatement from service retirement pursuant to Section 24208 or during the six calendar months commencing with the effective date of reinstatement from disability retirement 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. 65. Section 23851 of the Education Code, as amended by Section 4.5 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 66. Section 23854 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

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.

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(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, 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 is 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. 67. Section 23854 of the Education Code, as amended by Section 5 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 68. Section 23880 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

23880. (a) A death payment of five thousand dollars (\$5,000) shall be paid to the beneficiary upon receipt of proof of death of either of the following:

(1) A retirant.

(2) A member, if the death payment pursuant to Section 23801 would have otherwise been payable or if the conditions specified pursuant to paragraph (3) of subdivision (b) of Section 23854 are met, and if the member's death occurs during one of the following periods:

(A) Within one year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

(B) 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. 69. Section 23880 of the Education Code, as amended by Section 6 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 70. Section 23900 of the Education Code, as amended by Section 7 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 71. Section 23903.5 of the Education Code, as amended by Section 8 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 72. Section 23911.2 of the Education Code, as amended by Section 9 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 73. Section 24003 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24003. (a) The member shall provide medical documentation related to the impairment qualifying him or her for the disability allowance.

(b) On receipt of an application for disability allowance,

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the system may order a medical examination of a member to determine whether the member is incapacitated for further 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 the state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be disallowed, 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 22125, 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 too mentally or physically incapacitated to comply.

(d) If the board determines that a member who has applied for a disability allowance may perform his or her usual duties or those of 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) In the event that 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 any rejection of a disability allowance application within 30 days after that determination is made by the system.

SEC. 74. Section 24101 of the Education Code is amended to read:

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 in a position requiring membership in the system. 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 was reinstated to membership 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 this system commenced and

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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 less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

(c) A member shall not be eligible for disability retirement from this system 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. 75. Section 24103 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24103. (a) The member shall provide medical documentation related to the impairment qualifying him or her 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 further 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 disallowed, unless this requirement is waived by the board. If the member is too ill to comply with this examination, the system shall postpone the examination until a time that 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 22125, 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 too incapacitated mentally or physically to comply.

(d) If the board determines that a member who has applied for disability retirement may perform his or her usual duties or those of 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 any rejection of a disability allowance application within 30 days after that determination is made by the system.

SEC. 76. Section 24106 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24106. Upon retirement for disability pursuant to this chapter, a member shall receive a retirement allowance that

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shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each eligible dependent child, up to a maximum of 40 percent of final compensation. If there are more than four children, they shall share equally in the maximum allowance of 40 percent. An eligible child may waive his or her right to his or her portion in accordance with the requirements established by the system.

(c) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

SEC. 77. Section 24107 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24107. A disability retirant may elect an option pursuant to Section 24301 to modify the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

SEC. 78. Section 24152.5 of the Education Code, as amended by Section 10 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 79. Section 24155 of the Education Code, as amended by Section 10.5 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 80. Section 24156 of the Education Code, as amended by Section 11 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 81. Section 24200.2 of the Education Code, as amended by Section 7 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 82. Section 24200.3 of the Education Code, as added by Section 1 of Chapter 911 of the Statutes of 1993, is amended and renumbered to read:

24306.5. (a) Any service retirant who retired 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 service retirant 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 retirant 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 in the office of the system 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 system pursuant to this section.

SEC. 83. Section 24201 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24201. (a) Any member who comes within any of the following descriptions may be retired for service at his or her option upon written application for retirement to the board, subject to

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the following conditions:

(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 a local 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, there shall be excluded any service performed in other states of the United States, its territories and possessions, or in Canada.

(c) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 84. Section 24201 of the Education Code, as amended by Section 12 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 85. Section 24203 of the Education Code, as amended by Section 13 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 86. Section 24204 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24204. A retirement allowance shall become effective upon any date designated by the member, provided all of the following conditions are met:

(a) An application for 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 credited service for which salary 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 by the system 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 member was reinstated 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. 87. Section 24204 of the Education Code, as amended by Section 14 of Chapter 1144 of the Statutes of 1993, is repealed.

SEC. 88. Section 24205 of the Education Code, as amended by Section 8 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 89. Section 24207 of the Education Code is amended to read:

24207. If a service retirant is reinstated and subsequently retires, the minimum retirement allowance is the allowance provided by Section 24206.

SEC. 90. Section 24212 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24212. If a disability allowance granted after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment in a position requiring membership in the system, the service

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retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance exclusive of increments added for children.

SEC. 91. Section 24220 of the Education Code is repealed.

SEC. 92. Section 24301 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24301. (a) Any 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 notice, during which time the member may change the option election made on the disability retirement application.

(b) The option shall be 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 disability retiree and the named 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. 93. Section 24304 of the Education Code is amended to read:

24304. Upon reinstatement of a retiree to membership from disability retirement pursuant to Section 24117, any option elected at the time of retirement pursuant to Section 24301 shall be voided as of the effective date of the reinstatement. The preretirement election of option subsequent to reinstatement pursuant to Section 24117 is subject to the following:

(a) Members may not make a preretirement election of option pursuant to Section 24307 prior to attaining 55 years of age.

(b) Any member who was receiving an unmodified disability retirement allowance prior to reinstatement may not make a preretirement election of option earlier than six months following the date on which the member reinstated pursuant to Section 24117.

(c) Any 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 member reinstated pursuant to Section 24117. The member shall elect the same option and retain the same option beneficiary as made under Section 24301 when making the election during the six-month period following the date of reinstatement from disability retirement.

SEC. 94. Section 24306 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to

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read:

24306. (a) (1) A retirant who elected Option 2, Option 3, Option 4, or Option 5 may name a new option beneficiary and select a second joint and survivor option described in Section 24300 if the option beneficiary designated at the time the option was elected predeceases the retirant.

(2) The effective date of the election of the new joint and survivor option shall be one year following the date notification is received by the board, provided both the retirant and the designated option beneficiary are then living. The notification shall include proof of death of the predeceased beneficiary and a properly executed form for the new joint and survivor option.

(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 retirant 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 retirant upon notification to the board and shall commence to accrue to the retirant 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 predeceased beneficiary.

SEC. 95. Section 24307 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24307. (a) Any member who has qualified to make application for retirement allowance under Section 24201 may elect, as provided in Section 24300, and except as provided in Section 24305, without right of revocation or change after the effective date of his or her retirement, to receive an actuarially modified service retirement allowance as of the date of retirement, of the retirement allowance payable to the member when and if the member retires for service. If the death of the member occurs after the date upon which the election has been signed, the election shall be in full force and effect. The election shall be void if not 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 accumulated 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

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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) Any member reinstated to membership pursuant to Section 24208 is not eligible to file a preretirement election of an option until one year after the date of reinstatement.

(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. 96. Section 24308 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24308. (a) The election of an option as provided in Section 24307 shall preclude the payment of a family allowance to any beneficiary.

(b) The preretirement election of an option made by the member pursuant to Section 24307 shall be voided by the board as of the effective date of an approved disability retirement. Members receiving a disability retirement allowance pursuant to Chapter 26 (commencing with Section 24100) may not file an election of option as provided in Section 24307.

(c) The election of an option as provided in Section 24307 shall preclude the payment of a survivor benefit allowance pursuant to Chapter 23 (commencing with Section 23850) and shall preclude the payment of the remaining balance of the member's accumulated retirement contributions prior to the death of the option beneficiary.

SEC. 97. Section 24309 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24309. (a) If a member cancels the election of an option made pursuant to Section 24307, written cancellation shall be received by the board on or before the day preceding the effective date of retirement or during the period between reinstatement 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 one-half of 1 percent for each year or partial year that Option 3, Option 5, or Option 7 is in effect, or by six-tenths of 1 percent for each year or partial year that Option 4 is in effect, or by three-fourths of 1 percent for each year or partial year that Option 2 or Option 6 is in effect.

(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. 98. Section 24404 of the Education Code is amended to read:

24404. (a) Effective July 1, 1973, the benefits of persons eligible for survivor benefits pursuant to former Section 14186 as it read on June 30, 1972, shall be increased as follows:

- (1) Those eligible for ninety dollars (\$90) per month shall be increased to one hundred five dollars (\$105) per month.
- (2) Those eligible for one hundred eighty dollars (\$180) per month shall be increased to two hundred ten dollars (\$210) per month.
- (3) Those eligible for two hundred fifty dollars (\$250) per month shall be increased to two hundred ninety-five dollars

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(\$295) per month.

(b) These benefits shall be subject to the provisions of Sections 22139 and 24403 with the first annual improvement to occur on September 1, 1974, and annually thereafter.

SEC. 99. Section 24407 of the Education Code is amended to read:

24407. (a) The monthly allowances payable by the system to retirants, disabilitants, 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:

Period During Which Retirement or Death Occurred	Percentage
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 retirants, disabilitants, 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. 100. Section 24414 of the Education Code is amended to read:

24414. (a) Beginning in the 1989-90 fiscal year, and until the first fiscal year in which the Supplemental Benefit Maintenance Account established by Section 22400 derives sufficient resources from the General Fund pursuant to Section 22954 to provide purchasing power of 68.2 percent as authorized by Section 24415, the board shall transfer from the retirement fund to the Supplemental Benefit Maintenance Account those funds that are necessary to provide purchasing power of 68.2 percent as authorized by Section 24415. This subdivision shall become inoperative in the first fiscal year following the joint determination by the board and the Director of Finance that the funds scheduled for transfer from the General Fund pursuant to Section 22954 to the Supplemental Benefit Maintenance Account are adequate to meet the purposes of Section 24415.

(b) The funds advanced pursuant to subdivision (a) and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments shall be repaid from those funds transferred pursuant to Section 22954 that are in excess of the resources required to meet the purposes of Section 24415. Repayment shall commence in any year in which those excess funds exist and

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shall continue until the time all funds advanced under this section and any funds appropriated by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments are repaid. Repayment shall include regular interest from the time funds are advanced or appropriated until the time of repayment. After full repayment is made, the Director of Finance shall, notwithstanding Section 22954, adjust the percentage of the General Fund transfer in the amount which causes the balance in the account to equal a three-year reserve at the end of the subsequent fiscal year. The Director of Finance may base the adjusted rate on data provided by the board for projected payments in subject years, projected payroll, projected interest accrual to the account, and any other factors deemed relevant by the board.

(c) Notwithstanding Section 24415 or any other provision of law, if the state's contributions to the retirement fund provided by Section 22954 are, for any reason whatsoever, reduced or terminated before the retirement fund is fully repaid, as provided in subdivision (b), for all advances or transfers made pursuant to subdivision (a) and for any appropriations made by Item 1920-111-835 of the Budget Act of 1989 from the retirement fund to provide purchasing power protection payments, all duties of the board to make the advances or transfers required by subdivision (a) and to make the distributions required by Section 24415 shall immediately cease and shall have no further force or effect.

(d) It is the intent of the Legislature, in enacting the Supplemental Benefit Maintenance Program embodied in this section and Section 22400, subdivision (b) of Section 22954, Section 24415, subdivision (b) of Section 44929, and subdivision (b) of Section 87488, not to manifest any promise, except as provided in subdivision (c) of Section 22954, that, when accepted, would create a contract, express or implied. Notwithstanding any other provision of this part, nothing in the sections establishing the Supplemental Benefit Maintenance Program shall be construed as a basis for any implied contractual obligation, or as an element of exchange of consideration by a private party for consideration offered by the state, or as an intent to grant private rights of contract, or as conferring any vested right whatsoever on any present or future member, present or future annuitant, present or future surviving spouse of a present or future member or a present or future annuitant, surviving child of a present or future member or a present or future annuitant, or present or future beneficiary of the system.

(e) The board shall report annually to the Director of Finance and the appropriate fiscal and policy committees of the Legislature upon the benefits paid pursuant to Section 24415 and all actions taken pursuant to Section 22954 and this section.

SEC. 101. Section 24600 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24600. (a) The service retirement allowance or disability allowance begins to accrue on the effective date of the retirement or disability.

(b) On the death of a retirant or a person receiving a disability allowance, or when a disability allowance is terminated, or when a retirant is reinstated to membership, the allowance ceases on the day on which the death, allowance termination, or reinstatement occurs.

(c) Family benefits begin to accrue on the day following the day the death of the member occurs and cease on the day of the

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event that terminates eligibility.

(d) Survivor benefit allowances payable pursuant to Chapter 23 (commencing with Section 23850) on account of surviving spouses begin to accrue on the 60th anniversary of the member's birthday or on the day following the day of the member's death, if elected by the surviving spouse, and cease on the day of the surviving spouse's death.

(e) Option benefits begin to accrue on the day following the day the retirant died and cease on the day on which the death of the beneficiary occurs.

(f) Family allowances payable on account of a full-time student begin to accrue on the day following the day the death of the member occurs. Disability allowances payable on account of a full-time student begin to accrue on the effective date of the disability allowance. The allowances payable on account of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that was in progress in the month of attainment of age 22 years. However, any adjustments to a family or disability allowance on account of a full-time student's periods of nonattendance shall be made as follows: The allowance shall cease on the first day of the month in which the nonattendance was initiated and again accrues on the first day of a subsequent month in which reattendance occurs.

(g) Disability retirement allowances payable pursuant to Chapter 26 (commencing with Section 24100) on account of dependent children begin to accrue on the effective date of the retirement allowance and shall terminate on the earlier of termination of the child's eligibility or termination of the disability retirant's eligibility for reasons other than death.

(h) The survivor benefits payable pursuant to Chapter 23 (commencing with Section 23850) on account of dependent children begin to accrue on the day following the member's date of death and shall terminate upon termination of the child's eligibility.

(i) Supplemental payments issued pursuant to Sections 24701, 24702, and 24703 to retirants, disabilitants, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (h), inclusive, of this section.

(j) Notwithstanding any other provision of this part or other law, distributions from the system shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the system shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains the age of 70 1/2 years or (B) the calendar year in which the member terminates employment within the meaning of subdivision (k).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains the age of 70 1/2 years or (B) the calendar year in which the member terminates employment within the meaning of subdivision (k), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the

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member and the member's option beneficiary.

(k) For purposes of subdivision (j), the phrase "terminates employment" means the later of the termination of employment in a position requiring or permitting membership in this system or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

SEC. 102. Section 24600 of the Education Code, as amended by Section 4 of Chapter 861 of the Statutes of 1993, is repealed.

SEC. 103. Section 24600.1 of the Education Code, as amended by Section 3 of Chapter 1083 of the Statutes of 1993, is repealed.

SEC. 104. Section 24604 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24604. (a) A retirant, disabilitant, 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 retirant, disabilitant, 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 retirant, disabilitant, 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 retirant, disabilitant, or beneficiary, in the monthly benefit payment notice, of his or her 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, retirant, disabilitant, or beneficiary shall fully discharge the board and the system from any claim resulting from actions taken under this section.

SEC. 105. Section 24609 of the Education Code, as added by Section 10 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 106. Section 24612 of the Education Code, as amended by Section 11 of Chapter 920 of the Statutes of 1993, is repealed.

SEC. 107. Section 24806 of the Education Code, as added by Section 2 of Chapter 893 of the Statutes of 1993, is amended to read:

24806. (a) A district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts, in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be discontinued by the governing board of the district or districts, with the consent of the majority of the active members of the system expressing their desires with respect to the discontinuance of the plan evidenced in the manner the governing board may prescribe. However, no discontinuance of any retirement plan shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivisions (b), (c), (d), and (e).

(b) (1) Active and retired employees of the district or districts who otherwise would be members of the plan, other than

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teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the employees, together with any other assets of the plan as may be determined.

(2) With respect to persons who are members of the plan at its discontinuance, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution under the system shall be based on the age at the nearest birthday on July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who failed to redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration of the Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed by the system to the member's latest address on file in the office of the system, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his or her accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, that would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of discontinuance of the plan at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes the contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at its discontinuance and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees, who are made members of the Public Employees' Retirement System, prior to the assumption by the district or districts of the function under which the service was rendered, such as, but not limited to, cafeterias and student body activities, shall be credited under

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the employees' system, provided the service qualified for credit under the discontinued plan.

(5) The contract making the active employees members of the Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with respect to service rendered in a status in which they are eligible for membership, but that is no longer credited under the retirement system, and the service shall be credited in the same manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the discontinued plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the districts, effective at the discontinuance of the plan, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of discontinuance, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system that apply to active employees who are made members thereof. The changed allowances shall be paid to beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) Notwithstanding paragraph (1), the contract making active employees members of the Public Employees' Retirement System, shall include teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System, with respect to service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code. Contributions deducted from salary earned by the employees in that service, together with credited interest, and standing to the credit of the employees at the effective date of discontinuance of the plan, shall be subject to paragraph (1), in the same manner as they would have been so subject if the employees had been employed at the date of the discontinuance, in a status which was not requisite for membership in the State Teachers' Retirement System. The employees shall be members of the Public Employees' Retirement System with the same effect, but only with respect to that service, as if they had been employed in a status that would have qualified them for membership under other paragraphs of this subdivision. The employees shall continue in membership and shall be entitled to benefits in the same manner as if they individually were credited with at least five hundred dollars (\$500) in accumulated contributions. In the computation of the members' benefits under the Public Employees' Retirement System,

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their compensation earnable while they are members of the State Teachers' Retirement System shall be taken into consideration.

(c) Notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1 of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), contributions to the discontinued district retirement plan made by teachers and other persons employed by the district or districts in a status requisite for membership in the State Teachers' Retirement System standing to their individual credit at the date of discontinuance of the district retirement plan shall be deposited in the Retirement Annuity Fund with credited interest, to be applied on the amount due from the teachers, but not to exceed the amount due. Likewise an amount equal to the actuarial equivalent of the annuity portion of the retirement allowance to which the respective retired teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System were entitled under the plan, based on the interest rate and mortality tables used in its determination, shall be deposited in the Retirement Annuity Fund, to be applied on the amount due from the respective retired teachers, but not to exceed the amount due. Any excess of the contributions with credited interest or the actuarial equivalents, as the case may be, over the respective amounts due under those sections, shall be paid to the respective active and retired teachers and other persons. Further amounts, if any, due under those sections after the deposits, shall be paid to the Retirement Annuity Fund by the respective active and retired teachers and other persons. If any of the teachers or other persons who is not retired, is not entitled to credit under the State Teachers' Retirement System for all or part of his or her service credited under the plan, or if any of the retired teachers or other persons is not entitled to a retirement allowance from the system, either before or after the discontinuance, the provisions of this subdivision about contributions and credited interest or about the actuarial equivalent of annuity portions of retirement allowances, as the case may be, shall not apply to him or her with respect to service that is not credited under the state system, until and unless he or she becomes entitled to credit for that service or to an allowance from the state system, based on service that was credited to him or her under the discontinued plan. The balance of the assets held in the various funds of the discontinued district retirement plan after the transfers, deposits, and payments required by this section, or after establishment of reserves from which the transfers, deposits, and payments shall be made, shall be delivered to the district or districts in which the plan is discontinued.

(d) The district or districts in which the district retirement plan is discontinued shall pay monthly to teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System 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 was entitled under the plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System resulting from the discontinuance. If the amount payable to any teacher or other person, under the previous sentence, is less than two dollars

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(\$2), the district or districts may pay, in lieu of that amount, one amount that shall be actuarially equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table used in the determination of the teacher's or other person's retirement allowance under the district retirement plan. The payment of the actuarially equivalent amount shall discharge fully the district's liability to the teacher or other person under this subdivision. The arrangement under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 19 (commencing with Section 23200), inclusive, and Chapter 21.5 (commencing with Section 23700), nor shall the amount be taken into account in the calculation of retirement allowances under the State Teachers' Retirement System. If any of the teachers or other persons is not entitled to a retirement allowance from the State Teachers' Retirement System, either before or after discontinuance, the district or districts shall pay monthly to him or her, an amount equal to his or her retirement allowance under the plan prior to the discontinuance. If any teacher or other person has left the service of the district or districts, and is in a status under the plan, which if continued would qualify him or her for a retirement allowance without his or her return to that service, but is in a status that would otherwise not qualify him or her for retirement under the state system, the district or districts shall pay monthly to the teacher or other person, beginning at the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified if the plan had not been discontinued. If any teacher or other person has credit under the plan for service that does not qualify for credit under either the State Teachers' Retirement System or Public Employees' Retirement System, the district or districts shall pay monthly to the teacher or other person, beginning on the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified on the basis of that service if the plan had not been discontinued. If the individual at a later date becomes entitled to a retirement allowance from the state system, based on service that was credited to him or her under the discontinued plan, the monthly payments shall cease, and he or she shall become subject to subdivision (c), and the first four sentences of this subdivision, in the same manner as he or she would have been subject, if he or she had been entitled to a retirement allowance at the date of discontinuance, but calculation of actuarial equivalents and amounts payable shall be made as of the later date.

(e) If any person who was retired prior to the discontinuance from a position requisite for membership in the State Teachers' Retirement System, under a district retirement salary plan that is discontinued pursuant to this section, elected either under the plan or under the system, but not under both, to have the retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide a benefit for his or her beneficiary, the person shall have the right, to be exercised not later than 60 days after the discontinuance of the plan, to change his or her election under the State Teachers' Retirement System with respect to the options. Any computations of actuarial equivalent under a changed election shall be made as of the date of discontinuance of the plan, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

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SEC. 108. Sections 5.5 and 6.5 of this act incorporate changes in the State Teachers' Retirement Law proposed by AB 3832 (Chapter 193 of the Statutes of 1994), and shall become operative on January 1, 1995, the date on which AB 3832 takes effect, at which time Section 5 of this act shall cease to be operative.

SEC. 109. Section 50.5 of this bill incorporates amendments to Section 23104 of the Education Code proposed by both this bill and AB 2550. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 23104 of the Education Code, and (3) this bill is enacted after AB 2550, in which case Section 23104 of the Education Code, as amended by Section 50 of this bill, shall remain operative only until the operative date of AB 2550, at which time Section 50.5 of this bill shall become operative.

SEC. 110. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act would, among other things, adapt provisions of the State Teachers' Retirement Law (Part 13 (commencing with Section 22000) of the Education Code) that were recodified by Chapter 893 of the Statutes of 1993 to other statutes enacted in 1993. Thus, in order that statutory consistency may be achieved at the earliest possible time, and that administrative confusion may be avoided, it is necessary that this act take effect immediately.

BILL NUMBER: AB 2647 CHAPTERED '09/12/94

CHAPTER 507

FILED WITH SECRETARY OF STATE SEPTEMBER 12, 1994

APPROVED BY GOVERNOR SEPTEMBER 11, 1994

PASSED THE ASSEMBLY AUGUST 22, 1994

PASSED THE SENATE AUGUST 19, 1994

AMENDED IN SENATE JUNE 30, 1994

AMENDED IN SENATE JUNE 13, 1994

INTRODUCED BY Assembly Member Aguiar

FEBRUARY 2, 1994

An act to amend Sections 22515 and 23008 of the Education Code, relating to the State Teachers' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

AB 2647, Aguiar. Teachers retirement: membership.

The State Teachers' Retirement Law authorizes specified persons excluded from membership to elect membership in the system at anytime while employed in a substitute or part-time position that does not qualify for membership in the system.

This bill would include instructors in adult education who are excluded from membership within that election. The bill would require employing agencies to make refunds of overpaid contributions within specified time periods.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that the State Teachers' Retirement System address the issue of compensation and service credit equity for adult school teachers and make recommendations to the Legislature during the 1995 Regular Session of the Legislature.

SEC. 2. Section 22515 of the Education Code is amended to read:

22515. Persons excluded from membership in Sections 22602, 22603, and 22604 may elect membership in the system at any time while employed in a substitute or part-time position that does not qualify for membership in this system. The election is irrevocable, shall be in writing, and shall be filed in the office of this system prior to submission of contributions.

SEC. 3. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system 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 22142. 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

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the system, acting in good faith, disburses funds based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the system in full for the amount of the disbursement. Reimbursement shall be made immediately upon notification by the system.

BILL NUMBER: AB 1122 CHAPTERED 08/11/95

CHAPTER 390

FILED WITH SECRETARY OF STATE AUGUST 11, 1995

APPROVED BY GOVERNOR AUGUST 10, 1995

PASSED THE SENATE JULY 30, 1995

PASSED THE ASSEMBLY JUNE 1, 1995

AMENDED IN ASSEMBLY MAY 18, 1995

AMENDED IN ASSEMBLY MAY 9, 1995

AMENDED IN ASSEMBLY APRIL 17, 1995

INTRODUCED BY Assembly Member Cannella

FEBRUARY 23, 1995

An act to amend Sections 22115 and 22701 of, to add Sections 22106.5, 22112.5, 22138.6, and 22175 to, to repeal and add Section 22138.5 to, and to repeal Sections 22116, 22153, and 22702 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1122, Cannella. School employees: retirement.

The State Teachers' Retirement Law prescribes the method of computing retirement service credit for part-time employment.

This bill would revise those computations, would prescribe the method of computing full-time service, and make related changes. The provisions would become operative on July 1, 1996.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22106.5 is added to the Education Code, to read:

22106.5. "Basis of employment" means the standard of time over which the employer expects service to be performed by an employee in the position during the school year.

(a) "Full-time basis" means a basis of employment that is full time.

(b) "Part-time basis" means a basis of employment that is less than full time.

SEC. 2. Section 22112.5 is added to the Education Code, to read:

22112.5. "Class of employees" means a number of employees considered as a group because they are employed to perform similar duties, are employed in the same type of program, or share other similarities related to the nature of the work being performed. In no event shall one employee be considered a class or group.

SEC. 3. Section 22115 of the Education Code is amended to read:

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 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. 4. Section 22116 of the Education Code is repealed.

SEC. 5. Section 22138.5 of the Education Code is repealed.

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SEC. 6. Section 22138.5 is added to the Education Code, to read:

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 program managers and principals, 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. 7. Section 22138.6 is added to the Education Code, to read:

22138.6. "Full-time equivalent" means the time that a person who is employed on a part-time basis would be required to serve in a school year if he or she were employed full time in that position.

SEC. 8. Section 22153 of the Education Code is repealed.

SEC. 9. Section 22175 is added to the Education Code, to read:

22175. "Teaching units" means the instructional workload component of a community college instructor's full-time assignment, which may also be expressed by community college districts in other terms including, but not limited to, "lecture hour equivalents," "academic units," "load hours," or "load units."

SEC. 10. Section 22701 of the Education Code is amended to read:

22701. (a) Service performed prior to July 1, 1972, shall be credited according to the provisions of law in effect at the time service was performed.

(b) Service performed on or after July 1, 1972, shall be credited in the proportion the compensation earned bears to the compensation earnable.

SEC. 11. Section 22702 of the Education Code is repealed.

SEC. 12. The provisions of this act shall become operative on July 1, 1996.

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BILL NUMBER: AB 948 CHAPTERED 08/11/95

CHAPTER 394

FILED WITH SECRETARY OF STATE AUGUST 11, 1995

APPROVED BY GOVERNOR AUGUST 10, 1995

PASSED THE SENATE JULY 29, 1995

PASSED THE ASSEMBLY MAY 25, 1995

AMENDED IN ASSEMBLY MAY 10, 1995

AMENDED IN ASSEMBLY APRIL 17, 1995

INTRODUCED BY Assembly Member Gallegos

FEBRUARY 22, 1995

Act to add Section 22119.5 to, to repeal Section 24115 of, to repeal and add Sections 24114 and 24214 of, and to repeal, add, and repeal Section 24216 of, the Education Code, relating to educational employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 948, Gallegos. Teachers' retirement: benefits.

The State Teachers' Retirement Law authorizes service and disability retirants to earn not more than \$15,000 in any school year from a school district or other public employing agency.

This bill would make that limitation applicable only to earnings for service that would be creditable if performed by an active member and would exempt specified retirants from the limitations. The bill would make the allowance reduction for earnings in excess of that amount applicable regardless of when compensation is paid.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22119.5 is added to the Education Code, to read:

22119.5. (a) "Creditable service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment:

(1) The work of teachers; instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course

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of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals, or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section within the hours considered normal on a full-time basis for full-time employees of the employer.

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other supervised employees in the school health program.

(8) Services as a school librarian.

(9) The work of county and district superintendents and other employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) The board shall have final authority for determining creditable service to cover any activities not specified.

SEC. 2. Section 24114 of the Education Code is repealed.

SEC. 3. Section 24114 is added to the Education Code, to read:

24114. (a) A member retired for disability may be employed or self-employed 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, 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. 4. Section 24115 of the Education Code is repealed.

SEC. 5. Section 24214 of the Education Code is repealed.

SEC. 6. Section 24214 is added to the Education Code, to read:

24214. (a) A member retired for service may perform creditable service as defined in Section 22119.5 for an employer 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 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 earn compensation for creditable service 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 of a member retired for service shall be fifteen

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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.

SEC. 7. Section 24216 of the Education Code is repealed.

SEC. 8. Section 24216 is added to the Education Code, to read:

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

In order to ensure that this act takes effect in a timely enough manner to provide crucial benefits to members of the teaching profession and preserve continuity in the state's system of public instruction, it is necessary that this act take effect immediately.

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BILL NUMBER: AB 1298 CHAPTERED 10/04/95

CHAPTER 592
 FILED WITH SECRETARY OF STATE OCTOBER 4, 1995
 APPROVED BY GOVERNOR OCTOBER 4, 1995
 PASSED THE ASSEMBLY SEPTEMBER 5, 1995
 PASSED THE SENATE SEPTEMBER 1, 1995
 AMENDED IN SENATE AUGUST 21, 1995
 AMENDED IN ASSEMBLY MAY 30, 1995
 AMENDED IN ASSEMBLY MAY 18, 1995
 AMENDED IN ASSEMBLY APRIL 17, 1995

INTRODUCED BY Assembly Members Ducheny and Alpert

FEBRUARY 23, 1995

An act to amend Sections 22602 and 22604 of, to add Section 22119.5 to, and to add Part 14 (commencing with Section 26000) to, to repeal Sections 22502, 22503, 22505, 22506, 22507, 22603, 22605, 22606, 22607, and 22608 of, to repeal and add Section 22146 of, the Education Code, relating to educational employees, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1298, Ducheny. Teachers' retirement: Cash Balance Plan membership.

The State Teachers' Retirement Law regulates, and prescribes the provisions of, the State Teachers' Retirement System.

This bill would revise various provisions relating to eligibility for membership.

This bill would also establish the State Teachers' Retirement System Cash Balance Plan. The plan would prescribe retirement, disability, and death benefits for part-time educational employees. This bill would provide for the administration and operation of the plan. The bill would create the Cash Balance Fund and would continuously appropriate the fund for the purposes of the plan.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22119.5 is added to the Education Code, to read:

22119.5. (a) "Creditable service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant

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administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section within the hours considered normal on a full-time basis for full-time employees of the employer.

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other supervised employees in the school health program.

(8) Services as a school librarian.

(9) The work of county and district superintendents and other employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) The board shall have final authority for determining creditable service to cover any activities not specified.

SEC. 2. Section 22146 of the Education Code is repealed.

SEC. 3. Section 22146 is added to the Education Code, to read:

22146. (a) "Member" means any person, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 for an employer 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) to the member during a school year, unless the member's rights and obligations are determined under other provisions of this part.

(b) An active member is a member who earns compensation during the school year.

(c) An inactive member is a member who, by the pay period ending June 30, has not earned compensation during the school year.

(d) A disabled member is a member to whom a disability allowance is payable under Section 24006.

(e) 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. 4. Section 22502 of the Education Code is repealed.

SEC. 5. Section 22503 of the Education Code is repealed.

SEC. 6. Section 22505 of the Education Code is repealed.

SEC. 7. Section 22506 of the Education Code is repealed.

SEC. 8. Section 22507 of the Education Code is repealed.

SEC. 9. Section 22602 of the Education Code is amended to read:

22602. (a) Persons employed on a substitute basis, who are not already members when they become employed and who perform less than 100 complete days of service during the school year are excluded from membership in the system.

(b) Persons employed on a substitute basis who have performed 100 or more complete days of substitute service in one school district or county superintendent's office in that school year shall become members on the first day of the following pay period during which the additional service was performed.

(c) This section shall apply to employers who do not provide benefits for their employees under Part 14 (commencing with Section 26000).

SEC. 10. Section 22603 of the Education Code is repealed.

paragraphs (1) and (4) of subdivision (b) of Section 26807.

(a) The nonparticipant spouse shall be eligible for an annuity if the following conditions are satisfied:

(1) The nonparticipant spouse has at least three thousand five hundred dollars (\$3,500) in his or her separate nominal account.

(2) The nonparticipant spouse has attained the age of 55 years or more.

(b) An annuity of a nonparticipant spouse shall become effective upon any date designated by the nonparticipant spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonparticipant spouse has filed an application for an annuity on a form provided by the plan, which is executed no earlier than 90 days before the effective date of the annuity.

27412. The plan shall include the contribution and earnings credited awarded to a nonparticipant spouse in the judgment or court order to determine the eligibility of a member for an annuity.

27413. It is the intent of the Legislature to abolish any application of the terminable interest doctrine in California relating to the division of public retirement benefits of a participant in the event of dissolution of marriage or death if the division is made under this chapter.

SEC. 17. It is the intent of the Legislature in adding Section 22146 to the Education Code in Section 3 of this act and in repealing Sections 22502, 22503, 22505, 22506, 22507, 22602, 22603, 22604, 22605, 22606, 22607, and 22608 of the Education Code in Sections 4 to 15, inclusive, of this act to clarify the status of the active, inactive, disabled, and retired members of the State Teachers' Retirement System. Those provisions are intended to be technical and nonsubstantive and shall not be construed to affect in any manner the eligibility or rights of any person to any benefits under the State Teachers' Retirement Law.

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BILL NUMBER: AB 3221 CHAPTERED 08/19/96

CHAPTER 383
 FILED WITH SECRETARY OF STATE AUGUST 19, 1996
 APPROVED BY GOVERNOR AUGUST 17, 1996
 PASSED THE SENATE AUGUST 8, 1996
 PASSED THE ASSEMBLY MAY 29, 1996
 AMENDED IN ASSEMBLY MAY 14, 1996
 AMENDED IN ASSEMBLY APRIL 8, 1996

INTRODUCED BY Assembly Member Gallegos

FEBRUARY 23, 1996

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

LEGISLATIVE COUNSEL'S DIGEST

AB 3221, Gallegos. School employees: retirement.

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22135 of the Education Code is amended to read:

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, "final compensation" means the highest annual compensation earnable by an active member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the plan. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

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

(c) As used in this section, "classroom teacher" means any of the following:

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

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constitute a break in employment.

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

(d) As used in this section, "classroom teacher" does not include any of the following:

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

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

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

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

(5) Classified employees.

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

(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in allowances provided by this section and related administrative costs, a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the plan, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected

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pursuant to Section 23007.

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

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the applicability of this section to a member pursuant to the criteria set forth in this section when a retirement, disability, or family allowance becomes payable.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payment not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

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

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

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

(b) A member of the Public Employees' Retirement System employed by a school district, community college district, or a county superintendent who is subsequently employed to perform creditable service subject to coverage by this plan shall become a member of this plan unless the person elects within 60 days from the date of hire to continue as a member of the Public Employees' Retirement System.

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

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

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

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

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

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BILL NUMBER: AB 2673 CHAPTERED 09/19/96

CHAPTER 608

FILED WITH SECRETARY OF STATE SEPTEMBER 19, 1996

APPROVED BY GOVERNOR SEPTEMBER 18, 1996

PASSED THE ASSEMBLY AUGUST 22, 1996

PASSED THE SENATE AUGUST 8, 1996

AMENDED IN SENATE JUNE 27, 1996

AMENDED IN ASSEMBLY MAY 29, 1996

AMENDED IN ASSEMBLY MAY 16, 1996

AMENDED IN ASSEMBLY APRIL 17, 1996

INTRODUCED BY Assembly Member Ducheny

FEBRUARY 22, 1996

An act to amend Sections 22119.5, 22600, 26002, 26004, 26111, 26113, 26122, 26126, 26132, 26133, 26143, 26206, 26208, 26301, 26302, 26303, 26304, 26305, 26306, 26402, 26500, 26504, 26505, 26506, 26507, 26603, 26604, 26702, 26703, 26704, 26803, 26804, 26807, 26808, 26811, 26901, 26903, 26906, 27001, 27004, 27100, 27200, 27201, 27202, 27300, 27301, 27302, 27303, 27405, 27406, 27409, 27411, 27412, and 47611 of, to amend and renumber Section 26705.5 of, to add Sections 26000.5, 26401.5, 26810, 26811, 26910, and 26911 to, to add Chapter 17 (commencing with Section 28100) to Part 14 of, to repeal Section 27103 of, and to repeal and add Sections 26215, 26300, 26400, 26401, and 26402 of, the Education Code, relating to school employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2673, Ducheny. School employees: retirement.

Under existing law, the State Teachers' Retirement System Cash Balance Plan prescribes retirement, disability, and death benefits for part-time educational employees and provides for the administration and operation of the plan. Employers are required to inform employees of their right to elect membership in the State Teachers' Retirement System, an alternative statement plan if offered, or in the Cash Balance Plan.

This bill would delete the requirement of employers to inform employees of their right to elect membership in an alternative plan if offered, would provide a process for participants to transfer funds from qualified retirement plans into the plan, the rights of participants who are also receiving an annuity, and that plan provisions may include charter school employees and make other related changes.

The provisions of the bill would become operative on July 1, 1996.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22119.5 of the Education Code is amended to read:

22119.5. (a) "Creditable service" means any of the following activities performed for an employer in a position requiring a

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credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section within the hours considered normal on a full-time basis for full-time employees of the employer.

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.

(8) Services as a school librarian.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified.

SEC. 1.3. Section 22600 of the Education Code is amended to read:

22600. Persons employed to perform creditable service who are members of the San Francisco City and County Employees Retirement System pursuant to Section 24701 are excluded from membership in the plan for service subject to coverage by the San Francisco City and County Employees Retirement System. A person so excluded shall retain the right to receive a retirement allowance for creditable service that is subject to coverage by the plan unless he or she withdraws his or her contributions for that service.

SEC. 1.5. Section 26000.5 is added to the Education Code, to read:

26000.5. An employer whose governing board has elected to provide the benefits of this part for its employees pursuant to Section 26000 shall enter into an agreement with the State Teachers' Retirement System. The agreement shall specify the terms and conditions of the employer's formal action to provide the Cash Balance Plan and shall remain in effect unless or until the employer exercises the right to discontinue the plan pursuant to Chapter 17 (commencing with Section 28100).

SEC. 2. Section 26002 of the Education Code is amended to read:

26002. The Cash Balance Plan shall be administered by the

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SEC. 54. Section 27411 of the Education Code is amended to read:
 27411. The nonparticipant spouse who is awarded a separate nominal account shall have the right to an annuity pursuant to paragraphs (1) and (4) of subdivision (b) of Section 26807.

(a) The nonparticipant spouse shall be eligible for an annuity if the following conditions are satisfied:

(1) The nonparticipant spouse has at least three thousand five hundred dollars (\$3,500) in his or her separate nominal account.

(2) The nonparticipant spouse has attained the age of 55 years or more.

(b) An annuity of a nonparticipant spouse shall become effective upon any date designated by the nonparticipant spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonparticipant spouse has filed an application for an annuity on a form provided by the system, which is executed no earlier than 90 days before the effective date of the annuity.

SEC. 55. Section 27412 of the Education Code is amended to read:

27412. The system shall include the contribution and earnings credits awarded to a nonparticipant spouse in the judgment or court order to determine the eligibility of a participant for an annuity.

SEC. 56. Chapter 17 (commencing with Section 28100) is added to Part 14 of the Education Code, to read:

CHAPTER 17. DISCONTINUATION OF PLAN

28100. (a) The employer may discontinue providing the Cash Balance Plan at anytime in accordance with the terms and conditions of the employer's governing board's formal action to provide the plan.

(b) The employer shall notify the system of the decision to discontinue the plan no less than 90 days prior to the effective date of discontinuance. Such notice shall be submitted on a form prescribed by the system.

28101. (a) Upon discontinuation of the plan by the employer, the system will hold the employee and employer accounts for the benefit of the participant. The participant is immediately vested in both employee and employer accounts including accrued interest.

(b) Both employee and employer accounts will continue to be credited with interest at the minimum interest rate so long as there is an undistributed balance in such accounts.

SEC. 57. Section 47611 of the Education Code is amended to read:

47611. If a charter school chooses to participate in the State Teacher's Retirement System, all employees of the charter school who qualify for membership in the system shall be covered under the system, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as if the charter school were a public school in the school district that granted the charter.

SEC. 58. This act shall become operative on July 1, 1996.

SEC. 59. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to be implemented on the commencement of the 1996-97 fiscal year, it must take effect immediately.

BILL NUMBER: SB 2041 CHAPTERED 09/19/96

CHAPTER 634

FILED WITH SECRETARY OF STATE SEPTEMBER 19, 1996

APPROVED BY GOVERNOR SEPTEMBER 19, 1996

PASSED THE SENATE AUGUST 30, 1996

PASSED THE ASSEMBLY AUGUST 29, 1996

AMENDED IN ASSEMBLY AUGUST 21, 1996

INTRODUCED BY Senator Hughes

FEBRUARY 23, 1996

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.

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.

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

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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:

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:

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:

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:

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:

22108. "Benefit" or "benefits" 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:

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

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Section 26000).

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

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:

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:

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:

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:

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:

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:

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:

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:

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.

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

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

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

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disability.

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

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:

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:

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:

22130. "Effective date" means the date upon which the benefit becomes payable.

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

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:

22132. "Employed" or "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:

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:

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.

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(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:

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 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:

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:

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:

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.

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

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:

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:

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:

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:

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:

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:

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:

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.

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

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

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.

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

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

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:

22166. "Retirement allowance" means the amount payable to a retired member or an option beneficiary on a monthly basis.

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

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:

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

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- (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 1 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:

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:

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:

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:

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:

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

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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:

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:

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:

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:

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:

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:

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:

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:

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:

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

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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:

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:

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.

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

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:

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.

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(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:

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:

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:

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.

(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:

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:

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:

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. Retired 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

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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:

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:

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.

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

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

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:

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 members 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:

22308. (a) Subject to subdivision (d), the board may, in its

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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.

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

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:

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 retirement fund 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:

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

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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:

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:

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.

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

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:

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

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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:

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:

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:

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 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:

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:

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:

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

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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:

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. 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:

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) 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:

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:

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

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thousand dollars (\$50,000) in any one fiscal year.

SEC. 88. Section 22334 of the Education Code is repealed.

SEC. 89. Section 22335 of the Education Code is amended to read:

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:

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:

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:

(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

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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:

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:

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.

(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

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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:

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:

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

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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:

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:

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) Date 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 resume 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:

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:

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

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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:

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 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:

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:

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:

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:

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.

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SEC. 103. Section 22460 of the Education Code is amended to read:

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:

22461. (a) Upon retaining the services of a retired member under Section 24116, 24214, or 24215, the 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:

22500. All persons who were members of the California State Teachers' Retirement System on June 30, 1996, are members of the Defined Benefit Plan.

SEC. 106. Section 22501 of the Education Code is repealed.

SEC. 107. Section 22501 is added to the Education Code, to read:

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:

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:

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.

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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:

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:

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:

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:

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:

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:

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.

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SEC. 116. Section 22602 of the Education Code is amended to read:

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 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:

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:

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:

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:

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.

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SEC. 121. Section 22654 of the Education Code is repealed.

SEC. 122. Section 22655 of the Education Code is amended to read:

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:

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:

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

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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:

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.

(c) 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:

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:

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:

22662. The nonmember spouse who is awarded a separate account may redeposit accumulated retirement contributions previously refunded

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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.

(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:

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,

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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:

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.

(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,

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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:

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.

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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:

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:

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:

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:

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:

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:

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

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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 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:

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:

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, time 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.

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(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:

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 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

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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 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:

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

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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:

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.

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SEC. 140. Section 22717 of the Education Code is amended to read:

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:

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:

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:

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:

22721. Except as provided in Section 22717, no service credit shall be granted for any payment made for accumulated sick leave upon

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transfer from one employer to another, upon termination of service, upon retirement, or upon death. No contributions shall be withheld from any 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:

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:

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:

22802. (a) A member who was previously excluded from membership in the plan may elect to receive credit for:

(1) Service as a substitute excluded under Section 22602.

(2) Service performed on a part-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

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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:

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:

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.

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(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:

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 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:

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

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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:

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:

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 the same service in another retirement system.

SEC. 154. Section 22900 of the Education Code is amended to read:

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:

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:

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:

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

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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:

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:

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:

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:

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:

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:

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

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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:

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:

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:

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:

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:

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

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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:

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.

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(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:

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:

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:

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:

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:

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 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

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member of the plan with all the rights and privileges restored.

SEC. 175. Section 23106 of the Education Code is amended to read:

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:

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:

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 21/2 percent compounded annually.

SEC. 178. Section 23201 of the Education Code is amended to read:

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:

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:

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:

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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:

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:

23303. (a) If 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:

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:

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.

SEC. 186. Section 23700 of the Education Code is amended to read:

23700. (a) New survivor benefit and disability retirement programs that are provided pursuant to Chapter 23 (commencing with

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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:

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:

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:

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:

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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:

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:

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

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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:

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:

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:

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:

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

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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:

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:

24004. In cases of a member's willful substance abuse or if the board determines a member who qualifies for a disability allowance

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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:

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:

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:

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.

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(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:

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:

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:

24015. Notwithstanding Section 22132, if 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 662/3 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:

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:

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.

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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:

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:

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:

(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.

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SEC. 208. Section 24103 of the Education Code is amended to read:

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:

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:

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

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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:

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:

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:

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

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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:

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:

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:

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.

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SEC. 217. Section 24116 of the Education Code is amended to read:

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:

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:

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:

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 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:

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

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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:

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 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:

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:

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.

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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:

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:

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:

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:

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:

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

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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:

*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 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:

* 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:

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(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:

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:

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. 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.

(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.

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(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:

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:

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:

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:

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.

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(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:

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. Notification 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:

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.

Notification 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 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

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beneficiary.

SEC. 240. Section 24306.5 of the Education Code is amended to read:

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:

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

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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:

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:

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:

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:

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:

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,

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1974, 3 percent.

SEC. 248. Section 24406 of the Education Code is amended to read:

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:

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:

Period During Which Retirement or Death Occurred	Percentage
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:

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

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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:

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 member's allowance shall be modified under the option selected.

SEC. 252. Section 24410 of the Education Code is amended to read:

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:

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

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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:

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 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

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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:

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:

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 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:

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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:

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:

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:

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:

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:

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 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:

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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:

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:

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:

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:

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:

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 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:

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

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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:

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:

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:

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:

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 permitted

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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:

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:

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

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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:

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:

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:

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:

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:

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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:

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:

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:

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

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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:

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:

25000. (a) The board may develop one or more deferred compensation plans under Section 457 of the Internal Revenue Code 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:

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.

(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 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.

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BILL NUMBER: SB 1877 CHAPTERED 09/23/96

CHAPTER 680.

FILED WITH SECRETARY OF STATE SEPTEMBER 23, 1996
 APPROVED BY GOVERNOR SEPTEMBER 20, 1996
 PASSED THE SENATE AUGUST 22, 1996
 PASSED THE ASSEMBLY AUGUST 19, 1996
 AMENDED IN ASSEMBLY JUNE 24, 1996
 AMENDED IN SENATE MAY 16, 1996
 AMENDED IN SENATE MAY 7, 1996
 AMENDED IN SENATE APRIL 10, 1996

INTRODUCED BY Senator Rogers

FEBRUARY 22, 1996

An act to amend Section 22807 of, to add Chapter 14.5 (commencing with Section 22850) to Part 13 of, and to add Chapter 16 (commencing with Section 28000) to Part 14 of, the Education Code, and to amend Sections 20737, 20994, 20996, 20997, 31649, and 31649.5 of, to add Section 31649.1 to, and to repeal and add Sections 20990 and 31598 of, the Government Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1877, Rogers. Public employees: retirement.

(1) The State Teachers' Retirement Law prescribes benefits under the State Teachers' Retirement System. The Teacher's Retirement Board also administers the State Teachers' Retirement System Cash-Balance Plan.

This bill would prescribe benefits to members of the system and the plan in accordance with the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

(2) The Public Employees' Retirement Law provides that members who elect to be subject to Second Tier benefits shall be paid their accumulated contributions plus current year interest.

This bill would provide that those members shall not receive their accumulated contributions and interest until retirement or upon request after permanent separation from state service. The bill would provide that the retirement board shall determine the rate of interest paid during the period between the election and retirement or separation. The bill would also prescribe benefits to members of the system in accordance with federal law relating to the employment and reemployment rights of members of the uniformed services and would authorize the Public Utilities Commission to transmit monetary contributions to the system pursuant to a specified court consent decree prescribing additional retirement benefits for named retirees.

(3) The County Employees Retirement Law of 1937 requires annual statements to be in a form approved by the board of supervisors and to show specified information.

This bill would provide that annual statements shall be prepared in accordance with specified generally accepted accounting principles. The bill would prescribe benefits to members of county retirement systems in accordance with the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22807 of the Education Code is amended to read:

22807. (a) A member who voluntarily requests or agrees to an extension of his or her original term of enlistment, service, or tour of duty shall not receive credit for time served during the extension of military service after December 31, 1958.

(b) In no event shall a member receive credit for more than four years of military service performed after June 30, 1998, except where otherwise authorized in accordance with Chapter 14.5 (commencing with Section 22850).

SEC. 2. Chapter 14.5 (commencing with Section 22850) is added to Part 13 of the Education Code, to read:

CHAPTER 14.5. MILITARY SERVICE

22850. (a) The Legislature hereby declares its intent to provide benefits to reemployed members who have been absent from a position of employment covered by the plan to perform service in the uniformed services of the United States in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code).

(b) The system shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a member is absent from a position of employment for the purpose of an examination to determine the fitness of the member to perform any duty.

(d) "Uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) Except as provided in Section 22851, no benefit shall accrue during the period of service in the uniformed services if the member does not return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code.

22851. The right to pension benefits of a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, and is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be determined under this section:

(a) (1) A member shall be treated as not having incurred a break in service by reason of that member's eligible period or periods of service in the uniformed services.

(2) Each eligible period of service served by a member in the uniformed services shall, upon return to employment, with the same

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employer which had employed the member immediately prior to the eligible period of service in the uniformed services, be deemed to constitute service with the employer or employers toward plan vesting and eligibility for membership in the plan.

(3) A member who returns to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall not be entitled to any benefits in respect of service in the uniformed services to which the member would not otherwise have been entitled had the member remained continuously employed and not undertaken such service in the uniformed services.

(b) For purposes of calculating benefits, a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall be entitled to service credit for the eligible period of service in the uniformed services upon his or her payment of the member contributions required under Section 22901 that otherwise would have been due for such period of service had the member remained continuously employed and not undertaken such service in the uniformed services. No such payment of member contributions may exceed the amount the member would have been required to contribute had the member not served in the uniformed services and had remained continuously employed by the employer throughout the eligible period of service in the uniformed services. If a member fails to remit the member contributions that would have been required under Section 22901 in respect of the eligible period of service in the uniformed services no service credit shall be provided for the period to which the omitted contributions relate.

(c) Any payment of member contributions to the plan in this section shall be made by the member during the period beginning with the date of return to employment and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any payment of member contributions to the plan in this section by a member who returned to employment prior to January 1, 1997, and qualifies for benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code), shall be made by the member during the period beginning with the date of notification of eligibility by the employer to the plan and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years.

Any subsequent request to purchase this service shall be subject to the provisions of Chapter 14 (commencing with Section 22800). If all contributions due are not paid to the plan within the specified repayment period and in accordance with subdivision (b) of Section 22851 the contributions shall be returned to the member at the end of the repayment period. Interest on member contributions made for the eligible period of service in the uniformed services shall not be credited until after the contributions due are paid and then only prospectively to the member's account in accordance with Section 22216.

22852. (a) An employer reemploying a member with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be liable to the plan for the employer contributions provided that employer was the last employer employing the member immediately prior to the period served by the member in the uniformed services.

(b) For purposes of determining the amount of that liability and any obligation to the plan, interest shall not be included in the liability to the plan.

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(c) Subject to subdivision (e), the employer shall pay the employer contributions for the eligible period of service in the uniformed services, that would have been required under Sections 22950 and 22951 had the member remained continuously employed during that period of eligible service in the uniformed services.

(d) The employer shall not be liable for employer contributions for the eligible period of service in the uniformed services to the extent that the member fails to remit the member contributions for such period.

(e) Any employer who reemploys a member who is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall, within 30 days after the date of the reemployment, provide information as required by the board, on a form provided by the plan, notifying the plan of the reemployment.

(f) Employers shall remit the employer contributions to the plan required under subdivision (c) within 60 working days of the date the system notifies the employer of the amount of contributions due in respect of the member who elects to remit the member contributions for the eligible period of service in the uniformed services.

(g) If the employee does not comply with subdivision (b) of Section 22851 within the time period specified, the employer contributions that were remitted for that period shall be adjusted pursuant to Section 23008.

22853. For purposes of computing an employer's contributions for the eligible period of service or the member's contributions, the employee's compensation earnable during the period shall be computed as follows:

(a) The compensation earnable the member would have received for the eligible period of service.

(b) In the event the compensation earnable is not reasonably certain, the employer's contributions and member's contributions shall be based on the member's average compensation earnable during the 12-month period immediately preceding the eligible period of service in the uniformed services or, if shorter, the period of employment immediately preceding that period of service.

22854. A reemployed member who has been absent from a position of employment covered by the plan to perform service in the uniformed services, pursuant to Section 22850, for a period in excess of five years shall not be entitled to service credit or credit for plan vesting purposes, except where the service in the uniformed services has exceeded five years for the following reasons:

(a) The member is required to serve beyond five years to complete an initial period of obligated service.

(b) The member was unable to obtain orders releasing the member from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the member.

(c) The member served in the uniformed services as required pursuant to Section 270 of Title 10 of the United States Code, Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining.

(d) The member is ordered to do any of the following:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673(b); 673(c), or 688 of Title 10 of the United States Code or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a

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national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673(b) of Title 10 of the United States Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a member of the National Guard under Chapter 15 (commencing with Section 331) of Title 10 of the United States Code or under Section 3500 or 8500 of Title 10 of the United States Code.

22855. A member shall have no right to the benefits otherwise accorded under this chapter in respect of service in the uniformed services upon the occurrence of any of the following events:

(a) A separation of the member from the uniformed service with a dishonorable or bad conduct discharge.

(b) A separation of the member from the uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the secretary concerned.

(c) A dismissal of the member permitted under Section 1161(a) of Title 10 of the United States Code.

(d) A dropping of the member from the rolls pursuant to Section 1161(b) of Title 10 of the United States Code.

22856. No provision of this chapter shall apply to the extent it would require any action to be taken that would cause the plan or its members to incur adverse tax consequences under the Internal Revenue Code of 1986 (Title 26 of the United States Code).

SEC. 3. Chapter 16 (commencing with Section 28000) is added to Part 14 of the Education Code, to read:

CHAPTER 16. MILITARY SERVICES

28000. (a) The Legislature hereby finds and declares its intent to preserve and protect the rights of reemployed participants who have been absent from a position of employment covered by the plan to serve in the uniformed services of the United States of America in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code).

(b) The plan shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a participant is absent from a position of employment for the purpose of an examination to determine the fitness of the participant to perform any such duty.

(d) The term "uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) No entitlement of the right to contribute toward credits under the plan pursuant to this chapter by the participant as a result of service in the uniformed services shall accrue if the participant does not return to employment with the same employer or employers

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which employed the participant immediately prior to the eligible period of service in the uniformed services as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code.

28001. (a) The participant who returns to employment with the same employer which had employed the participant immediately prior to the eligible period of service in the uniformed services, in accordance with the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall be treated as not having incurred a break in the performance of creditable service by reason of that participant's period or periods of service in the uniformed services. The length of each period of service in the uniformed services shall not exceed five years unless otherwise permitted pursuant to Section 28004. Each period of service in the uniformed services by the participant shall, upon that participant's return to employment with the same employer or employers which had employed the participant immediately prior to the eligible period of service in the uniformed services, constitute employment toward the performance of creditable service provided that participant elects to remit the employee contributions that would have been made during the period of service in the uniformed services. The remittance of employee contributions shall be calculated pursuant to Sections 26501 and 28003. In no event shall that remittance exceed the amount the participant would have been required to contribute during that period of performance of creditable service had the participant remained continuously employed by the last employer and not served in the uniformed services throughout that period.

(b) Notwithstanding Section 26506, remittance of employee contributions in accordance with subdivision (a) shall be made by the employer pursuant to Section 26502 upon the employer's receipt of written consent of the participant specifying a schedule of repayments. That remittance shall commence during the period beginning with the date of return to employment and may continue for three times the period of the participant's eligible period of service in the uniformed services, not to exceed five years. The plan's receipt of the remittance payments to the plan shall be credited pursuant to Chapter 7 of this part. Interest on the payments of remitted employee contributions made for the period of service in the uniformed services shall not be credited in the participant's account until after such payments are received and only prospectively to the participant's account in accordance with Section 26604. Upon receipt of the remittance payments to the plan, the payments shall be subject to the same terms and conditions under the plan as if the payments had been employee contributions made by the participant had the participant not served for a period in the uniformed services. In no event shall the current year contributions and contributions made for purposes of purchasing service exceed the maximum exclusion allowance as set forth in the Internal Revenue Code.

28002. (a) Except as provided in subdivision (b), an employer reemploying a participant with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall be liable to remit the employer contributions provided that employer employed the participant immediately prior to the eligible period of service in the uniformed services. That remittance shall exclude interest and the contribution rate by the employer shall be to the same extent as that for contributions to the plan for other employees during the same period. The employer shall, within 30 days of the date of reemployment, provide information as required by the board, on a form provided by the

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system, notifying the system of reemployment. Following receipt of that notice, the plan shall calculate in accordance with Section 28003 the total amount of employer contributions due for the participant for the full period of service in the uniformed services.

Within 60 working days of notification by the plan of amount due, the employer shall remit to the plan all employer contributions.

(b) The employer shall not be liable for employer contributions for the period of service in the uniformed services if the participant elects not to remit the employee contributions for that period through the employer as required under Section 28001. In the event the participant does not remit all of the employee contributions within the prescribed repayment period, the total amount of the employer contributions shall remain with the plan and credited to the participant's employer account.

28003. For purposes of calculating the employer's liability under Section 28002 or the required employee contributions under Section 28001, the participant's salary during that period shall be computed as follows:

(a) The salary the participant would have received with the employer for the eligible period of service in the uniformed services.

(b) In the event that salary is not reasonably certain, the contributions shall be based on the participant's average salary with the employer during the 12-month period immediately preceding the eligible period of service in the uniformed services or, if shorter, the contributions shall be based on the participant's average salary for the period of employment immediately preceding that period.

28004. A participant who is absent from a position of employment subject to the plan due to that participant's service in the uniformed services, shall not be entitled to obtain the right to contribute toward credits under the plan in excess of five years of service in the uniformed services, except for the following reasons:

(a) The participant is required to serve beyond five years to complete an initial period of obligated service in the uniformed services;

(b) The participant was unable to obtain orders releasing the participant from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the participant;

(c) The participant served in the uniformed services as required pursuant to Section 270 of Title 10, under Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining; or

(d) The participant is:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673b, 673c, or 688 of Title 10 or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673b of Title 10 of the United States Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

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(5) Called into federal service as a participant of the National Guard under Chapter 15 of Title 10 or under Section 3500 or 8500 of Title 10 of the United States Code.

28005. A participant's entitlement to the right to contribute toward credits under the plan pursuant to this chapter by reason of the service in the uniformed services terminates upon the occurrence of any of the following events:

(a) A separation of the participant from the uniformed service with a dishonorable or bad conduct discharge.

(b) A separation of the participant from the uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the secretary concerned.

(c) A dismissal of the participant permitted under Section 1161(a) of Title 10 of the United States Code.

(d) A dropping of the participant from the rolls pursuant to Section 1161(b) of Title 10 of the United States Code.

28006. No provision of this chapter shall apply to the extent it would require any action to be taken that would cause the plan or its members to incur adverse tax consequences under the Internal Revenue Code of 1986 (Title 26 of the United States Code).

SEC. 4. Section 20737 of the Government Code is amended to read:

20737. The account of a member who elects to be subject to Section 21076 shall be paid current year interest through the effective date of that election for service rendered as a state miscellaneous or state industrial member. Interest subsequent to the effective date of that election shall accrue at a rate determined by the board. The member shall not receive his or her accumulated contributions plus interest until the time of retirement or upon request after permanent separation from state service. Interest shall be paid through the day prior to retirement or through the date on which the claim is filed with the Controller. This section does not apply to a member who elects to be subject to Section 21077.

SEC. 5. Section 20990 of the Government Code is repealed:

SEC. 6. Section 20990 is added to the Government Code, to read:

20990. A member is absent on military service when he or she is absent from state service by reason of service with the uniformed services. Uniformed services means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a member is absent from a position of employment for the purpose of an examination to determine the fitness of the member to perform any duty.

The system shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

SEC. 7. Section 20994 of the Government Code is amended to read:

20994. Any employee of a contracting agency who is or was absent on military service on the effective date of the contract and who would become or would have become a member if he or she were not absent becomes or became a member on the effective date, with the same status and rights of membership as if he or she were not or had not been so absent on the effective date. Any such employee and any other employee of a contracting agency who was absent on military

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service prior to the effective date shall receive credit as prior service for time during which he or she was absent on military service prior to the effective date provided the employee is entitled to receive prior service credit pursuant to Section 20933 or 20934 and he or she returned to employment of the contracting agency within six months of the termination of his or her active service with the uniformed services under conditions other than dishonorable or within six months after any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes.

SEC. 8. Section 20996 of the Government Code is amended to read:

20996. An employee of a contracting agency who is or was absent on military service on the effective date of the contract and who would become or would have become a member if he or she were not absent becomes or became a member on that effective date, with the same status and rights of membership as if he or she were not or had not been absent on that effective date. The employee and any other employee of a contracting agency who was absent on military service prior to that effective date shall receive credit as prior service for time during which he or she was absent on military service prior to that effective date provided that employee is entitled to receive prior service credit pursuant to Section 20933, 20934, or 20972 and he or she returned to employment of the contracting agency within six months of the termination of his or her active service with the uniformed services under conditions other than dishonorable or within six months after any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes.

This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for the approval of contracts or in the case of contracts made after January 1, 1989, by express provision in the contract making the contracting agency subject to this section.

SEC. 9. Section 20997 of the Government Code is amended to read:

20997. Notwithstanding any other provision of this part, for each member absent without compensation due to military service pursuant to Section 20990, the employer shall contribute an amount equal to the contributions that would have been made by the employer and the employee during the absence. The employer's contribution pursuant to this section shall be based upon the member's compensation earnable and the contribution rates in effect at the commencement of the absence, provided that: (1) the member returns to state service within six months after receiving a discharge from military service other than dishonorable; or (2) the member returns to state service within six months after completion of any period of rehabilitation offered by the United States government, except that for purposes of this section, rehabilitation solely for education purposes shall not be considered; or (3) the member is granted a leave of absence from the state employer as of the same date the member was reinstated to that employment from military service, provided that the member returns to state service at the conclusion of the leave; or (4) the member is placed on a state civil service reemployment list within six months after receiving a discharge from military service other than dishonorable and returns to state service upon receipt of an offer of reemployment; or (5) the member retires from this system for service or disability during the course of an absence from state service for military service; or (6) the member dies during the course of an absence from state service for military service.

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Any member on leave from state service for military service who elects to continue contributing to this system shall be entitled to a refund of those contributions upon request.

Any member who withdrew contributions during or in contemplation of his or her military service is entitled to the benefits of this section irrespective of whether the contributions are redeposited. The rate for future contributions for the member shall be based upon the member's age at the time the member commenced a leave of absence from state service for service in the military.

The employer's contribution pursuant to this section may be made either in lump sum, or it may be included in its monthly contribution as adjusted by inclusion of the amount due in the employer rate at the valuation most near in time to the event causing the employer's liability for those contributions. The employer's contributions pursuant to this section shall be used solely for the purpose of paying retirement and death benefits and shall not be paid to the member whose contributions are refunded to him or her pursuant to Section 20735.

SEC. 10. Section 31598 of the Government Code is repealed.

SEC. 11. Section 31598 is added to the Government Code, to read:

31598. The annual statement shall be prepared in accordance with generally accepted accounting principles on the basis of pronouncements of the Government Accounting Standards Board or its successor organization.

SEC. 12. Section 31649 of the Government Code is amended to read:

31649. (a) Any member who resigns to enter and does enter the armed forces of the United States on a voluntary or involuntary basis, and within 90 days after the termination of that service under honorable conditions, reenters county service, or

(b) Any member who obtains a leave of absence to enter and does enter the armed forces of the United States on a voluntary or involuntary basis, and within one year after the termination under honorable conditions of leave of absence reenters county service, if he or she has not contributed to the retirement fund the total percentage of his or her compensation earnable due pursuant to Section 31461 due under this chapter for the entire period during which he or she was out of county service and in military service, may, not more than 90 days after his or her reentrance into county service, file with the board his or her election that no further contributions be deducted from his or her compensation except contributions due because of current service.

(c) A member who reenters county service under either (a) or (b) above may be allowed up to five years credit for vesting in the system.

SEC. 13. Section 31649.1 is added to the Government Code, to read:

31649.1. Any employer who reemploys a member who is subject to the provisions of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall, within 30 days after the date of that reemployment, provide information in writing as required by the board notifying the system of that reemployment, and shall provide the returning employee written notification of the right to purchase that service credit.

SEC. 14. Section 31649.5 of the Government Code is amended to read:

31649.5. (a) Notwithstanding Section 31649, any member who resigned, or obtained a leave of absence, to enter and did enter the armed forces of the United States on a voluntary or involuntary basis and returned to county service within one year after separation

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therefrom, under honorable conditions, shall receive credit for service and prior service for all or any part of his or her military service, if, before retirement from the county, he or she contributes what he or she would have paid to the fund based on his or her compensation earnable pursuant to Section 31461 at the time he or she resigned or received the leave of absence, together with regular interest thereon, and if, when he or she contributes, the military service is not a basis for present or future military retirement pay.

(b) This section shall not be operative in any county until the board of supervisors so orders.

SEC. 15. (a) It is the intent of the Legislature in enacting this section to authorize the Public Utilities Commission to make the necessary monetary contributions to the Public Employees' Retirement Fund to achieve the monthly retirement benefit to which certain former state employees are entitled under the terms of the consent decree filed in the case of Frank Crua et al. v. Public Utilities Commission (consolidated case numbers C-90-0378 MHP, C-91-2195 MHP, and C-93-2785 MHP) before the United States District Court for the Northern District of California.

(b) Notwithstanding any provisions of the Government Code, the Public Employees' Retirement System shall provide an additional retirement benefit calculated in accordance with the above referenced case to a retired employee of the California Public Utilities Commission if all of the following conditions exist:

(1) The name of the employee is listed pursuant to Section VII.A.2. of the consent decree entered on January 13, 1995, in the case of Frank Crua et al. v. Public Utilities Commission (consolidated case numbers C-90-0378 MHP, C-91-2195 MHP, and C-93-2785 MHP) before the United States District Court for the Northern District of California.

(2) The retiree has elected the enhanced early retirement option defined by Paragraph VII.B.1. of that consent decree.

(3) The retiree has permanently retired from the Public Utilities Commission within 12 months of the final effect date of the consent decree.

(4) The retiree had not retired from the Public Utilities Commission prior to May 20, 1994.

(5) The Public Utilities Commission has transmitted to the Public Employees' Retirement Fund an amount determined by the Board of Administration of the Public Employees' Retirement System that is equal to the actuarial equivalent of the difference between the allowance the member will receive pursuant to the terms of the consent decree and the amount the member would have received without the consent decree. The transfer to the retirement fund shall be made in a manner and time period acceptable to the Public Utilities Commission and the Board of Administration of the Public Employees' Retirement System.

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Bill NUMBER: AB 3032 CHAPTERED 09/30/96

CHAPTER 1165
 FILED WITH SECRETARY OF STATE SEPTEMBER 30, 1996
 APPROVED BY GOVERNOR SEPTEMBER 30, 1996
 PASSED THE ASSEMBLY AUGUST 30, 1996
 PASSED THE SENATE AUGUST 21, 1996
 AMENDED IN SENATE AUGUST 19, 1996
 AMENDED IN SENATE AUGUST 5, 1996
 AMENDED IN SENATE JUNE 19, 1996
 AMENDED IN ASSEMBLY MARCH 28, 1996

INTRODUCED BY Assembly Member Burton

FEBRUARY 23, 1996

An act to amend Sections 22008, 22112.5, 22134, 22451.5, 22451.7, 23805, 23806, 23809, 23855, 23856, 24002, 24006, 24007, 24009, 24016, 24017, 24106, 24108, 24211, 24212, 24213, 24414, and 26139 of, to amend, repeal, and add Section 22139 of, to add Sections 22119.2, 22123.5, and 26112.5 to, to repeal Sections 22112, 22114, 23807, 23808, 23857, and 24008 of, and to repeal and add Sections 22111, 22123, and 24600 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 3032, Burton. School employees: retirement.

The State Teachers' Retirement Law provides disability and family benefits for dependent unmarried children who are under 18 years of age and dependent unmarried children who are under 22 years of age and full-time students, as defined.

This bill would provide disability and family benefits for all dependent unmarried children up to the attainment of 22 years of age and would define the terms "child's portion" and "children's portion" for purposes of benefits. Those provisions would be repealed on January 1, 2002.

The State Teachers' Retirement Law defines the terms "compensation" and "salary" for purposes of determining benefits and contributions and provides that employer and member contribution rates are based upon members' compensation and salaries.

This bill would repeal that provision and would instead define the terms "creditable compensation" and "final compensation" for purposes of determining benefits and contributions. The bill would provide that any employer or person who knowingly or willfully reports compensation and salary inconsistent with the provisions of the bill would be required to reimburse the system for any overpayments. The bill would make technical changes in other provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22008 of the Education Code is amended to read:

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

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(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, or beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, or beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, or beneficiary to receive benefits under the plan, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, or other party in relation to or on behalf of a member, or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

SEC. 2. Section 22111 of the Education Code is repealed.

SEC. 3. Section 22111 is added to the Education Code, to read:

22111. "Child's portion" or "children's portion" means the amount of a disability allowance, disability retirement allowance, family allowance, or survivor benefit allowance payable for a dependent child or dependent children.

SEC. 4. Section 22112 of the Education Code is repealed.

SEC. 5. Section 22112.5 of the Education Code is amended to read:

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

(b) A class of employees may be comprised of one person if no other person employed by the employer performs similar duties, is employed in the same type of program, or shares other similarities related to the nature of the work being performed and that same class is in common use among other employers.

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

(d) The amendments to this section during the 1995-96 Regular Session of the Legislature shall be deemed to have become operative on July 1, 1996.

SEC. 6. Section 22114 of the Education Code is repealed.

SEC. 7. Section 22119.2 is added to the Education Code, to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

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(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of this plan in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

(8) Compensatory damages or money paid to a member in excess of creditable compensation as a compromise settlement or as severance pay.

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the plan. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the plan and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases

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in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

SEC. 8. Section 22123 of the Education Code is repealed.

SEC. 9. Section 22123 is added to the Education Code, to read:

22123. (a) "Dependent child" or "dependent children" under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is not older than 22 years of age and who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death.

(b) "Offspring" shall include the member's child who is born within the 10-month period commencing on the earlier of the member's disability allowance effective date or the date of the member's death.

(c) "Offspring" shall include a child adopted by the member.

(d) "Dependent child" shall not include the member's offspring or stepchild who is adopted by a person other than the member's spouse.

(e) "Dependent child" under the family allowance program shall not include:

(1) The member's offspring or stepchild who was financially dependent on the member on the date of the member's death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(f) "Financially dependent" for purposes of this section means that at least one-half of the child's support was being provided by the member on the member's disability allowance effective date or the date of the member's death. The system may require that income tax records or other data be submitted to substantiate the child's financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member's disability allowance or the date of the member's death.

(g) "Member" as used in this section shall have the same meaning specified in Section 23800.

(h) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 9.5. Section 22123 is added to the Education Code, to read:

22123. (a) "Dependent child" or "dependent children" under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death and who meets either of the following:

(1) Is not older than 18 years of age.

(2) Is between 18 and 22 years of age and who is registered as a full-time student as defined in Section 22139 on the effective date of the member's disability allowance or the date of the member's death. A dependent child who is a full-time student in the month he or she attains 22 years of age shall be deemed not to have attained that age until the first day of the month following the school quarter or semester that was in progress in the month the person attains 22 years of age.

(b) "Offspring" shall include:

(1) The member's child who is born within the 10-month period commencing on the earlier of the member's disability allowance effective date or the date of the member's death.

(2) A child adopted by the member.

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money paid for creditable service performed.

(3) Money paid for the participant's absence from performance of creditable service as approved by an employer, except as provided in paragraph (5) of subdivision (b).

(4) Employee contributions picked up by an employer under Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code.

(5) Amounts deducted by an employer from the participant's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines by plan amendment to be "salary."

(b) "Salary" does not mean and shall not include:

(1) Money paid for service that is not creditable service.

(2) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Fringe benefits provided by an employer.

(4) Job-related expenses paid or reimbursed by an employer.

(5) Money paid for unused accumulated leave.

(6) Compensatory damages or money paid to a participant in excess of salary as a compromise settlement or as severance pay.

(7) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for a participant.

(8) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a participant's benefits under the plan.

(9) Any other payments the board determines by plan amendment not to be "salary."

(c) Any employer or person who knowingly or willfully reports salary in a manner inconsistent with the provisions of subdivisions (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of such inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with provisions of the Penal Code. The system may establish procedures to ensure that salary reported by an employer is in compliance with this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

BILL NUMBER: SB 471 CHAPTERED 09/25/97

CHAPTER 482

FILED WITH SECRETARY OF STATE SEPTEMBER 25, 1997

APPROVED BY GOVERNOR SEPTEMBER 24, 1997

PASSED THE SENATE AUGUST 29, 1997

PASSED THE ASSEMBLY AUGUST 25, 1997

AMENDED IN ASSEMBLY AUGUST 11, 1997

AMENDED IN ASSEMBLY JULY 15, 1997

AMENDED IN ASSEMBLY JULY 3, 1997

INTRODUCED BY Senator Burton

FEBRUARY 19, 1997

An act to amend Sections 22002, 22115, 22119.2, 22134, 22155, 22456, 22701, 22710, 22713, 22901, 22903, 22904, 22950, 22951, 22952, 22954, 22955, 23000, 23002, 23005, 23008, 24005, 24205, and 24950 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 471, Burton. School employee retirement.
The State Teachers' Retirement Law defines the term "creditable compensation" for various purposes.
The bill would revise that definition and make related changes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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 creditable compensation, unless otherwise specified in this part.
- (b) Employers shall contribute a percentage of the total creditable compensation 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 22115 of the Education Code is amended to read:

22115. (a) "Compensation earnable" means the annual creditable compensation that a person would earn in a school year 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 creditable compensation earned by the service credit.

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

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for

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documents upon which the employer identifies persons to whom compensation is paid.

SEC. 6. Section 22456 of the Education Code is amended to read:

22456. At any time upon the request of the system, the employer shall furnish a statement of the amount of contributions deducted from the compensation of any member, the service performed and the compensation 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. 7. Section 22701 of the Education Code is amended to read:

22701. (a) Service performed prior to July 1, 1972, shall be credited according to the provisions of law in effect at the time service was performed.

(b) Service performed on or after July 1, 1972, shall be credited in the proportion that creditable compensation earned by the member bears to the member's compensation earnable.

SEC. 8. Section 22710 of the Education Code is amended to read:

22710. (a) Service shall be credited, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of creditable service and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the creditable compensation paid to the member bears to the compensation earnable by the member.

(b) The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of absence specified in subdivision (a).

SEC. 9. Section 22713 of the Education Code is amended to read:

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, in part, on final compensation determined from the compensation earnable the member would have been entitled to 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, time 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.

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reflect the contribution required to fund the normal cost deficit when the unfunded obligation has been deemed to be eliminated by the board based upon a recommendation from its actuary. If a rate increase or decrease is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer exceed 4.3 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based.

(b) The funds transferred pursuant to subdivision (a) shall first be applied to meeting the normal cost deficit, if any, for that fiscal year.

(c) The transfers made pursuant to this section are in lieu of the state contributions formerly made pursuant to Sections 23401 and 23402.

(d) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, and (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions are based to determine the dollar amount of the normal cost deficit for the year.

(e) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. The Legislature recognizes that the system shall, pursuant to this act, receive less funds in the short term than it would have received under former Sections 23401 and 23402 (Chapter 282 of the Statutes of 1979). However, it is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(f) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(g) This section shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate that occurs after July 1, 1990.

(h) The amendments to this section during the 1991-92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

SEC. 21. Section 23000 of the Education Code is amended to read:

23000. Each employer shall deduct from the creditable compensation of members employed by the employer the member contributions required by this part and shall remit to the system those contributions plus the employer contributions required by this part and Section 44987.

SEC. 22. Section 23002 of the Education Code is amended to read:

23002. Member and employer contributions required by this part and Section 44987 are due in the office of the system five working days immediately following the period covered by the monthly report upon which the compensation earned during the period is being reported and from and upon which the contributions are due. Payments shall be delinquent on the sixth working day thereafter and regular interest on delinquent payments shall begin to accrue as of that day.

The board shall authorize estimated payments of not less than 95 percent of the contributions due, and, in that case, the balance of contributions payable shall be due in the office of the system no more than 15 working days following the period covered by the monthly

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report upon which the contributions are based. This additional payment shall be delinquent on the 16th working day thereafter, and regular interest shall begin to accrue as of that day.

SEC. 23. Section 23005 of the Education Code is amended to read:

23005. Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the compensation being reported was earned, and are delinquent 15 calendar days immediately thereafter.

SEC. 24. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any payment of creditable compensation 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 pursuant to Section 23006. 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 Teacher's Retirement Fund based on that information, the county superintendent or other employing agency who submitted the report shall reimburse the retirement fund in full for the amount of the erroneous disbursement. Reimbursement shall be made immediately upon notification by the system.

SEC. 26. Section 24005 of the Education Code is amended to read:

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 creditable 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. 27. Section 24205 of the Education Code is amended to read:

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

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(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.

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BILL NUMBER: SB 227 CHAPTERED 10/10/97

CHAPTER 838

FILED WITH SECRETARY OF STATE OCTOBER 10, 1997
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 AMENDED IN ASSEMBLY JULY 18, 1997
 AMENDED IN ASSEMBLY JULY 3, 1997
 AMENDED IN SENATE JUNE 3, 1997
 AMENDED IN SENATE APRIL 23, 1997
 AMENDED IN SENATE MARCH 17, 1997

INTRODUCED BY Senator Solis

JANUARY 30, 1997

An act to amend Sections 22509, 22801, and 22803 of, and to add Section 22508.5 to, the Education Code, and to add Section 20309 to the Government Code, relating to community colleges.

LEGISLATIVE COUNSEL'S DIGEST

SB 227, Solis. Community colleges: officers and employees.

Existing law permits members of the Public Employees' Retirement System and the State Teachers' Retirement System who are subsequently employed in a position requiring membership in the other system to, upon an election made within 60 days in writing, remain in their initial retirement system.

This bill would permit certain State Teachers' Retirement System and Public Employees' Retirement System members subsequently employed by specified state agencies in positions that would require the individual to become a member of a different retirement system, to elect coverage in either system within 60 days, in writing. The bill would require the Public Employees' Retirement System to transfer assets to the State Teachers' Retirement System when a member elects to become a member of the State Teachers' Retirement System.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22508.5 is added to the Education Code, to read:

22508.5. (a) Any person who is a member of the State Teachers' Retirement System employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that require membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the State Teachers' Retirement System. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the State Teachers' Retirement System.

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(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage by this plan, may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by this plan pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998.

SEC. 2. Section 22509 of the Education Code is amended to read:

22509. (a) Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election.

(b) Any election made pursuant to subdivision (a) of Section 22508 or subdivision (a) of Section 22508.5 shall be filed with the office of the State Teachers' Retirement System and a copy of the election shall be filed with the other public retirement system. Any election made pursuant to subdivision (b) of Section 22508 or subdivision (b) of Section 22508.5 shall be filed with the office of the Public Employees' Retirement System and a copy of the election shall be filed with the office of this system.

(c) Any election made pursuant to Section 22508 or Section 22508.5 shall become effective as of the first day of employment in the position that qualified the employee to make an election.

SEC. 3. Section 22801 of the Education Code is amended to read:

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, adopted by the board as a plan amendment, 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) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) 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.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments.

SEC. 4. Section 22803 of the Education Code is amended to read:

22803. (a) A member may elect to receive credit for any of the following:

(1) Service performed in a teaching position in a publicly

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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.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), 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. 5. Section 20309 is added to the Government Code, to read:

20309. (a) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges and who subsequently is employed by a community college district to perform service subject to coverage by the State Teachers' Retirement System, may elect to retain coverage by the Public Employees' Retirement System for that service. An election to retain coverage under the Public Employees' Retirement System shall be submitted in writing by the member to the Public Employees' Retirement System on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers' Retirement System, within 60 days of the date the member's change in employment is effective.

(b) (1) A member who had been a member of the State Teachers' Retirement System and who changed employment and became a member of the Public Employees' Retirement System on or after July 1, 1991, but before January 1, 1998, may elect to return to coverage under the State Teachers' Retirement System if an election to do so is made in writing to each system on or before March 1, 1998. Members who elect to transfer to the State Teachers' Retirement System shall pay, prior to retirement, all contributions with respect to service in the

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Public Employees' Retirement System at the contribution rate for additional service credit in effect at the time of the transfer to the State Teachers' Retirement System.

(2) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to this subdivision to the State Teachers' Retirement System.

(3) The Public Employees' Retirement System is not required to identify and notify members who may be eligible for the election allowed by this section.

(c) Subdivision (a) shall apply to changes in employment effective on or after January 1, 1998.

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BILL NUMBER: AB 2765 CHAPTERED 09/29/98

CHAPTER 965

FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1998
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 PASSED THE ASSEMBLY AUGUST 27, 1998
 PASSED THE SENATE AUGUST 26, 1998
 AMENDED IN SENATE AUGUST 20, 1998
 AMENDED IN SENATE JULY 30, 1998
 AMENDED IN ASSEMBLY MAY 22, 1998
 AMENDED IN ASSEMBLY MAY 4, 1998

INTRODUCED BY Committee on Public Employees, Retirement and Social Security (Honda (Chair), Migden, Scott, Shelley, and Wildman)

FEBRUARY 26, 1998

An act to amend Sections 22002, 22117, 22120, 22121, 22132, 22138.6, 22143, 22146, 22146.5, 22147, 22151, 22154, 22156, 22161, 22162, 22163, 22165, 22170, 22201, 22207, 22212, 22216, 22222, 22223, 22224, 22225, 22250, 22251, 22252, 22253, 22302, 22303.5, 22305, 22306, 22308, 22313, 22315, 22316, 22317, 22317.5, 22327, 22450, 22354, 22500, 22501, 22508, 22508.5, 22513, 22515, 22516, 22601.5, 22602, 22604, 22650, 22651, 22652, 22653, 22655, 22657, 22659, 22660, 22661, 22662, 22663, 22664, 22665, 22700, 22703, 22705, 22706, 22708, 22709, 22710, 22711, 22712, 22712.5, 22713, 22714, 22715, 22716, 22718, 22721, 22800, 22802, 22805, 22806, 22807, 22808, 22809, 22810, 22821, 22823, 22850, 22851, 22852, 22853, 22854, 22855, 22856, 22900, 22901, 22902, 22903, 22904, 22906, 22907, 22950, 22951, 22951.5, 22952, 22954, 22956, 23003, 23005, 23006, 23101, 23102, 23103, 23104, 23106, 23107, 23200, 23202, 23203, 23300, 23301, 23302, 23303, 23304, 23700, 23800, 23801, 23805, 23850, 23851, 23880, 23881, 24001, 24001.5, 24002, 24003, 24004, 24005, 24006, 24010, 24011, 24013, 24014, 24015, 24016, 24017, 24018, 24100, 24101, 24102, 24103, 24104, 24105, 24106, 24107, 24108, 24109, 24110, 24111, 24112, 24113, 24114, 24116, 24117, 24118, 24119, 24203, 24204, 24205, 24206, 24207, 24208, 24209, 24210, 24211, 24212, 24213, 24214, 24215, 24216, 24216.5, 24217, 24301, 24308, 24309, 24311, 24400, 24417, 24505, 24600, 24603, 24604, 24605, 24606, 24607, 24608, 24609, 24610, 24612, 24613, 24615, 24617, 24618, 24619, 24700, 24701, 24702, 24703, 24704, 24750, 24751, 24950, 24951, 25000, 26001, 26002, 26102, 26113, 26117, 26119, 26120, 26121, 26123, 26124, 26125, 26126, 26127, 26131, 26132, 26133, 26136, 26138, 26139, 26143, 26144, 26208, 26210, 26211, 26212, 26213, 26216, 26301, 26302, 26303, 26305, 26306, 26400, 26401, 26500, 26502, 26504, 26507, 26604, 26606, 26607, 26800, 26802, 26803, 26804, 26805, 26806, 26807, 26809, 26810, 26811, 26900, 26901, 26902, 26903, 26905, 26906, 26908, 26911, 27000, 27001, 27003, 27006, 27007, 27008, 27100, 27101, 27200, 27201, 27202, 27203, 27204, 27205, 27207, 27300, 27302, 27303, 27400, 27403, 27404, 27405, 27406, 27407, 27410, 27411, 28000, 28001, 28002, 28004, 28005, 28100, 44929, and 87488 of, to add Sections 22502, 22503, 22504, 22705.5, and 26301.5 to, to add and repeal Section 24216.8 of, and to repeal Sections 22175, 22358, and 22600 of, the Education Code, to amend Section 2610 of the Family Code, and to amend Sections 3543.2, 22009.1, 22208, and 22302 of, and to amend and repeal Sections 22009.03 and 22156 of, the Government Code, relating to the State Teachers' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, Committee on Public Employees, Retirement and Social Security. State Teachers' Retirement System: generally.

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

This bill would make technical, nonsubstantive changes in various

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provisions of that law.

(2) Existing law defines the term regular interest for purposes of various calculations and charges.

This bill would revise that term and would require the board to annually adopt that rate.

(3) Existing law requires the system's governing board upon the recommendation of the actuary, to adopt mortality and other tables and interest rates.

This bill would instead require the board to adopt certain information and would delete the actuary recommendation requirement.

(4) Existing law limits postretirement school employment.

This bill would permit retired members to be employed by school districts to meet the objectives of the Class Size Reduction Program.

(5) Existing law requires a quarterly report on assets to be submitted to the Legislature.

This bill would delete that requirement.

(6) Existing law authorizes assessment of penalties against employers for late reports or unacceptable forms of not less than \$500.

This bill would delete that limitation.

(7) Existing law provides that the employee contribution rate to the State Teacher's Retirement System Cash Balance Plan shall not exceed the employer contribution rate.

This bill would provide that the employee rate may exceed the employer rate but that the employer contribution vote may not be less than 4%.

(8) Existing law authorizes school governing boards to encourage retirements by providing additional service credit and provides until July 1, 2000, that certain types of postretirement school employment is exempted from postretirement school employment limitations.

This bill would extend that exemption to July 1, 2003.

(9) Pursuant to existing law, the Board of Administration of the Public Employees' Retirement System administers an agreement with the federal government for social security coverage of employees of the state and the political subdivisions thereof which contract for coverage. The existing law authorizes each school district, from July 1, 1990, to July 1, 1993, and the State Teachers' Retirement System, on and after July 1, 1993, to apply to the Board of Administration of the Public Employees' Retirement System for elections among their respective certificated employees who are members of the State Teachers' Retirement System for the election of Medicare coverage of those certificated employees who elect it. The existing law also makes certain of these provisions inoperative on July 1, 1999, and repeals them as of January 1, 2000.

This bill would extend the repeal date of certain of these provisions from January 1, 2000, to January 1, 2005.

(10) This bill would also provide that its amendments to Sections 22601.5, 22602, 22604, 26301, 26400, 26401, 26504, 27410, and 22601.5 of the Education Code shall not become operative, and shall be repealed on January 1, 1999, if SB 2085 of the 1997-98 Regular Session is enacted prior to this bill and amends those sections.

(11) This bill would incorporate additional changes in Section 23203 of the Education Code made by SB 2126 contingent upon the prior enactment of SB 2126, as specified.

(12) This bill would also provide that its amendment of Section 27405 of the Education Code would be contingent upon the enactment of SB 2085.

(13) This bill would also provide that the form of its proposed amendments to Section 22664 of the Education Code is contingent upon the enactment of SB 2126.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(a) Members shall contribute a percentage of creditable compensation, unless otherwise specified in this part.

(b) Employers shall contribute a percentage of the total creditable compensation 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 under this part.

SEC. 2. Section 22117 of the Education Code is amended to read:

22117. "Contribution rate for additional service credit" means the contribution rate adopted by the board as a plan amendment with respect to the Defined Benefit Program for the purchase of service credit. This rate shall be based upon the most recent valuation of the plan with respect to the Defined Benefit Program and increased to include any subsequently required contribution rates designated for funding subsequent allowance increases.

SEC. 3. Section 22120 of the Education Code is amended to read:

22120. "Credited interest" means interest that is credited to active members' and inactive members', accumulated retirement contributions, and accumulated annuity deposit contributions at a rate set annually by the board as a plan amendment with respect to the Defined Benefit Program.

SEC. 4. Section 22121 of the Education Code is amended to read:

22121. "Credited service" means service for which the required contributions have been paid.

SEC. 5. Section 22132 of the Education Code is amended to read:

22132. "Employed" or "employment" means employment to perform creditable service subject to coverage by the State Teachers' Retirement Defined Benefit Program, except as otherwise specifically provided under this part.

SEC. 6. Section 22138.6 of the Education Code is amended to read:

22138.6. "Full-time equivalent" means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time in that position.

SEC. 6.5. Section 22143 of the Education Code is amended to read:

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 with respect to the Defined Benefit Program under this part and the Cash Balance Benefit Program under Part 14 (commencing with Section 26000).

SEC. 7. Section 22146 of the Education Code is amended to read:

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 creditable compensation for that service and has not received a refund for that service and, as a result, is subject to the Defined Benefit Program. A member's rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any applicable exceptions under other provisions of this part.

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

(c) A disabled member is a member to whom a disability allowance

is payable under Chapter 25 (commencing with Section 24001).

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable.

SEC. 8. Section 22146.5 of the Education Code is amended to read:

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

SEC. 9. Section 22147 of the Education Code is amended to read:

22147. (a) "Month" means 20 working days or four weeks of five working days each, including legal holidays, with respect to the computation and crediting of service.

(b) "Month," for all other purposes, means a period commencing on any day of a calendar month and extending through the day preceding the corresponding day of the succeeding calendar month, if there is any such corresponding day, and if not, through the last day of the succeeding calendar month.

SEC. 10. Section 22151 of the Education Code is amended to read:

22151. "Overtime" means the aggregate service performed as a member of the Defined Benefit Program in excess of the hours of work considered normal for employees on a full-time basis.

SEC. 11. Section 22154 of the Education Code is amended to read:

22154. "Pay period" means a payroll period of not less than four weeks or more than one calendar month.

SEC. 12. Section 22156 of the Education Code is amended to read:

22156. "Plan vesting" means the right of the member upon completion of the minimum number of required years of credited service provided in the Defined Benefit Program to entitle the member or his or her beneficiary to a monthly retirement allowance, disability allowance, survivor benefit allowance, family allowance, 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. 13. Section 22161 of the Education Code is amended to read:

22161. "Public school" means any day or evening elementary school, and any day and evening secondary school, community college, technical school, kindergarten school, and prekindergarten school established by the Legislature, or by municipal or district authority.

SEC. 14. Section 22162 of the Education Code is amended to read:

22162. "Regular interest", with respect to the Defined Benefit Program, is interest that is compounded annually based upon the annual equivalent of the prior year's average yield to maturity on the investment grade fixed-income securities with respect to the Defined Benefit Program. The regular interest rate shall be adopted annually by the board as a plan amendment.

SEC. 15. Section 22163 of the Education Code is amended to read:

22163. "Reinstatement" means the terminating of a service or disability retirement allowance and the changing of status from a retired member to an inactive member or an active member.

SEC. 16. Section 22165 of the Education Code is amended to read:

22165. "Retirement" means a change in status from an inactive member or an active member to a retired member.

SEC. 17. Section 22170 of the Education Code is amended to read:

22170. "Service" means service performed for compensation in a position subject to coverage under the Defined Benefit Program, except as otherwise specifically provided in this part.

SEC. 18. Section 22175 of the Education Code is repealed.

SEC. 19. Section 22201 of the Education Code is amended to read:

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 administration of the plan and the system.

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(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. 20. Section 22207 of the Education Code is amended to read:
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 and Part 14 (commencing with Section 26000).

SEC. 21. Section 22212 of the Education Code is amended to read:
22212. The board shall appoint such employees as are necessary to administer the plan and the system.

SEC. 22. Section 22216 of the Education Code is amended to read:
22216. (a) The board shall annually adopt as a plan amendment with respect to the Defined Benefit Program the rate of credited interest to be credited to members' accumulated retirement contributions for service performed after June 30, 1935, and the accumulated annuity deposit contributions excluding all accumulated contributions while being paid as disability allowances, family allowances, and retirement allowances.

(b) The board shall credit interest to all other accumulated reserves at the actuarially assumed interest rate.

SEC. 23. Section 22222 of the Education Code is amended to read:
22222. The board may adjust the amounts of the death payments based on changes in the All Urban California Consumer Price Index, and shall adopt as a plan amendment with respect to the Defined Benefit Program any adjusted amount, provided that the most recent actuarial valuation report indicates that the adjustment would not increase the normal cost.

SEC. 24. Section 22223 of the Education Code is amended to read:
22223. The members of the board who are not members of the Defined Benefit Program or participants of the Cash Balance Benefit Program 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. 25. Section 22224 of the Education Code is amended to read:
22224. Members of the Defined Benefit Program and participants of the Cash Balance Benefit Program, 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. 26. Section 22225 of the Education Code is amended to read:
22225. (a) The compensation of the members of the Defined Benefit Program and participants of the Cash Balance Benefit Program 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 either a member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program 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.

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SEC. 27. Section 22250 of the Education Code is amended to read:

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 of the Defined Benefit Program as well as the participants and beneficiaries of the Cash Balance Benefit Program as follows:

(a) For the exclusive purpose of the following:

(1) Providing benefits to members and beneficiaries of the Defined Benefit Program as well as the participants and beneficiaries of the Cash Balance Benefit Program.

(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 plan 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 plan and the system insofar as those documents and instruments are consistent with this part and Part 14 (commencing with Section 26000).

SEC. 28. Section 22251 of the Education Code is amended to read:

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 of the Defined Benefit Program as well as the participants and beneficiaries of the Cash Balance Benefit Program and defraying reasonable expenses of administering the plan and 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.

SEC. 29. Section 22252 of the Education Code is amended to read:

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 of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, for less than adequate consideration, or from a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, 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 of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, without the receipt of adequate security and a reasonable rate of interest, or from a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, 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 of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, for less than adequate consideration, or from a member, or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, to the system for more than adequate consideration.

(d) Transfer to, or use by or for the benefit of, a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, 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.

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SEC. 30. Section 22253 of the Education Code is amended to read:

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 plan and 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 of the Defined Benefit Program, as well as participants and beneficiaries of the Cash Balance Benefit Program.

(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. 31. Section 22302 of the Education Code is amended to read:

22302. (a) The board shall establish an ombudsman position to serve as an advocate for the members of the Defined Benefit Program and participants of the Cash Balance Benefit Program. 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. 32. Section 22303.5 of the Education Code is amended to read:

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 and benefits of the Defined Benefit Program, 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. 33. Section 22305 of the Education Code is amended to read:

22305. Any rules and regulations adopted by the board for the purpose of the administration of this part and Part 14 (commencing with Section 26000), and not inconsistent with this part and Part 14 (commencing with Section 26000), have the force and effect of law.

SEC. 34. Section 22306 of the Education Code is amended to read:

22306. (a) Information filed with the system by a member, participant, or beneficiary of the plan 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, participant, or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the member, participant or beneficiary to whom the information relates.

(2) To the authorized representative of the member, participant or beneficiary.

(3) To the governing board of the member's or participant'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 or participant 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. 35. Section 22308 of the Education Code is amended to read:

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 of the Defined Benefit Program, and of any participant or beneficiary of the Cash Balance Benefit Program, if 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, participant 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.

SEC. 36. Section 22313 of the Education Code is amended to read:

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 with respect to the Defined Benefit Program, 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. 37. Section 22315 of the Education Code is amended to read:

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 Defined Benefit Program 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.

SEC. 38. Section 22316 of the Education Code is amended to read:

22316. (a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member of the Defined Benefit Program 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 under this part to any person who became a member of the Defined Benefit Program 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 with respect to the Defined Benefit Program 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 of the Defined Benefit Program on or after January 1, 1990.

SEC. 39. Section 22317 of the Education Code is amended to read:

22317. (a) With respect to members of the Defined Benefit Program with membership effective dates of December 31, 1989, and earlier, benefit enhancements due to a plan amendment enacted after October 14, 1987, with respect to the Defined Benefit Program, 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 of the Defined Benefit Program with membership effective dates of January 1, 1990, and later, retirement benefits under this part, including enhancements due to a plan amendment with respect to the Defined Benefit Program, 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 under this part pursuant to a plan amendment with respect to the Defined Benefit Program 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, with respect to the Defined Benefit Program.

SEC. 40. Section 22317.5 of the Education Code is amended to read:

22317.5. The amount of compensation that is taken into account in computing benefits payable under this part to any person who first becomes a member of the Defined Benefit Program on or after July 1, 1996, shall not exceed the annual compensation limitations prescribed by Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period, shall be subject to the annual compensation limit applicable to that period.

Notwithstanding any other provision of this part, no member contribution shall be paid upon any compensation in excess of the annual compensation limitations prescribed by Section 401(a)(17) of Title 26 of the United States Code.

SEC. 41. Section 22327 of the Education Code is amended to read:

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 shall be obtained from the Employment Development Department upon request by the board. 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. 42. Section 22354 of the Education Code is amended to read:

22354. (a) The board shall, pursuant to the state civil service statutes, either contract with, or establish and fill full-time positions for, investment managers who are experienced and knowledgeable in corporate management issues to monitor each corporation any of whose shares are owned by the plan and to advise the board on the voting of the shares owned by the plan and on the responses of the system to merger proposals and tender offers and all other matters pertaining to corporate governance.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from this section.

SEC. 43. Section 22358 of the Education Code is repealed.

SEC. 44. Section 22450 of the Education Code is amended to read:

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 Defined Benefit Program as the board requires.

(b) A member who has not had any creditable service reported during the prior school year shall provide the system with his or her current mailing address and beneficiary information.

SEC. 45. Section 22500 of the Education Code is amended to read:

22500. All persons who were members of the California State Teachers' Retirement System on June 30, 1996, are members of the Defined Benefit Program under the plan.

SEC. 46. Section 22501 of the Education Code is amended to read:

22501. (a) Any person employed to perform creditable service on a full-time basis who is not already a member of the Defined Benefit Program under the plan shall become a member as of the first day of employment, unless excluded from membership pursuant to Section 22601.

(b) Creditable service in more than one position shall not be aggregated for the purpose of determining mandatory membership under this section.

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 47. Section 22502 is added to the Education Code, to read:

22502. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 48. Section 22503 is added to the Education Code, to read:

22503. (a) Any person employed to perform creditable service as a

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substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 49. Section 22504 is added to the Education Code, to read:

22504. (a) Any person employed on a part-time basis who is not already a member of the Defined Benefit Program shall become a member on the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons employed on a part-time basis by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 50. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district, community college district, or a county superintendent to perform service that requires membership in a different public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) A member of the Public Employees' Retirement System who is employed by a school district, community college district, or a county superintendent and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire to perform creditable service. If that election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

SEC. 51. Section 22508.5 of the Education Code is amended to read:

22508.5. (a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement plan employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that require membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the Defined Benefit Program. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the program.

(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage by this plan, may

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elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by this plan pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998.

SEC. 52. Section 22513 of the Education Code is amended to read:

22513. Members of the Defined Benefit Program who elect membership in the Public Employees' Retirement System and have achieved plan vesting according to Section 22156 shall retain the vested rights to survivor and disability benefits under this part until they qualify for the similar benefits in the Public Employees' Retirement System.

SEC. 53. Section 22515 of the Education Code is amended to read:

22515. Persons excluded from membership pursuant to Sections 22601.5, 22602, and 22604 may elect membership in the Defined Benefit Program at any time while employed to perform creditable service subject to coverage under that program. The election shall be in writing on a form prescribed by this system, and shall be filed in the office of this system prior to submission of contributions. The election is irrevocable, and shall remain in effect until the member terminates employment and receives a refund of accumulated retirement 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. 54. Section 22516 of the Education Code is amended to read:

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in the Defined Benefit Program any person employed to perform creditable service at a level that requires mandatory membership in the program for which he or she has the right to elect membership in the program 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 the Defined Benefit Program.

(b) Service performed after becoming a member of another retirement system shall not be credited to the member under this part, nor shall contributions or benefits under this part 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. 55. Section 22600 of the Education Code is repealed.

SEC. 56. Section 22601.5 of the Education Code is amended to read:

22601.5. (a) Any person who is not already a member of the plan who is employed to perform creditable service and whose basis of employment is less than 50 percent of the full-time equivalent for the position is excluded from mandatory membership in the plan.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 57. Section 22602 of the Education Code is amended to read:

22602. (a) Any person who is not already a member of the plan who is employed as a substitute and who performs less than 100 complete days of creditable service in one school district, community college district, or county superintendent's office during the school year is excluded from mandatory membership in the plan.

(b) This section shall not apply to employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 58. Section 22604 of the Education Code is amended to read:

22604. (a) Any person who is not already a member of the plan who is employed on a part-time basis, and who performs less than 60 hours of creditable service in a pay period if employed on an hourly basis, or less than 10 days of creditable service in a pay period if

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employed on a daily basis, in one school district, community college district, or county superintendent's office is excluded from mandatory membership in the plan.

(b) This section shall not apply to employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 59. Section 22650 of the Education Code is amended to read:

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 under this part and establishes and defines the rights of nonmember spouses in the plan under this part.

SEC. 60. Section 22651 of the Education Code is amended to read:

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 under this part. A nonmember spouse who is awarded a separate account of service credit and accumulated retirement contributions or who receives a retirement allowance under this part, or who is awarded an interest in a member's retirement allowance under this part is not a member.

SEC. 61. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the accumulated retirement contributions and service credit under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit or accumulated retirement contributions under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member in the Defined Benefit Program.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse, including, but not limited to, the following:

(1) The right to a retirement allowance under this part.

(2) The right to a refund of accumulated retirement contributions under this part.

(3) The right to redeposit accumulated retirement contributions which are eligible for redeposit under this part by the member under Sections 23200 to 23203, inclusive, and the shares of the member and the nonmember spouse of the eligible redeposit amount.

(4) The right to purchase additional service credit under this part which is eligible for purchase by the member under Sections 22800 to 22810, inclusive, and the shares of the member and the nonmember spouse of the service credit eligible for purchase.

SEC. 62. Section 22653 of the Education Code is amended to read:

22653. (a) The nonmember spouse who is awarded a separate account under this part pursuant to Section 22652 is not a member of the Defined Benefit Program 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 Defined Benefit Program.

SEC. 63. Section 22655 of the Education Code is amended to read:

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 under this part 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 under this part 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 under this part of the retired member.

(c) If the court does not award the entire retirement allowance under this part 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 under this part without change.

(2) The retired member shall cancel the option under which the retirement allowance is modified under this part 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 under this part of the retired member, the option beneficiary, or both.

(3) The retired member shall cancel the option under which the retirement allowance is modified under this part 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 under this part, other than the nonmember spouse, predeceases the retired member, the court shall order the retired member to select a new option beneficiary under this part 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 under this part 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 under this part 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 under this part in the event that accumulated retirement contributions become payable.

SEC. 64. Section 22656 of the Education Code is amended to read:

22656. No judgment or court order issued pursuant to this chapter is binding on the plan with respect to the Defined Benefit Program 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. 65. Section 22657 of the Education Code is amended to read:

22657. (a) The following provisions shall apply to a nonmember spouse as if he or she were a member under this part: 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 under this part that is not explicitly established in Sections 22650 to 22655, inclusive, and Sections 22658 to 22665, inclusive.

SEC. 66. Section 22658 of the Education Code is amended to read:

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 under this part shall not be combined in any way or for any purpose with the accumulated contributions, service credit, and final

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compensation of any other separate account of the nonmember spouse.

(c) 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 under this part because the nonmember spouse is employed or has been employed to perform creditable service subject to coverage under the Defined Benefit Program.

SEC. 67. Section 22659 of the Education Code is amended to read:

22659. Upon being awarded a separate account or an interest in the retirement allowance of a retired member under this part, 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. 68. Section 22660 of the Education Code is amended to read:

22660. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance attributable to the separate account which is unpaid on the date of the death of the nonmember spouse under this part.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance under Section 24300.

SEC. 69. Section 22661 of the Education Code is amended to read:

22661. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to a refund of the accumulated retirement contributions in the account of the nonmember spouse under this part.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain the refund.

(c) The refund under this part 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 under this part and represented by the accumulated retirement contributions when the refund becomes effective.

(e) The nonmember spouse may not cancel a refund under this part after the refund is effective.

(f) The nonmember spouse shall have no right to elect to redeposit the refunded accumulated retirement contributions under this part 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 under this part, 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. 70. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under this part 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 under this part only those accumulated retirement contributions that were previously refunded to

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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 under this part, 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 under this part 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 under this part. 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.

(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 under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 71. Section 22663 of the Education Code is amended to read:

22663. The nonmember spouse who is awarded a separate account under this part 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 under this part, 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

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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 under this part 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 under this part 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. 72. Section 22664 of the Education Code is amended to read:
22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part 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 under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(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 or court order pursuant to Section 22652 was entered.

(c) Upon service retirement at or over normal retirement age under this part, 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 under this part 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 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable 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.

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(d) If the member is or was receiving a disability allowance under this part 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 under the Defined Benefit Program 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 under the Defined Benefit Program, 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 under this part. 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 under this part, 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. 72.5. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited 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. 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, out-of-state 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 under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(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 or court order pursuant to Section 22652 was entered.

(c) Upon service retirement at or over normal retirement age under this part, 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 under this part 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 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable 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 under this part 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 under the Defined Benefit Program 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 under the Defined Benefit Program, 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

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contributions for that service.

SEC. 78. Section 22706 of the Education Code is amended to read:

22706. A member shall not receive credit for service performed while receiving a retirement or disability allowance from the Defined Benefit Program.

SEC. 79. Section 22708 of the Education Code is amended to read:

22708. The calculations of retirement allowances under this part for state employees in the personal leave program shall include credit for service that would have been credited had the employee not been in the personal leave program. The costs that result from the increased service credit shall be paid for by the employer in a manner prescribed by the system.

SEC. 80. Section 22709 of the Education Code is amended to read:

22709. A member shall receive credit under this part for time during which the member is prevented from performing creditable service subject to coverage under the Defined Benefit Program, 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 under the Defined Benefit Program, the system shall give the member four years of service credit under this part.

SEC. 81. Section 22710 of the Education Code is amended to read:

22710. (a) Service shall be credited under this part, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of creditable service and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the creditable compensation paid to the member bears to the compensation earnable by the member.

(b) The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of absence specified in subdivision (a).

SEC. 82. Section 22711 of the Education Code is amended to read:

22711. (a) A member under this part shall be granted service 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 under this Defined Benefit Program in the month prior to commencement of the leave of absence.

(2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(3) The member's employer contributes to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(b) The maximum period of time during which a member may serve as an elected officer and receive service credit pursuant to this section shall not exceed 12 calendar years.

SEC. 83. Section 22712 of the Education Code is amended to read:

22712. A member under this part shall receive credit for time served as an exchange teacher in any location.

SEC. 84. Section 22712.5 of the Education Code is amended to read:

22712.5. All members under this part who are employed by a school district, community college district, or superintendent of schools and who received credit during the school year ending June 30, 1996,

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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. 85. Section 22713 of the Education Code is amended to read:

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 of the Defined Benefit Program 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, in part, on final compensation determined from the compensation earnable the member would have been entitled to 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 under the Defined Benefit Program 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, time 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 at least 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 creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced 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 make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 86. Section 22714 of the Education Code is amended to read:

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 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

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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 under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service and retires for service under the provisions of Chapter 27 (commencing with Section 24201) 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.

(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 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 of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates 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. 87. Section 22715 of the Education Code is amended to read:

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 under this part to members of the Defined Benefit Program, 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

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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 under this part 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 under this part, 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. 88. Section 22716 of the Education Code is amended to read:

22716. Notwithstanding any other provision of law, a member of the Defined Benefit Program 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.

SEC. 89. Section 22718 of the Education Code is amended to read:

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 under this part, 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 Defined Benefit Program.

(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. 90. Section 22721 of the Education Code is amended to read:

22721. Except as provided in Section 22717, no service credit shall be granted under this part 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 under this part shall be withheld from any 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" under this part. 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. 91. Section 22800 of the Education Code is amended to read:

22800. (a) Claims for permissive and additional service credit under this part 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 under this part 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. 92. Section 22802 of the Education Code is amended to read:

22802. (a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

(1) Service as a substitute excluded under Section 22602.

(2) Service performed on a part-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 under the Defined Benefit Program.

(6) Service subject to coverage under the Defined Benefit Program 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 under this part for service performed while excluded from membership under the Defined Benefit Program shall pay the required contributions for all such service.

SEC. 93. Section 22805 of the Education Code is amended to read:

22805. (a) A member may elect to receive credit under this part 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. 94. Section 22806 of the Education Code is amended to read:

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 under this part, of not to exceed four years, for time served of not less than one year, prior to membership in the Defined Benefit Program, in the armed forces of the United

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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 credit under this part 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 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. 95. Section 22807 of the Education Code is amended to read:

22807. (a) A member of the Defined Benefit Program who voluntarily requests or agrees to an extension of his or her original term of enlistment, service, or tour of duty shall not receive credit under this part for time served during the extension of military service after December 31, 1958.

(b) In no event shall a member receive credit for more than four years of military service performed after June 30, 1998, except where otherwise authorized in accordance with Chapter 14.5 (commencing with Section 22850).

SEC. 96. Section 22808 of the Education Code is amended to read:

22808. A member of the Defined Benefit Program shall not be required to pay contributions under this part 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 under the Defined Benefit Program 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 under the Defined Benefit Program 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 under the Defined Benefit Program 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 under the Defined Benefit Program 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).

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SEC. 97. Section 22809 of the Education Code is amended to read:

22809. A member of the Defined Benefit Program may elect to receive credit under this part 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 Defined Benefit Program.

(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. 98. Section 22810 of the Education Code is amended to read:

22810. (a) Any member of the Defined Benefit Program, who was a member of the program on June 30, 1944, may elect to receive credit under this part 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 under the Defined Benefit Program.

(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 the same service in another retirement system.

SEC. 99. Section 22821 of the Education Code is amended to read:

22821. A member's election to purchase out-of-state service credit pursuant to this chapter shall be submitted in writing and shall include information as required by the board.

SEC. 100. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the Defined Benefit Program.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service pursuant to this chapter shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member may make payment in full within 30 days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 101. Section 22850 of the Education Code is amended to read:

22850. (a) The Legislature hereby declares its intent to provide benefits under this part to reemployed members who have been absent from a position of employment subject to coverage under the Defined Benefit Program to perform service in the uniformed services of the United States in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with

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Section 4301) of Title 38 of the United States Code).

(b) The system shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a member is absent from a position of employment for the purpose of an examination to determine the fitness of the member to perform any duty.

(d) "Uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) Except as provided in Section 22851, no benefit shall accrue during the period of service in the uniformed services if the member does not return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code.

SEC. 102. Section 22851 of the Education Code is amended to read:

22851. The right to pension benefits under this part of a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, and is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be determined under this section.

(a) (1) A member shall be treated as not having incurred a break in service by reason of that member's eligible period or periods of service in the uniformed services.

(2) Each eligible period of service served by a member in the uniformed services shall, upon return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, be deemed to constitute service with the employer or employers toward plan vesting and eligibility for membership in the Defined Benefit Program.

(3) A member who returns to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall not be entitled to any benefits under this part in respect of service in the uniformed services to which the member would not otherwise have been entitled had the member remained continuously employed and not undertaken such service in the uniformed services.

(b) For purposes of calculating benefits, a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall be entitled to service credit under this part for the eligible period of service in the uniformed services upon his or her payment of the member contributions required under Section 22901 that otherwise would have been due for such period of service had the member remained continuously employed and not undertaken such service in the uniformed services. No such payment of member contributions may exceed the amount the member would have been required to contribute under this part had the member not served in the uniformed services and had remained continuously employed by the employer throughout the eligible period of service in the uniformed services. If a member fails to remit the member contributions that would have been required under Section 22901 in respect of the eligible period of service in the uniformed services no service credit shall be provided under this part for the period to which the omitted contributions relate.

(c) Any payment of member contributions to the Defined Benefit

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Program in this section shall be made by the member during the period beginning with the date of return to employment and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any payment of member contributions to the Defined Benefit Program in this section by a member who returned to employment prior to January 1, 1997, and qualifies for benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code), shall be made by the member during the period beginning with the date of notification of eligibility by the employer to the system and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any subsequent request to purchase this service shall be subject to the provisions of Chapter 14 (commencing with Section 22800). If all contributions due under this part are not paid to the plan with respect to the Defined Benefit Program within the specified repayment period and in accordance with subdivision (b) of Section 22851 the contributions shall be returned to the member at the end of the repayment period. Interest on member contributions made for the eligible period of service in the uniformed services shall not be credited under this part until after the contributions due are paid and then only prospectively to the member's account in accordance with Section 22216.

SEC. 103. Section 22852 of the Education Code is amended to read:

22852. (a) An employer reemploying a member of the Defined Benefit Program with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be liable to the plan for the employer contributions under this part provided that employer was the last employer employing the member immediately prior to the period served by the member in the uniformed services.

(b) For purposes of determining the amount of that liability under this part and any obligation to the plan with respect to the Defined Benefit Program, interest shall not be included in the liability to the plan.

(c) Subject to subdivision (e), the employer shall pay the employer contributions for the eligible period of service in the uniformed services, that would have been required under Sections 22950 and 22951 had the member remained continuously employed during that period of eligible service in the uniformed services.

(d) The employer shall not be liable for employer contributions under this part for the eligible period of service in the uniformed services to the extent that the member fails to remit the member contributions for such period.

(e) The employer shall provide information regarding the reemployment of a member who is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United State Codes on a form prescribed by the system within 30 days of the date of reemployment.

(f) Employers shall remit to the plan with respect to the Defined Benefit Program the employer contributions required under subdivision (c) within 60 working days of the date the system notifies the employer of the amount of contributions due with respect to the member who elects to remit the member contributions for the eligible period of service in the uniformed services.

(g) If the employee does not comply with subdivision (b) of Section 22851 within the time period specified, the employer contributions that were remitted for that period shall be adjusted pursuant to Section 23008.

SEC. 104. Section 22853 of the Education Code is amended to read:

22853. For purposes of computing an employer's contributions for the eligible period of service or the member's contributions under this part, the employee's compensation earnable during the period shall be computed as follows:

(a) The compensation earnable the member would have received for

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the eligible period of service.

(b) In the event the compensation earnable is not reasonably certain, the employer's contributions and member's contributions shall be based on the member's average compensation earnable during the 12-month period immediately preceding the eligible period of service in the uniformed services or, if shorter, the period of employment immediately preceding that period of service.

SEC. 105. Section 22854 of the Education Code is amended to read:

22854. A reemployed member who has been absent from a position of employment subject to coverage under the Defined Benefit Program to perform service in the uniformed services, pursuant to Section 22850, for a period in excess of five years shall not be entitled to service credit or credit for plan vesting purposes under this part, except where the service in the uniformed services has exceeded five years for the following reasons:

(a) The member is required to serve beyond five years to complete an initial period of obligated service.

(b) The member was unable to obtain orders releasing the member from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the member.

(c) The member served in the uniformed services as required pursuant to Section 270 of Title 10 of the United States Code, Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining.

(d) The member is ordered to do any of the following:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673(b), 673(c), or 688 of Title 10 of the United States Code or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673(b) of Title 10 of the United States Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a member of the National Guard under Chapter 15 (commencing with Section 331) of Title 10 of the United States Code or under Section 3500 or 8500 of Title 10 of the United States Code.

SEC. 106. Section 22855 of the Education Code is amended to read:

22855. A member of the Defined Benefit Program shall have no right to the benefits under this part otherwise accorded under this chapter in respect of service in the uniformed services upon the occurrence of any of the following events:

(a) A separation of the member from the uniformed service with a dishonorable or bad conduct discharge.

(b) A separation of the member from the uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the secretary concerned.

(c) A dismissal of the member permitted under Section 1161(a) of Title 10 of the United States Code.

(d) A dropping of the member from the rolls pursuant to Section 1161(b) of Title 10 of the United States Code.

SEC. 107. Section 22856 of the Education Code is amended to read:

22856. No provision of this chapter shall apply to the extent it would require any action to be taken that would cause the plan or its members under this part to incur adverse tax consequences under the Internal Revenue Code of 1986 (Title 26 of the United States Code).

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SEC. 108. Section 22900 of the Education Code is amended to read:

22900. Acceptance of employment to perform creditable service subject to coverage under the Defined Benefit Program is consent to have contributions deducted from compensation.

SEC. 109. Section 22901 of the Education Code is amended to read:

22901. Each member of the Defined Benefit Program shall contribute to the retirement fund an amount equivalent to 8 percent of the member's creditable compensation.

SEC. 110. Section 22902 of the Education Code is amended to read:

22902. Members' accumulated retirement contributions and those other contributions required for credited service under this part shall be in the amounts required based on rates of contribution applicable for the years included in that period.

SEC. 111. Section 22903 of the Education Code is amended to read:

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 contributions required to be paid under this part by a member of the Defined Benefit Program, provided that the contributions are deducted from the creditable compensation of the member.

SEC. 112. Section 22904 of the Education Code is amended to read:

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the contributions required to be paid under this part by a state employee who is a member of the Defined Benefit Program, provided that the contributions are deducted from the creditable compensation of the member. The pickup 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 the account of the member.

SEC. 113. Section 22906 of the Education Code is amended to read:

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 under this part, the board shall refund the contributions as it may allocate to the time.

SEC. 114. Section 22907 of the Education Code is amended to read:

22907. Accumulated retirement contributions credited under this part 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 to the plan under this part plus regular interest from the end of the school year in which the contributions were underpaid to the date of payment.

SEC. 115. Section 22950 of the Education Code is amended to read:

22950. Employers shall contribute monthly to the Teachers' Retirement Fund 8 percent of the creditable compensation upon which members' contributions under this part are based.

SEC. 116. Section 22951 of the Education Code is amended to read:

22951. In addition to any other contributions required by this

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part, employers shall contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based.

SEC. 117. Section 22951.5 of the Education Code is amended to read:

22951.5. In addition to any other contributions required by this part, if the board determines that the Supplemental Benefit Maintenance Account will not have sufficient funds to make the maximum payment under this part pursuant to Section 24417, the board may increase the employer contribution rate as provided in Section 24416.

SEC. 118. Section 22952 of the Education Code is amended to read:

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 creditable compensation upon which members' contributions under this part 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 compensation 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. 119. Section 22954 of the Education Code is amended to read:

22954. (a) In addition to any other contributions required by this part, on July 1, 1990, and on July 1 of each subsequent year, the Controller, subject to Section 24414, shall transfer, based on estimated payroll data provided by the board, the following percentages of the total of the prior year creditable compensation upon which members' contributions under this part are based to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund, for the purpose of funding the supplemental payments authorized under Section 24415:

- | | |
|--|-------|
| (1) For the fiscal year ending June 30, 1991 | 0.50% |
| (2) For the fiscal year ending June 30, 1992 | 1.00% |
| (3) For the fiscal year ending June 30, 1993 | 1.50% |
| (4) For the fiscal year ending June 30, 1994 | 2.00% |
| (5) For the fiscal year ending June 30, 1995, and each
fiscal year thereafter | 2.50% |

These transfers shall be based upon estimated payroll data provided to the Director of Finance by the board and shall be adjusted in January of that same fiscal year to reflect actual payroll data.

(b) The board may deduct from the annual state contributions made pursuant to this section an amount necessary for the administrative expenses to implement Section 24415, subject to the annual Budget Act.

(c) Notwithstanding any other provision of law, it is the intent of the Legislature, in establishing the Supplemental Benefit Maintenance Program embodied in this section and Sections 22400, 24414, and 24415, to manifest a contractually enforceable promise to repay the Teachers' Retirement Fund in full, with interest, as provided in subdivision (b) of Section 24414, for all transfers or advances made from the Teachers' Retirement Fund pursuant to subdivision (a) of Section 24414 and for any funds appropriated by

Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments.

(d) Except as provided in subdivision (c), the Legislature reserves the right to reduce or terminate the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section and to reduce or terminate the distributions required by Section 24415. It is intended that any legislative reduction or termination of the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section or any reduction or termination of distributions required by Section 24415, shall be effectuated by a separate statute rather than by the annual Budget Act.

SEC. 120. Section 22956 of the Education Code is amended to read:

22956. Employer and state contributions made to the plan under this part are to finance the employer obligation for all members of the Defined Benefit Program and, therefore, shall not be credited to the individual member accounts. 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 with respect to the Defined Benefit Program. Under no circumstances shall employer contributions be allocated or awarded to individual members, their spouses, or beneficiaries.

SEC. 121. Section 23003 of the Education Code is amended to read:

23003. (a) If a county superintendent of schools or employing agency other than a school district or community college district fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions under this part until the contributions have been received by the system.

SEC. 122. Section 23005 of the Education Code is amended to read:

23005. Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the compensation being reported under this part was earned, and are delinquent 15 calendar days immediately thereafter.

SEC. 123. Section 23006 of the Education Code is amended to read:

23006. (a) If a county superintendent of schools or employing agency other than a school district or community college district submits monthly reports late or in unacceptable form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required under this part by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars (\$500), whichever is greater.

SEC. 124. Section 23101 of the Education Code is amended to read:

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 under this part 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. 125. Section 23102 of the Education Code is amended to read:

23102. Prior to the system paying a refund of accumulated retirement contributions under this part, the employer shall certify that the member's employment has been terminated.

SEC. 126. Section 23103 of the Education Code is amended to read:

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 credited service under the Defined Benefit Program to qualify for service retirement under this part.

SEC. 127. Section 23104 of the Education Code is amended to read:

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 under this part.

(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 under this part.

(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 Defined Benefit Program with all the rights and privileges under this part restored.

(d) For refunds involving direct trustee-to-trustee transfers, if the member returns the warrant drawn to the trustee of the 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 Defined Benefit Program with all the rights and privileges under this part restored.

SEC. 128. Section 23106 of the Education Code is amended to read:

23106. If a member ceases to be entitled to credit for service in the Defined Benefit Program 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. 129. Section 23107 of the Education Code is amended to read:

23107. Any member of the Defined Benefit Program without terminating membership in the program and upon making application on forms provided by the system shall be paid a refund of the accumulated annuity deposit contributions under this part.

SEC. 130. Section 23200 of the Education Code is amended to read:

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the Defined Benefit Program, 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 under this part.

(b) For time prior to July 1, 1944, regular interest shall be at 21/2 percent compounded annually.

(c) If a nonmember spouse, as defined in Section 22651, withdraws accumulated contributions in accordance with Section 22661, the member may redeposit a sum equal to those contributions pursuant to subdivision (a), providing he or she is not receiving an allowance under Chapter 26 (commencing with Section 24100) or Chapter 27 (commencing with Section 24201).

SEC. 131. Section 23202 of the Education Code is amended to read:

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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 under this part.

(b) An election to redeposit refunded accumulated retirement contributions shall be considered as an election to repay all accumulated retirement contributions previously refunded under the provision of this chapter.

(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 canceled, the member may at any time prior to the effective date of retirement under this part, 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. 132. Section 23203 of the Education Code is amended to read:

23203. Redeposit of refunded accumulated retirement contributions under this part 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. 132.5. Section 23203 of the Education Code is amended to read:

23203. Redeposit of refunded accumulated retirement contributions under this part shall be made in one sum, or in not more than 120 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars (\$25).

SEC. 133. Section 23300 of the Education Code is amended to read:

23300. (a) A member of the Defined Benefit Program 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 under this part 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. 134. Section 23301 of the Education Code is amended to read:

23301. A corporation, trust, eleemosynary, parochial institution, or public entity may be designated as a beneficiary under this part. However, they may not be designated as option beneficiaries.

SEC. 135. Section 23302 of the Education Code is amended to read:

23302. Payment under this part 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. 136. Section 23303 of the Education Code is amended to read:

23303. (a) If 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

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its discretion all or a portion of any amount payable under this part, 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. 137. Section 23304 of the Education Code is amended to read:

23304. If no beneficiary designation is in effect on the date of death, any benefit payable under this part 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. 138. Section 23700 of the Education Code is amended to read:

23700. (a) New survivor benefit and disability retirement programs that are provided under the Defined Benefit Program pursuant to Chapter 23 (commencing with Section 23850) and Chapter 26 (commencing with Section 24100), are effective as of October 16, 1992. All members of the Defined Benefit Program with an effective date of membership in the program on or after October 16, 1992, shall be covered by these survivor benefit and disability retirement programs under this part:

(b) The purpose of this chapter is to set forth the criteria for granting certain members of the Defined Benefit Program, 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. 139. Section 23800 of the Education Code is amended to read:

23800. (a) This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable under this part 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 under this part 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. 140. Section 23801 of the Education Code is amended to read:

23801. (a) A death payment of no less than five thousand dollars (\$5,000) shall be paid to the beneficiary upon receipt of proof of death of a 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) While disabled, if the disability had been continuous from the last day for which compensation had been paid.

(3) Within four months after termination of service or termination of employment, whichever occurs first.

(4) Within four months after termination of a disability allowance if no service was performed after the termination.

(5) 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 reinstatement from service retirement pursuant

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to Section 24208.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index and adopt any adjusted amount as a plan amendment.

(d) A beneficiary may waive his or her right to the death payment in accordance with the requirements established by the system.

SEC. 140.5. Section 23805 of the Education Code is amended to read:

23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the deceased member's surviving spouse who has financial responsibility for at least one dependent child, an amount equal to 40 percent of the member's final compensation or the disabled member's projected final compensation plus 10 percent of the member's final compensation or the disabled member's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each dependent child, an amount equal to 10 percent of the deceased member's final compensation or the disabled member's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five dependent children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at age 60 years or over if there is no dependent child, an allowance equal to the amount that would have been payable to the spouse as beneficiary under Option 3 as provided in Section 24300, computed on the member's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave credit and the calculation of that service credit shall be determined pursuant to Section 22717.

(d) If there is neither surviving spouse nor dependent child, to the dependent parent, age 60 years or over, an allowance equal to the amount that would have been payable to the dependent parent as beneficiary under Option 3 as provided in Section 24300 computed on the member's projected final compensation and projected service to normal retirement age. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave and the calculation of that service credit shall be determined pursuant to Section 22717. If there are two dependent parents, only one family allowance shall be payable under this subdivision and that allowance shall be computed on the assumption that the younger parent is the option beneficiary and the allowance shall be divided equally for as long as there are two dependent parents. Thereafter, the full allowance shall be payable to the surviving dependent parent.

(e) The surviving spouse or dependent parent may elect to begin receiving the family allowance payable under subdivision (c) or (d) immediately upon the later of the death of the member or when there is no dependent child, or to defer receipt of the allowance to the date the surviving spouse or dependent parent attains age 60 years. If allowance payments commence prior to the date the surviving spouse or dependent parent attains age 60 years, the allowance payable shall be actuarially reduced.

(f) If there is no dependent child, a surviving spouse or dependent parent or parents may elect, prior to receipt of the first payment under subdivision (c) or (d), to receive the member's accumulated retirement contributions in a lump sum subject to a reduction for any disability allowance or family allowance payments previously made.

SEC. 141. Section 23850 of the Education Code is amended to read:

interest on the unpaid balance calculated from the date the last allowance payment was made to the date the balance is paid.

SEC. 145. Section 24001 of the Education Code is amended to read:

24001. (a) A member may apply for a disability allowance under the Defined Benefit Program 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 performance of service subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed 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 neither attained normal retirement age, nor possesses sufficient unused sick leave days to receive creditable compensation 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 Defined Benefit Program commenced and remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability allowance under this part if the reason that the member is credited with less than four years of actual service performed subject to coverage under the Defined Benefit Program is due to an on-the-job injury or a disease that occurred while the member was employed and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member under this part who has less than five years of credited service to a disability allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

(d) A member shall not be eligible for disability under the Defined Benefit Program 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. 146. Section 24001.5 of the Education Code is amended to read:

24001.5. A member shall not be eligible for disability under the Defined Benefit Program 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. 147. Section 24002 of the Education Code is amended to read:

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application under this part 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:

(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 of service for which compensation is payable to the member.

(c) While the member is on a leave of absence without

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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 under this part 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. 150. Section 24005 of the Education Code is amended to read:

24005. (a) A disability allowance under this part 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 creditable 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 under the Defined Benefit Program at the time the disability allowance is approved under this part, 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. 151. Section 24006 of the Education Code is amended to read:

24006. Upon qualification for disability under this part, a member shall receive an annual allowance equal to 50 percent of final compensation payable in monthly installments. The allowance shall be increased by 10 percent of final compensation for each dependent child, to a maximum of four dependent children.

SEC. 152. Section 24010 of the Education Code is amended to read:

24010. Allowances payable under Sections 24006 and 24007 shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems for the same impairment or impairments that qualify the member for a disability allowance under this part.

SEC. 153. Section 24011 of the Education Code is amended to read:

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 treatment program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to follow the treatment program, 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. 154. Section 24013 of the Education Code is amended to read:

24013. The board may require any member receiving a disability allowance under this part to undergo medical examination at such

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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. 155. Section 24014 of the Education Code is amended to read:

24014. A disabled member may be employed to perform creditable service subject to coverage under the Defined Benefit Program. 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 Defined Benefit Program.

SEC. 156. Section 24015 of the Education Code is amended to read:

24015. Notwithstanding Section 22132, if a person who begins to receive a disability allowance under this part 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 66 2/3 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. 157. Section 24016 of the Education Code is amended to read:

24016. (a) For any one or more months in which the total of a disabled member's allowance under this part, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 100 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

(b) This action shall not apply to disabled members who have allowances terminated under Section 24015 or who are enrolled in an approved rehabilitation program.

SEC. 158. Section 24017 of the Education Code is amended to read:

24017. If a person who began receiving a disability allowance under this part after June 30, 1972, is enrolled in an approved rehabilitation program and the total of the disability allowance, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 50 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

SEC. 159. Section 24018 of the Education Code is amended to read:

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 under

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this part 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. 160. Section 24100 of the Education Code is amended to read:

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 under this part on and after October 16, 1992, all persons who become members of the plan on and after October 16, 1992, subsequent to a refund, and to all members as of October 15, 1992, who elect under this part, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered by the disability retirement program set forth in this chapter.

SEC. 161. Section 24101 of the Education Code is amended to read:

24101. (a) A member may apply for a disability retirement under this part 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 under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed 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 Defined Benefit Program commenced and that remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) 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 Defined Benefit Program and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member who has less than five years of credited service to a disability retirement allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

(d) A member shall not be eligible for disability retirement from the Defined Benefit Program 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. 163. Section 24102 of the Education Code is amended to read:

24102. The board may authorize payment of a disability retirement allowance under this part 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:

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(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 under the Defined Benefit Program, 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 Defined Benefit Program commenced and which remains substantially unchanged at the time of application.

SEC. 164. Section 24103 of the Education Code is amended to read:

24103. (a) The member shall provide medical documentation substantiating the impairment qualifying the member for the disability retirement under this part.

(b) On receipt of an application for disability retirement under this part, 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 under this part 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 under this part 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 under this part.

(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 under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability retirement allowance application under this part within 30 days after that determination

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is made by the system.

SEC. 165. Section 24104 of the Education Code is amended to read:

24104. In cases of a member's willful substance abuse or if the board determines a member who qualifies for disability retirement under this part 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. 166. Section 24105 of the Education Code is amended to read:

24105. (a) A disability retirement allowance under this part 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 under this part 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 under this part shall be rejected.

(c) If the member is employed to perform creditable service subject to coverage under the Defined Benefit Program 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. 167. Section 24106 of the Education Code is amended to read:

24106. Upon retirement for disability pursuant to this chapter, a member under this part shall receive a retirement allowance that shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each dependent child, up to a maximum of 40 percent of final compensation.

If there are more than four dependent children, they shall share equally in the maximum allowance of 40 percent. A dependent child may waive his or her right to his or her portion of the allowance in accordance with procedures established by the system.

(c) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

SEC. 168. Section 24107 of the Education Code is amended to read:

24107. A member retired for disability under this part may elect an option pursuant to Section 24301 to modify the disability

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retirement allowance payable pursuant to subdivision (a) of Section 24106.

SEC. 169. Section 24108 of the Education Code is amended to read:

24108. A retirement allowance payable pursuant to Section 24106 that includes a child's portion shall be reduced when a dependent child becomes ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the retired member's allowance under this part shall not be less than it could have been if there had never been a dependent child.

SEC. 170. Section 24109 of the Education Code is amended to read:

24109. Retirement allowances payable pursuant to subdivision (a) of Section 24106 shall be reduced by an amount equal to the unmodified benefits paid or payable under a workers' compensation program for the same impairment or impairments that qualify the member for a disability retirement allowance under this part.

SEC. 171. Section 24110 of the Education Code is amended to read:

24110. A member who qualifies for disability retirement under this part 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. 172. Section 24111 of the Education Code is amended to read:

24111. (a) A member who qualifies for disability retirement under this part 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 under this part 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. 173. Section 24112 of the Education Code is amended to read:

24112. The board may require a member receiving a disability retirement allowance under this part 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,

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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. 174. Section 24113 of the Education Code is amended to read:

24113. A member retired for disability under this part may be employed to perform creditable service subject to coverage under the Defined Benefit Program. 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 under this part.

SEC. 175. Section 24114 of the Education Code is amended to read:

24114. (a) A member retired for disability under this part may be employed or self-employed in any capacity, notwithstanding Section 22132, but shall not make contributions to the retirement fund with respect to the Defined Benefit Program or accrue service credit under this part based on earnings from any employment.

(b) A member retired for disability under this part 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 under this part 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 under this part 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 under this part 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 under this part who began receiving a disability retirement allowance prior to October 16, 1992.

SEC. 176. Section 24116 of the Education Code is amended to read:

24116. A member retired for disability under this part whose last employment was in the California State University, as a member of the Defined Benefit Program 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. 177. Section 24117 of the Education Code is amended to read:

24117. (a) A member retired for disability under this part may terminate the disability retirement allowance upon written request to the system.

(b) If a member retired for disability under this part is determined by the board to no longer be eligible to receive a

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disability retirement allowance pursuant to this chapter, the disability retirement allowance shall be terminated.

SEC. 178. Section 24118 of the Education Code is amended to read:

24118. (a) Upon termination of a disability retirement allowance that was payable pursuant to this chapter, the individual account of the member under this part shall be credited with the amount of the member's accumulated retirement contributions as they were on the effective date of disability retirement, less the sum of all payments made under subdivisions (a) and (b) of Section 24106. The reduction shall not be greater than the total of the accumulated retirement contributions.

(b) Upon the termination of a disability retirement, the accumulated annuity deposit contribution account of the member shall be credited with the amounts of those contributions as they were on the date the annuity became payable under this part because of that retirement less the sum of all payments made pursuant to subdivision (c) of Section 24106.

SEC. 179. Section 24119 of the Education Code is amended to read:

24119. When a member retired for disability under this part 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. 180. Section 24203 of the Education Code is amended to read:

24203. (a) A member who has 30 years of credited service under this part 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 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. 181. Section 24204 of the Education Code is amended to read:

24204. A service retirement allowance under this part 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. 182. Section 24205 of the Education Code is amended to read:

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24205. (a) The board shall, in consultation with members, develop, adopt, and implement an additional early retirement alternative under this part 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 Defined Benefit Program.

(c) The additional employer contributions required, if any, under this section shall be computed as a level percentage of creditable 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. 183. Section 24206 of the Education Code is amended to read:

24206. The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit contributions payable for service retirement under this part, shall not be less than ten dollars (\$10) per month multiplied by the years of credited service. This guaranteed amount 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 is 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 will elapse until the member would have reached age 60 years.

SEC. 184. Section 24207 of the Education Code is amended to read:

24207. If a retired member terminates a service retirement allowance and subsequently retires under this part, the minimum retirement allowance shall be the allowance provided by Section 24206.

SEC. 185. Section 24208 of the Education Code is amended to read:

24208. A member retired for service under this part may terminate the retirement allowance upon written request to the system.

SEC. 186. Section 24209 of the Education Code is amended to read:

24209. Upon retirement for service under this part 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

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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. 187. Section 24210 of the Education Code is amended to read:

24210. Upon retirement for service under this part 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. 188. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

SEC. 189. Section 24212 of the Education Code is amended to read:

24212. If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage by the plan, the service retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

SEC. 190. Section 24213 of the Education Code is amended to read:

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24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 191. Section 24214 of the Education Code is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member 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 under this part 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 under this part shall not be required to reinstate for performing the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section shall not be applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part 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.

(g) If a member retired for service under this part earns compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The amendments to this section enacted during the 1995-96

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Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 192. Section 24215 of the Education Code is amended to read:

24215. A member retired for service under this part whose last employment was in the California State University, as a member of the Defined Benefit Program 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. 193. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part 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 under this part 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 of the employer.

(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 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in the district from which he or she retired.

(e) This section shall become operative on July 1, 1995, and shall remain in effect only until July 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2003, deletes or extends that date.

SEC. 194. Section 24216.5 of the Education Code is amended to read:

24216.5. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before July 1, 1998.

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(2) The member retired for service is employed by a school district to provide:

(A) Direct classroom instruction to students in newly created grades kindergarten through 3; or

(B) Is temporarily filling a position in grades 4 through 12 that was vacated due to a teacher transferring to a classroom in grades kindergarten through 3 within the same district that was created to meet the objectives of the Class Size Reduction Program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service shall not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) Upon written request to the system, a member who retired for service under this part with an effective date on or before July 1, 1996, and who, between July 1, 1996, and 60 days following the effective date of this section, terminated his or her service retirement allowance and returned to employment that qualifies for the exemption specified in subdivision (a) may cancel his or her reinstatement and return to status as a member retired for service as if the service retirement allowance had not been terminated.

(d) This section shall not apply to the compensation earned for creditable service performed by a member retired for service for a county office of education or a community college district.

(e) This section shall become operative on July 1, 1996, and shall remain in effect only until July 1, 2002, and as of that date is repealed unless a later enacted statute which is enacted before July 1, 2002, deletes or extends that date.

SEC. 195. Section 24217 of the Education Code is amended to read:

24217. A person who was a member under this part on June 30, 1972, and had five or more years of service and who had attained age 55 years, shall have the option of receiving the allowance payable under Section 14245, as it read on that date in lieu of the allowance payable under subdivision (a) of Section 24202.

SEC. 196. Section 24301 of the Education Code is amended to read:

24301. (a) A member who has filed an application under this part 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

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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. 197. Section 24308 of the Education Code is amended to read:

24308. (a) The election of an option as provided in Section 24307 shall preclude the payment of a family allowance to any beneficiary under this part.

(b) The preretirement election of an option made by the member pursuant to Section 24307 shall be voided by the board as of the effective date of an approved disability retirement under this part. Members receiving a disability retirement allowance pursuant to Chapter 26 (commencing with Section 24100) may not file an election of option as provided in Section 24307.

(c) The election of an option as provided in Section 24307 shall preclude the payment of a survivor benefit allowance pursuant to Chapter 23 (commencing with Section 23850) and shall preclude the payment of the remaining balance of the member's accumulated retirement contributions prior to the death of the option beneficiary.

SEC. 198. Section 24309 of the Education Code is amended to read:

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 under this part or during the period between termination of the retirement allowance pursuant to Section 24208 or 24117 and the effective date of the subsequent retirement under this part. 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 under this part shall be subject to the allowance reduction prescribed in this section.

SEC. 199. Section 24311 of the Education Code is amended to read:

24311. (a) A member who has a preretirement election of an option in effect on December 31, 1990, may change his or her preretirement election of Option 2, Option 3, Option 4, or Option 5, to either Option 6 or Option 7 without the allowance reduction prescribed in Sections 24309 and 24310, provided the change is made on or after January 1, 1991, and prior to the earlier of January 1, 1992, or the member's retirement under this part.

(b) If the member elects to change his or her option under this section, then the member shall retain the same option beneficiary as named in the prior preretirement election. The election to change the preretirement election under this section shall be void if not received in the system's office in Sacramento at least 30 days prior to the death of the option beneficiary.

SEC. 200. Section 24400 of the Education Code is amended to read:

24400. The Legislature recognizes that inflation erodes the purchasing power of benefits paid under the plan under this part. It is the intent of the Legislature to understand the degree of erosion of these benefits. The board shall report to the Governor and

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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 Defined Benefit Program. The board shall indicate the amount of supplementary increases in retirement allowances required to preserve the purchasing power of benefits provided by the Defined Benefit Program. The board shall also determine and report on the increases.

SEC. 201. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and beneficiaries under this part. The amount available for distribution in any

fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 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 and Section 24415.

(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 and Section 24415, 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 benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(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, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions 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 Section 22140 and 22141.

SEC. 202. Section 24505 of the Education Code is amended to read:

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 this plan.

SEC. 203. Section 24600 of the Education Code, as added by Section 36 of Chapter 1165 of the Statutes of 1996, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the

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event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(1) Until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is eligible as a full-time student to receive a child's portion of an allowance shall continue to be eligible for a child's portion until the person attains 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age.

(2) Notwithstanding subdivision (e) of Section 22123, until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is not eligible as a full-time student to receive a child's portion of an allowance, may return to school on a full-time basis on or after January 1, 1997, and become eligible for a child's portion from the date of return to full-time student status until 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age. No benefits shall be payable under this paragraph for a person who does not return to school as a full-time student prior to attaining 22 years of age.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100), not later than April 1 of the calendar year following the later of both of the following:

(A) The calendar year in which the member attains age 70 1/2 years.

(B) The calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains age 70 1/2 years; or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option

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beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of the termination of employment subject to coverage under the Defined Benefit Program or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 204. Section 24600 of the Education Code, as added by Section 36.5 of Chapter 1165 of the Statutes of 1996, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 1/2 years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year

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following the later of (A) the calendar year in which the member attains 70 1/2 years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the plan or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 205. Section 24603 of the Education Code is amended to read:

24603. If any estimated allowances under this part 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. 206. Section 24604 of the Education Code is amended to read:

24604. (a) A retired member, disabled member, or beneficiary under this part 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 under this part 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 under this part 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 under this part shall fully discharge the board, system, and plan from any claim resulting from actions taken under this section.

SEC. 207. Section 24605 of the Education Code is amended to read:

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 under this part, has been lost or that payment transmitted electronically cannot be 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. 208. Section 24606 of the Education Code is amended to read:

24606. (a) Whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under this plan under this part 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,

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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 with respect to the Defined Benefit Program.

(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. 209. Section 24607 of the Education Code is amended to read:

24607. Any warrant in an amount less than two thousand dollars (\$2,000) paid by the system under this part, 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. 210. Section 24608 of the Education Code is amended to read:

24608. (a) Persons entitled to receive allowances under the plan under this part 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 to the credit of the Defined Benefit Program.

SEC. 211. Section 24609 of the Education Code is amended to read:

24609. Any allowance payable under this part 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 option beneficiary entitled to payment in accordance with an option elected 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 elected an option.

SEC. 212. Section 24610 of the Education Code is amended to read:

24610. Any disability allowance under this part 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 under this part or, if none, to the beneficiary entitled to receive the death payment under this part.

SEC. 213. Section 24612 of the Education Code is amended to read:

24612. (a) If any person entitled to a benefit from the plan under this part 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 under this part.

SEC. 214. Section 24613 of the Education Code is amended to read:

24613. (a) Payment pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons under this part constitutes a complete discharge and release of the board, system, and plan from liability for that payment.

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(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. 215. Section 24615 of the Education Code is amended to read:

24615. If the board determines that contributions are due the system under this part 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. 216. Section 24617 of the Education Code is amended to read:

24617. (a) To recover an amount overpaid under this part, 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. 217. Section 24618 of the Education Code is amended to read:

24618. Losses or gains resulting from overpayment or underpayment of contributions or other amounts under this part within the limits set by the State Board of Control for automatic writeoff, and losses or gains in greater amounts specifically approved for writeoffs by the State Board of Control, shall be debited or credited, as the case may be, to the appropriate reserve in the retirement fund.

SEC. 218. Section 24619 of the Education Code is amended to read:

24619. The system shall annually report to the board the following information:

(a) The amount of underpayment made to recipients under this part.

(b) The amount to be recovered because of overpayments and the number of overpayments under this part.

(c) The actions taken by the board and the system to reduce the number and amount of overpayments and underpayments under this part.

SEC. 219. Section 24700 of the Education Code is amended to read:

24700. On July 1, 1972, and thereafter all persons who first enter employment in the San Francisco Unified School District or the San Francisco Community College District to perform creditable service subject to coverage under the Defined Benefit Program are members of the plan 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. 220. Section 24701 of the Education Code is amended to read:

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 Plan under this part 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 22121.

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SEC. 221. Section 24702 of the Education Code is amended to read:

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 under the Defined Benefit Program 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 Program, 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 unmodified allowance.

SEC. 222. Section 24703 of the Education Code is amended to read:

24703. Persons who select to be covered only by the Defined Benefit Program 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 Program.

SEC. 223. Section 24704 of the Education Code is amended to read:

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 Program after June 30, 1972.

(b) Persons who were members of both the San Francisco system and the Defined Benefit Program 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 Program, but not both, provided the person qualifies for and redeposits prior to retirement.

SEC. 224. Section 24750 of the Education Code is amended to read:

24750. 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 have former Permanent Fund contributions only on deposit related to former local system service shall have those accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit the contributions required to bring the account into full balance with regular interest prior to retirement under this part.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

SEC. 225. Section 24751 of the Education Code is amended to read:

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 with respect to the Defined Benefit Program, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System with respect to the Defined

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Benefit Program, 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 under this part. The redeposit shall be made in a lump sum or by installment payments as specified by the chief executive officer.

SEC. 226. Section 24950 of the Education Code is amended to read:

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 under this part 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 under this part. 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. Employer contributions made under this section are excluded from the definition of creditable compensation as provided in Section 22119.2.

(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. 227. Section 24951 of the Education Code is amended to read:

24951. If the rate of participation in the annuity contract and custodial account is less than 2 percent of active members in the Defined Benefit Program 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. 228. Section 25000 of the Education Code is amended to read:

25000. (a) The board may develop one or more deferred compensation plans under Section 457 of the Internal Revenue Code

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which an employer may choose to establish and offer to its employees who are members of the plan under this part or Part 14 (commencing with Section 26000).

(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 plan under this part or Part 14 (commencing with Section 26000).

(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. 229. Section 26001 of the Education Code is amended to read:

26001. The design and administration of the plan, including the Cash Balance Benefit Program, shall comply with the applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code. The Teachers' Retirement Board may amend the plan to comply with the applicable federal laws and regulations to the extent permitted by law, to establish or revise the minimum interest rate, to declare additional earnings credit, to declare additional annuity credit, and to adopt and amend actuarial assumptions for all purposes under the plan.

SEC. 230. Section 26002 of the Education Code is amended to read:

26002. The Cash Balance Benefit Program shall be administered by the Teachers' Retirement Board with all of the powers, responsibilities and duties for administration of the plan set forth in Chapter 3 (commencing with Section 22200) through Chapter 7 (commencing with Section 22375) of Part 13. In administering the plan, the board and its officers and employees of the system shall exercise their fiduciary duties set forth in Chapter 4 (commencing with Section 22250) of Part 13.

SEC. 231. Section 26102 of the Education Code is amended to read:

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26102. "Actuary" means a person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields who has been appointed by the board for the purpose of actuarial services required under this part.

SEC. 232. Section 26113 of the Education Code is amended to read:

26113. (a) "Creditable Service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupational programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section.

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.

(8) Services as a school librarian.

(9) The work of county and district superintendents and other employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified.

SEC. 233. Section 26117 of the Education Code is amended to read:

26117. "Disability date" means the date the benefit becomes payable to a participant who has applied for a disability benefit from the plan under this part and has been determined to have a total and permanent disability.

SEC. 234. Section 26119 of the Education Code is amended to read:

26119. "Employee account" means the nominal account of the participant to which employee contributions and interest and any additional earnings credits in respect thereof are credited under the Cash Balance Benefit Program.

SEC. 235. Section 26120 of the Education Code is amended to read:

26120. "Employee contribution rate" means the percentage of the participant's salary withheld by the employer as an employee contribution under the Cash Balance Benefit Program.

SEC. 236. Section 26121 of the Education Code is amended to read:

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26121. "Employee contribution" means the amount withheld from the participant's salary by the employer as a contribution by the employee under the Cash Balance Benefit Program.

SEC. 237. Section 26123 of the Education Code is amended to read:

26123. "Employer account" means the nominal account of the participant in which employer contributions on behalf of the participant and interest and any additional earnings credits in respect thereof are credited under the Cash Balance Benefit Program.

SEC. 238. Section 26124 of the Education Code is amended to read:

26124. "Employer contribution rate" means the percentage of salary that determines the amount the employer contributes to the Cash Balance Benefit Program with respect to each employee who is a participant.

SEC. 239. Section 26125 of the Education Code is amended to read:

26125. "Employer contribution" means the amount contributed by the employer to the Cash Balance Benefit Program with respect to the participant.

SEC. 240. Section 26126 of the Education Code is amended to read:

26126. "Employed" or "employment" means employed to perform creditable service subject to coverage under the Cash Balance Benefit Program.

SEC. 241. Section 26127 of the Education Code is amended to read:

26127. "Full time equivalent" means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time, as defined by Section 22138.5, in that position.

SEC. 242. Section 26131 of the Education Code is amended to read:

26131. "Minimum interest rate" means the annual rate determined for the plan year by the board by means of an amendment to the plan with respect to the Cash Balance Benefit Program in accordance with applicable federal laws and regulations.

SEC. 243. Section 26132 of the Education Code is amended to read:

26132. "Participant" means a person who has performed creditable service subject to coverage by the Cash Balance Benefit Program, and who has contributions credited under the Cash Balance Benefit Program or is receiving an annuity under the Cash Balance Benefit Program by reason of creditable service.

SEC. 244. Section 26133 of the Education Code is amended to read:

26133. "Pay period" means a payroll period specified by the employer but not more than 31 calendar days.

SEC. 245. Section 26136 of the Education Code is amended to read:

26136. "Retirement" means termination of employment and completion of all conditions precedent to receiving a retirement benefit under the Cash Balance Benefit Program.

SEC. 246. Section 26138 of the Education Code is amended to read:

26138. "Retirement date" means the date the benefit under this part becomes payable to a participant who has applied for a retirement benefit from the plan under this part.

SEC. 247. Section 26139 of the Education Code is amended to read:

26139. (a) "Salary" means remuneration payable in cash by an employer to a participant for creditable service subject to coverage under the Cash Balance Benefit Program. Salary shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed.

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(2) For participants not paid according to a salary schedule, money paid for creditable service performed.

(3) Money paid for the participant's absence from performance of creditable service as approved by an employer, except as provided in paragraph (5) of subdivision (b).

(4) Employee contributions picked up by an employer under Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code.

(5) Amounts deducted by an employer from the participant's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines by plan amendment to be "salary."

(b) "Salary" does not mean and shall not include:

(1) Money paid for service that is not creditable service.

(2) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Fringe benefits provided by an employer.

(4) Job-related expenses paid or reimbursed by an employer.

(5) Money paid for unused accumulated leave.

(6) Compensatory damages or money paid to a participant in excess of salary as a compromise settlement or as severance pay.

(7) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for a participant.

(8) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a participant's benefits under the plan.

(9) Any other payments the board determines by plan amendment not to be "salary."

(c) Any employer or person who knowingly or willfully reports salary in a manner inconsistent with the provisions of subdivisions (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of such inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with provisions of the Penal Code. The system may establish procedures to ensure that salary reported by an employer is in compliance with this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

SEC. 248. Section 26143 of the Education Code is amended to read:

26143. "Termination benefit" means a benefit that is an amount equal to the sum of the participant's employee account and employer account payable under this part pursuant to the provisions of Chapter 13 (commencing with Section 27200).

SEC. 249. Section 26144 of the Education Code is amended to read:

26144. "Total and permanent disability" means any medically determinable physical or mental incapacity that is expected to prevent the participant from performing creditable service under this part for the employer for a continuous period of at least one year.

SEC. 250. Section 26208 of the Education Code is amended to read:

26208. The board shall establish and maintain records and accounts following recognized accounting principles and controls with

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respect to the Cash Balance Benefit Program.

SEC. 251. Section 26210 of the Education Code is amended to read:

26210. The board has exclusive control of the investment of the Retirement Fund with respect to assets attributed to the Cash Balance Benefit Program. In investing the fund, the board and its officers and employees shall exercise their fiduciary duties set forth in Chapter 4 (commencing with Section 22250) and Chapter 6 (commencing with Section 22350) of Part 13.

SEC. 252. Section 26211 of the Education Code is amended to read:

26211. The board shall acquire the services of an actuary to:

(a) Perform an actuarial investigation of the demographic and economic experience of the Cash Balance Benefit Program at least once every four years and make recommendations to the board for the adoption of actuarial assumptions for the program that are, in the aggregate, reasonably related to the past experience of the program and the actuary's best estimate of the future experience of the program.

(b) Perform an annual actuarial valuation of the assets and liabilities of the plan with respect to the Cash Balance Benefit Program, using the actuarial assumptions adopted by the board.

(c) Recommend to the board all rates and factors necessary to administer the Cash Balance Benefit Program, including, but not limited to, mortality tables, annuity factors, interest rates, additional earnings credits, and employer contribution rates.

(d) Recommend to the board the goal for maintaining a sufficient Gain and Loss Reserve with respect to the Cash Balance Benefit Program, the amount to be transferred to the Gain and Loss Reserve from investment earnings of the plan each year with respect to the Cash Balance Benefit Program, and a strategy for the amortization of any unfunded actuarial obligation.

(e) Recommend to the board transfers of amounts between the Gain and Loss Reserve and the Annuitant Reserve with respect to the Cash Balance Benefit Program.

(f) Perform any other actuarial services that may be required for the administration of the plan with respect to the Cash Balance Benefit Program, as requested by the board.

SEC. 253. Section 26212 of the Education Code is amended to read:

26212. The board shall maintain all data necessary for the actuarial investigation of the demographic and economic experience of the Cash Balance Benefit Program, and for the actuarial valuation of the assets and liabilities of the plan with respect to the Cash Balance Benefit Program.

SEC. 254. Section 26213 of the Education Code is amended to read:

26213. The board shall adopt actuarial assumptions, rates, factors and tables necessary to administer the Cash Balance Benefit Program as an amendment to the plan.

SEC. 255. Section 26216 of the Education Code is amended to read:

26216. The board may administer the Cash Balance Benefit Program through an agreement with a qualified third-party administrator that shall provide custodial, recordkeeping, or other administrative services specified under the agreement.

SEC. 256. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay period, along with all other information required by the system, no later than 15 calendar days following the last day of the pay period in which the salary was paid, and the report is delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 257. Section 26301.5 is added to the Education Code, to read:

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26301.5. Each employer shall deduct from the salary of participants employed by the employer the participant contributions required by this part and shall remit to the system those contributions plus the employer contributions required by this part and Section 44987.

SEC. 258. Section 26302 of the Education Code is amended to read:

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

(b) If a report with respect to the Cash Balance Benefit Program contains erroneous information and the system, acting in good faith, makes a distribution from the Teachers' Retirement Fund with respect to the Cash Balance Benefit Program based on that information, the employer who submitted the report shall reimburse the Retirement Fund in full for the amount of the erroneous disbursement, plus interest on the amount of the erroneous disbursement at the minimum interest rate from the date of disbursement to the date of reimbursement, immediately upon notification by the system.

SEC. 259. Section 26303 of the Education Code is amended to read:

26303. (a) Employers shall transmit to the plan the employee contributions and employer contributions with respect to the Cash Balance Benefit Program for salary paid to each participant during the pay period no later than five working days following the last day of the pay period in which the salary was paid.

(b) Payments shall be delinquent on the sixth working day thereafter, and interest shall begin to accrue at the minimum interest rate from that day until payment is received by the plan. Interest for late payment under this subdivision shall be due from the employer.

SEC. 260. Section 26305 of the Education Code is amended to read:

26305. Upon request of the system, an employer shall provide the system with information regarding the salary paid or to be paid to employees subject to coverage by the Cash Balance Benefit Program in a plan year. The information may include, but shall not be limited to, employment contracts, salary schedules, and minutes from meetings conducted by the governing board of the employer.

SEC. 261. Section 26306 of the Education Code is amended to read:

26306. (a) Upon request by the system, a participant or beneficiary with respect to the Cash Balance Benefit Program shall provide to the system any information affecting his or her status as a participant or beneficiary.

(b) Upon request by the system, the participant shall provide proof of his or her date of birth.

(c) A participant who has not contributed to the Cash Balance Benefit Program during the immediately preceding plan year shall provide the system with his or her current mailing address and beneficiary information.

SEC. 262. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed to perform creditable service for less than 50 percent of the full-time equivalent for the position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided the person is not subject to mandatory membership in the Defined Benefit Program except as provided in Section 26402.

(b) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the employer in addition to the Cash Balance Benefit Program, the

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employee may elect within 60 calendar days of the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate in the alternative retirement plan in lieu of participating in the Cash Balance Benefit Program. Any election shall not preclude an employee from participating in the Cash Balance Benefit Program at a later date so long as the Cash Balance Benefit Program is provided by the employer and the employee is eligible to participate in the Cash Balance Benefit Program.

(c) If subdivision (b) is applicable, the employer shall inform employees pursuant to subdivision (c) of Section 26300 of their right to make an election and the election shall be made on a form prescribed by the system and filed with the employer. The election shall become effective on the later of the first day on which creditable service is performed or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) If the participant's basis of employment with an employer that provides the Cash Balance Benefit Program changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Plan as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 263. Section 26401 of the Education Code is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service for less than 50 percent of the full-time equivalent for the position for an employer that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage by the Cash Balance Benefit Program for that employer provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(c) Employers shall make available to employees specified in subdivision (a) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the month following the month in which the election is made.

(d) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 264. Section 26500 of the Education Code is amended to read:

26500. Acceptance of employment subject to coverage by the Cash Balance Benefit Program constitutes consent to have contributions

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deducted from the employee's salary as required by Section 26501.

SEC. 265. Section 26502 of the Education Code is amended to read:

26502. Notwithstanding Section 26301.5, the employer may pick up, for the sole purpose of and in accordance with the requirements of Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code, all of the amounts otherwise due as employee contributions, which shall be paid by the employer in lieu of employee contributions and which shall be deducted from the employee's salary.

SEC. 266. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate may exceed the employer contribution rate but in no event shall the employer contribution rate be less than 4 percent.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notice to the system and remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions; if any, that would have been required if the contribution rates were in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 267. Section 26505 of the Education Code is amended to read:

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

SEC. 268. Section 26507 of the Education Code is amended to read:

26507. (a) The board may adjust the mandatory employer contribution rate specified under Section 26503 for a fixed period of plan years when it has determined based upon the recommendation of the actuary, that increased contributions are required. The

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adjustment shall not exceed one-fourth of one percent for any plan year. The mandatory employer contribution rate as adjusted shall not exceed 4.25 percent of salary in any plan year for each participant employed by the employer, except as provided in subdivision (b).

(b) The adjustment to the employer contribution rate specified in subdivision (a) shall be applied to the employer contribution rate specified in a collective bargaining agreement pursuant to Section 26504 and in effect on the first day of the plan year in which the adjustment to the employer contribution rate takes effect.

(c) The adjusted employer contribution rate shall become effective no earlier than the first day of the plan year immediately following adoption by the board:

SEC. 269. Section 26604 of the Education Code is amended to read:

26604. (a) Beginning June 1, 1996, prior to the Cash Balance Plan becoming effective, and each June thereafter, the board, by plan amendment with respect to the Cash Balance Benefit Program, shall declare the minimum interest rate to be used to credit employee accounts and employer accounts with respect to the Cash Balance Benefit Program during the plan year beginning July 1.

(b) Interest shall be computed at the minimum interest rate on the balance of the employee account and the employer account as of the first day of that month. Interest for contributions credited during that month to the respective account shall be computed at the minimum interest rate from the date of deposit. Interest shall be credited to the respective account as of the last day of that month.

(c) Interest shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity.

SEC. 270. Section 26606 of the Education Code is amended to read:

26606. Any additional earnings credit declared shall be determined as a specified percentage increase in the closing balance of each employee account and employer account with respect to the Cash Balance Benefit Program measured as of the last day of the plan year. The additional earnings credit shall be credited to employee account and employer account balances as of the date the board declares the additional earnings credit is to be applied. The additional earnings credit shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity under the Cash Balance Benefit Program.

SEC. 271. Section 26607 of the Education Code is amended to read:

26607. (a) The board may declare by means of plan amendment with respect to the Cash Balance Benefit Program an additional annuity credit applicable to annuities being paid under the Cash Balance Benefit Program.

(b) The declaration authorized by subdivision (a) may be made only when the board by plan amendment with respect to the Cash Balance Benefit Program declares an additional earnings credit as provided in Section 26605 and if the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for the plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate, the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, any addition to be made to the Gain and Loss Reserve under subdivision (c) of Section 26202, the total amount required to credit all employee and employer accounts in respect of the additional earnings credit so declared, and any other obligations incurred by the plan with respect to the Cash Balance Benefit Program.

(c) Any additional annuity credit with respect to the Cash Balance Benefit Program shall be based upon the annuity of the participant or beneficiary for the plan year and shall be paid as a lump sum to the participant or beneficiary on the date specified by the board.

SEC. 272. Section 26800 of the Education Code is amended to read:

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26800. The normal retirement age for the Cash Balance Benefit Program is 60 years of age.

SEC. 273. Section 26802 of the Education Code is amended to read:

26802. Distribution of the retirement benefit under this part shall commence no later than the required beginning date specified in subdivision (c) of Section 26004.

SEC. 274. Section 26803 of the Education Code is amended to read:

26803. (a) All creditable service subject to coverage by the Cash Balance Benefit Program and all service with the participant's last employer or employers that is creditable under the Defined Benefit Program shall be terminated prior to the retirement date.

(b) All employers with which the participant is employed to perform creditable service subject to coverage by the plan shall certify on a form prescribed by the system that the participant's employment has been terminated.

SEC. 275. Section 26804 of the Education Code is amended to read:

26804. Application for a retirement benefit under this part shall be made on a form prescribed by the system.

SEC. 276. Section 26805 of the Education Code is amended to read:

26805. The retirement benefit under this part is a benefit payable in the event of retirement that is an amount equal to the sum of the employee account and the employer account as of the retirement date.

SEC. 277. Section 26806 of the Education Code is amended to read:

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

SEC. 278. Section 26807 of the Education Code is amended to read:

26807. (a) Upon application for a retirement benefit under this part, the participant may elect to receive the retirement benefit in the form of an annuity, provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars (\$3,500).

(b) The participant may elect one of the following annuity options:

(1) A single life annuity with a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant with any balance remaining upon the death of the participant payable in a lump sum to the beneficiary.

(2) A single life annuity without a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant.

(3) A 100-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(4) A 50-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with one-half of the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the

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participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(5) A period certain annuity, which is the lump sum payable over a specified number of years, from a minimum of three years to a maximum of 10 years but in any event not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary, until there is no balance remaining in the participant's employee account and employer account.

SEC. 279. Section 26809 of the Education Code is amended to read:

26809. Upon election of an annuity under this part, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 280. Section 26810 of the Education Code is amended to read:

26810. (a) A participant who is employed to perform creditable service subject to coverage by the Cash Balance Benefit Program while receiving an annuity under the program may voluntarily terminate the annuity upon employment and make contributions to the program based on salary paid by the employer for the employment, provided the participant has attained age 60 and has been receiving a retirement annuity for at least one year. The participant shall continue to be subject to Section 26808.

(b) The participant shall request in writing within 60 days of employment that the annuity be terminated. Termination of the participant's annuity shall become effective on the first day of the month following the month in which verification of the participant's employment is received by the system from the participant's employer.

(c) Upon voluntary termination of the annuity, the employee and employer account of the participant shall be credited with respective balances that reflect the actuarial equivalent of the participant's retirement benefit as of the date the participant terminates the annuity and the Annuitant Reserve shall be reduced by the amount of the credits.

(d) The portion of the annuity derived from the amounts credited to the employee account and employer account, as of the date the participant terminates the annuity, shall be calculated using the actuarial assumptions in effect on the initial retirement date using the age of the participant and, if the participant elected a joint and survivor option the age of the beneficiary on the current retirement date.

(e) Upon election of a subsequent annuity, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 281. Section 26811 of the Education Code is amended to read:

26811. The beneficiary under the joint and survivor option elected pursuant to paragraph (3) or (4) of subdivision (b) of Section 26807 shall be the person designated by the participant on the application for a retirement benefit under this part, and shall not be changed after the original retirement date unless the beneficiary has predeceased the participant.

SEC. 282. Section 26900 of the Education Code is amended to read:

26900. A participant may apply to receive a disability benefit under this part at any time.

SEC. 283. Section 26901 of the Education Code is amended to read:

26901. Application for a disability benefit under this part shall be made by the participant, or the guardian or conservator of the participant, on a form prescribed by the system.

SEC. 284. Section 26902 of the Education Code is amended to read:

26902. (a) A disability benefit under this part shall become payable only upon determination by the board that the participant has

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a total and permanent disability. The board shall require current relevant medical reports by licensed practitioners, including the report of the treating physician, and may make any inquiries necessary to the determination of total and permanent disability. Failure of the participant, or the participant's guardian or conservator, to provide any documents, complete any forms, or respond to any questions from the board within 45 days of the request may be cause for rejection of the application.

(b) Upon determination by the board that the participant does not have a total and permanent disability, the application for disability benefit, and any designation of beneficiary for the benefit, shall be automatically canceled.

SEC. 285. Section 26903 of the Education Code is amended to read:

26903. All creditable service subject to coverage by the Cash Balance Benefit Program and Defined Benefit Program shall be terminated prior to the disability date.

SEC. 286. Section 26905 of the Education Code is amended to read:

26905. The normal form of disability benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the participant, no further benefits shall be payable from the Cash Balance Benefit Program.

SEC. 287. Section 26906 of the Education Code is amended to read:

26906. (a) Upon application for a disability benefit under this part, the participant may elect to receive the disability benefit in the form of an annuity provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars (\$3,500).

(b) The participant may elect one of the following options:

(1) A single life annuity with a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant with any balance remaining upon the death of the participant payable in a lump sum to the beneficiary.

(2) A single life annuity without a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant.

(3) A 100-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(4) A 50-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with one-half of the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(5) A period certain annuity, which is the lump sum payable over a specified number of years, from a minimum of three years to a maximum of 10 years but in any event not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary, until there is no balance remaining in the participant's employee account and employer account.

SEC. 288. Section 26908 of the Education Code is amended to read:

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26908. Upon election of an annuity under this part, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 289. Section 26911 of the Education Code is amended to read:

26911. If a participant who is receiving a disability annuity under this part becomes reemployed prior to 60 years of age to perform creditable service subject to coverage by the Cash Balance Benefit Program or the Defined Benefit Program, the disability annuity shall be terminated.

SEC. 290. Section 27001 of the Education Code is amended to read:

27001. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other provision of law to the contrary, the death benefit payable under the Cash Balance Benefit Program may be requested by the beneficiary and paid by the system as soon as practicable after the system receives proof of the participant's death. Except as provided in Section 27302, the death benefit under this part shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the beneficiary is the participant's spouse in which case distributions must commence on or before the later of either of:

(a) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(b) December 31 of the calendar year in which the participant would have attained the age of 70 $\frac{1}{2}$ years.

SEC. 291. Section 27003 of the Education Code is amended to read:

27003. The normal form of death benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the beneficiary, no further benefits shall be payable from the plan with respect to the Cash Balance Benefit Program.

SEC. 292. Section 27006 of the Education Code is amended to read:

27006. Upon the beneficiary's election to receive the death benefit under this part in the form of an annuity, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 293. Section 27007 of the Education Code is amended to read:

27007. (a) If the participant died while receiving an annuity under this part, the death benefit shall be payable in accordance with the terms of the annuity elected by the participant.

(b) Upon the death of a participant who elected a single life annuity with a cash refund feature under this part, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the beneficiary.

(c) Upon the death of a participant who elected a single life annuity without a cash refund feature under this part, no death benefit shall be payable.

(d) Upon the death of a participant who elected a joint and survivor annuity under this part, the annuity shall continue for life to the surviving beneficiary under the joint and survivor option. If the beneficiary under the joint and survivor option has predeceased the participant, no death benefit shall be payable.

(e) Upon the death of a participant who elected a period certain annuity under this part prior to the completion of annuity payments due the participant, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the beneficiary.

SEC. 294. Section 27008 of the Education Code is amended to read:

27008. Upon the death of a beneficiary who was receiving an annuity under this part due to the death of a participant, payment shall be made as follows:

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(a) Upon the death of a beneficiary under a joint and survivor option, no amount shall be payable.

(b) Upon the death of a beneficiary who elected a single life annuity without a cash refund feature, no amount shall be payable.

(c) Upon the death of a beneficiary who elected a period certain annuity prior to the completion of annuity payments due the beneficiary, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the estate of the beneficiary.

SEC. 295. Section 27100 of the Education Code is amended to read:

27100. A participant may at any time designate or change the designation of one or more primary beneficiaries and one or more contingent beneficiaries to receive any lump-sum death benefit that may be payable under the plan. The beneficiary for the lump-sum death benefit under this part may be a person, trust, or the estate of the participant. The beneficiary shall be designated on a form prescribed by the system that is received in the system's office in Sacramento before the participant's death.

SEC. 296. Section 27101 of the Education Code is amended to read:

27101. In the event the participant dies without a valid beneficiary designation on file with the system, any lump-sum death benefit under this part shall be payable to the estate of the participant.

SEC. 297. Section 27200 of the Education Code is amended to read:

27200. Upon termination of all creditable service subject to coverage by the plan under this part and Part 13 (commencing with Section 22000) for any reason other than death, disability, or retirement, a participant may apply for a lump-sum termination benefit under this part which shall be an amount that is equal to the sum of the participant's employee account and the employer account as of the date the termination benefit is paid.

SEC. 298. Section 27201 of the Education Code is amended to read:

27201. (a) All creditable service subject to coverage by the Cash Balance Benefit Program and all service with the participants' last employer or employers that is creditable service under the Defined Benefit Program shall terminate prior to application for a termination benefit under this part.

(b) All employers with which the participant is employed to perform creditable service subject to coverage by the plan shall certify on a form prescribed by the system that the participant's employment has been terminated.

SEC. 299. Section 27202 of the Education Code is amended to read:

27202. Application for a termination benefit under this part shall be made on an application form prescribed by the system.

SEC. 300. Section 27203 of the Education Code is amended to read:

27203. A participant may not apply for a termination benefit under this part if less than five years have elapsed following the date the most recent termination benefit was distributed to the participant.

SEC. 301. Section 27204 of the Education Code is amended to read:

27204. The termination benefit under this part shall not be payable before one year has elapsed following the date of termination of employment. The application for the termination benefit shall be automatically canceled if the participant performs creditable service within the year following the date of termination of employment.

SEC. 302. Section 27205 of the Education Code is amended to read:

27205. A participant may cancel the application for a termination benefit under this part at any time prior to distribution of the benefit.

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SEC. 303. Section 27207 of the Education Code is amended to read:

27207. Upon distribution of the lump-sum payment to the participant under this part, no further benefits shall be payable from the plan under this part.

SEC. 304. Section 27300 of the Education Code is amended to read:

27300. (a) The plan's obligations under this part to a participant or beneficiary who has applied for a benefit cease upon distribution of the lump-sum benefit.

(b) Deposit in the United States mail of a warrant drawn as directed by the participant or beneficiary and addressed as directed by the participant or beneficiary constitutes distribution of the benefits under this part.

(c) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefits under this part.

(d) If the participant or beneficiary has elected to transfer all or a specified portion of the lump-sum benefit that is eligible for direct trustee-to-trustee transfer to the trustee of an eligible retirement plan within the meaning of Section 401(a)(31) of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefits under this part.

(e) Distribution under subdivision (b), (c), or (d) 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 plan from liability for that payment under this part.

* SEC. 305. Section 27302 of the Education Code is amended to read:

27302. If a benefit payable under this part cannot be distributed because, after a good faith effort, the participant or beneficiary cannot be located, the balances in the participant's employee account and employer account shall be forfeited by the participant or beneficiary, but if the participant or beneficiary thereafter submits a valid claim to the system the employee and employer accounts shall be reinstated and shall be credited with all applicable interest at the minimum interest rate and additional earnings credit amounts attributable to the period during which the forfeiture was in effect.

SEC. 306. Section 27303 of the Education Code is amended to read:

27303. Any overpayment to a participant or beneficiary under this part shall be deducted from any subsequent benefit payment that may be payable under the plan, except as provided in Section 26302.

SEC. 307. Section 27400 of the Education Code is amended to read:

27400. This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in benefits under this part and defines the rights of nonparticipant spouses in the Cash Balance Benefit Program.

SEC. 308. Section 27403 of the Education Code is amended to read:

27403. The nonparticipant spouse who is awarded separate nominal accounts pursuant to Section 24702 is not a participant of the Cash Balance Benefit Program. The nonparticipant spouse is entitled only to rights and benefits explicitly established by this chapter.

SEC. 309. Section 27404 of the Education Code is amended to read:

27404. The nonparticipant spouse is entitled to no benefits or rights from the separate nominal accounts except as otherwise provided in this chapter. However, this section shall not be construed to limit any right arising from the accounts of a nonparticipant with respect to the Cash Balance Benefit Program which exists because the nonparticipant spouse is employed to perform

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creditable service subject to coverage by the program.

SEC. 309.5. Section 27405 of the Education Code is amended to read:

27405. Upon the legal separation or dissolution of marriage of a participant, the court may include in the judgment or court order a determination of the community property rights of the parties in the participant's annuity consistent with this section. Upon election under subparagraph (E) of paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonparticipant spouse a community property share in the benefits of a participant receiving an annuity shall be consistent with this section.

(a) If the court does not award the entire annuity to the participant and the participant is receiving an annuity under paragraph (1) or (2) of subdivision (b) of Section 26807, the court shall require only that the system pay from the plan to the nonparticipant spouse, by separate warrant, his or her community property share of the participant's annuity, or the option beneficiary's annuity or both.

(b) The nonparticipant spouse may designate a beneficiary to receive his or her community property share of the participant's annuity.

SEC. 310. Section 27406 of the Education Code is amended to read:

27406. The nonparticipant spouse who is awarded separate nominal accounts with respect to the Cash Balance Benefit Program shall have the right to a lump-sum distribution of amounts credited to the account.

(a) The nonparticipant spouse shall file an application on a form provided by the system to obtain the distribution.

(b) The distribution is effective when the system deposits in the United States mail a warrant drawn in favor of the nonparticipant spouse and addressed to the latest address for the nonparticipant spouse on file with the system. If the nonparticipant spouse has elected on a form provided by the system to transfer all or a specified portion of the accounts that are eligible for direct trustee-to-trustee transfer under Section 401(a)(31) of Title 26 of the United States Code to the trustee of a qualified plan under Section 402 of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes a distribution of the nonparticipant spouse's credit balance from the separate nominal accounts.

(c) The nonparticipant spouse is deemed to have permanently waived all rights to an annuity when the distribution becomes effective.

(d) The nonparticipant spouse may not cancel a distribution after the distribution is effective.

(e) The nonparticipant spouse shall have no right to elect to redeposit the distribution after the distribution is effective.

SEC. 311. Section 27407 of the Education Code is amended to read:

27407. No judgment or court order issued pursuant to this chapter is binding on the plan with respect to the Cash Balance Benefit Program 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. 312. Section 27410 of the Education Code is amended to read:

27410. (a) The nonparticipant spouse who is awarded separate nominal accounts shall have the right to designate, pursuant to Sections 27100 to 27102, inclusive, a beneficiary or beneficiaries to receive the accounts credited to the separate nominal accounts of the nonparticipant spouse on his or her date of death, and any annuity attributable to the separate nominal accounts which is unpaid on the date of the death of the nonparticipant spouse.

(b) This section shall not be construed to provide the nonparticipant spouse with any right to elect a joint and survivor annuity pursuant to paragraphs (3) and (4) of subdivision (b) of Section 26807.

SEC. 313. Section 27411 of the Education Code is amended to read:

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27411. The nonparticipant spouse who is awarded a separate nominal account under this part shall have the right to an annuity pursuant to paragraphs (1), (2), or (5) of subdivision (b) of Section 26807.

(a) The nonparticipant spouse shall be eligible for an annuity if the following conditions are satisfied:

(1) The nonparticipant spouse has at least three thousand five hundred dollars (\$3,500) in his or her separate nominal accounts.

(2) The nonparticipant spouse has attained the age of 55 years or more.

(b) An annuity of a nonparticipant spouse shall become effective upon any date designated by the nonparticipant spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonparticipant spouse has filed an application for an annuity on a form provided by the system, which is executed no earlier than 90 days before the effective date of the annuity.

SEC. 314. Section 28000 of the Education Code is amended to read:

28000. (a) The Legislature hereby finds and declares its intent to preserve and protect the rights of reemployed participants who have been absent from a position of employment covered by the Cash Balance Benefit Program to serve in the uniformed services of the United States of America in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code).

(b) The plan shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a participant is absent from a position of employment for the purpose of an examination to determine the fitness of the participant to perform any such duty.

(d) The term "uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) No entitlement of the right to contribute toward credits under the Cash Balance Benefit Program pursuant to this chapter by the participant as a result of service in the uniformed services shall accrue if the participant does not return to employment with the same employer or employers which employed the participant immediately prior to the eligible period of service in the uniformed services as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code.

SEC. 315. Section 28001 of the Education Code is amended to read:

28001. (a) The participant who returns to employment with the same employer which had employed the participant immediately prior to the eligible period of service in the uniformed services, in accordance with the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall be treated as not having incurred a break in the performance of creditable service by reason of that participant's period or periods of service in the uniformed services. The length of each period of service in the uniformed services shall not exceed five years unless otherwise permitted pursuant to Section 28004. Each period of service in the uniformed services by the participant shall, upon that participant's return to employment with the same employer or employers which had employed the participant immediately prior to the eligible period of service in the uniformed services, constitute employment toward the performance of creditable service provided that participant elects to

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remit the employee contributions that would have been made during the period of service in the uniformed services. The remittance of employee contributions shall be calculated pursuant to Sections 26501 and 28003. In no event shall that remittance exceed the amount the participant would have been required to contribute during that period of performance of creditable service had the participant remained continuously employed by the last employer and not served in the uniformed services throughout that period.

(b) Notwithstanding Section 26506, remittance of employee contributions in accordance with subdivision (a) shall be made by the employer pursuant to Section 26502 upon the employer's receipt of written consent of the participant specifying a schedule of repayments. That remittance shall commence during the period beginning with the date of return to employment and may continue for three times the period of the participant's eligible period of service in the uniformed services, not to exceed five years. The plan's receipt of the remittance payments to the plan with respect to the Cash Balance Benefit Program shall be credited pursuant to Chapter 7 of this part. Interest on the payments of remitted employee contributions made for the period of service in the uniformed services shall not be credited in the participant's account until after such payments are received and only prospectively to the participant's account in accordance with Section 26604. Upon receipt of the remittance payments to the plan, the payments shall be subject to the same terms and conditions under the program as if the payments had been employee contributions made by the participant had the participant not served for a period in the uniformed services. In no event shall the current year contributions and contributions made for purposes of purchasing service exceed the maximum exclusion allowance as set forth in the Internal Revenue Code.

SEC. 316. Section 28002 of the Education Code is amended to read:

28002. (a) Except as provided in subdivision (b), an employer reemploying a participant with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall be liable to remit the employer contributions provided that employer employed the participant immediately prior to the eligible period of service in the uniformed services. That remittance shall exclude interest and the contribution rate by the employer shall be to the same extent as that for contributions to the Cash Balance Benefit Program for other employees during the same period. The employer shall, within 30 days of the date of reemployment, provide information as required by the board, on a form provided by the system, notifying the system of reemployment. Following receipt of that notice, the system shall calculate in accordance with Section 28003 the total amount of employer contributions due for the participant for the full period of service in the uniformed services. Within 60 working days of notification by the plan of amount due, the employer shall remit to the plan all employer contributions.

(b) The employer shall not be liable for employer contributions for the period of service in the uniformed services if the participant elects not to remit the employee contributions for that period through the employer as required under Section 28001. In the event the participant does not remit all of the employee contributions within the prescribed repayment period, the total amount of the employer contributions shall remain with the plan and credited to the participant's employer account with respect to the Cash Balance Benefit Program.

SEC. 317. Section 28004 of the Education Code is amended to read:

28004. A participant who is absent from a position of employment subject to the Cash Balance Benefit Program due to that participant's service in the uniformed services, shall not be entitled to obtain the right to contribute toward credits under the plan in excess of five years of service in the uniformed services, except for the following reasons:

(a) The participant is required to serve beyond five years to

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complete an initial period of obligated service in the uniformed services;

(b) The participant was unable to obtain orders releasing the participant from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the participant;

(c) The participant served in the uniformed services as required pursuant to Section 270 of Title 10, under Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining; or

(d) The participant is:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673b, 673c, or 688 of Title 10 or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673b of Title 10 of the United States Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a participant of the National Guard under Chapter 15 of Title 10 or under Section 3500 or 8500 of Title 10 of the United States Code.

SEC. 318. Section 28005 of the Education Code is amended to read:

28005. A participant's entitlement to the right to contribute toward credits under the Cash Balance Benefit Program pursuant to this chapter by reason of the service in the uniformed services terminates upon the occurrence of any of the following events:

(a) A separation of the participant from the uniformed service with a dishonorable or bad conduct discharge.

(b) A separation of the participant from the uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the secretary concerned.

(c) A dismissal of the participant permitted under Section 1161(a) of Title 10 of the United States Code.

(d) A dropping of the participant from the rolls pursuant to Section 1161(b) of Title 10 of the United States Code.

SEC. 319. Section 28100 of the Education Code is amended to read:

28100. (a) The employer may discontinue providing the Cash Balance Plan at anytime in accordance with the terms and conditions of the employer's governing board's formal action to provide the plan.

(b) The employer shall notify the system of the decision to discontinue the plan no less than 90 calendar days prior to the effective date of discontinuance. Such notice shall be submitted on a form prescribed by the system.

SEC. 320. Section 44929 of the Education Code is amended to read:

44929. (a) Whenever the governing board of a school district or a county office of education, by formal action taken prior to January 1, 1999, determines that because of impending 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 the retirement of certificated employees 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 as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be

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credited under the State Teachers' Retirement Defined Benefit Program to a certificated employee pursuant to Section 22714 if all of the following conditions exist:

(1) The employee is credited with five or more years of service under the State Teachers' Retirement Defined Benefit Program 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 district or county superintendent of schools that shall specify the period.

(2) The district or county office of education transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22714 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board that equals 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 that shall not exceed four years, that is acceptable to the Teachers' Retirement Board. The school district or county office of education shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22714.

(3) The district or county office of education transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(4) The governing board of the school district or the county office of education has considered the availability of teachers 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.

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(d) The service credit made available pursuant to this section shall be available to all members employed by the school district or county office of education who meet the conditions set forth in this section.

(e) The amount of service credit shall be two years.

(f) Any employee who retires with service credit granted under this section and Section 22714 and who subsequently reinstates, shall forfeit the service credit granted under this section and Section 22714.

(g) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement Defined Benefit Program.

SEC. 321. Section 87488 of the Education Code is amended to read:

87488. (a) Whenever the governing board of a community college district, by formal action taken prior to January 1, 1999, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will either: result in a net savings to the district; result in a reduction of the number of academic employees as a result of declining enrollment; or result in the retention of faculty who are qualified to teach in areas of teacher shortage, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement Defined Benefit Program to an academic employee pursuant to Section 22714 if all of the following conditions exist:

(1) The employee is credited with five or more years of service under the State Teachers' Retirement Defined Benefit Program and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district that shall specify the period.

(2) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22714 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board that equals 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 in a time period that shall not exceed four years, that is acceptable to the Teachers' Retirement Board. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22714.

(3) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(4) The governing board of the community college district has considered the availability of academic employees to fill the positions that would be vacated pursuant to this section.

(b) (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

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teach in teacher shortage disciplines.

(2) The chancellor shall certify to the Teachers' Retirement Board that the results 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) 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 district for all administrative costs that result from the certification.

(c) The service credit made available pursuant to this section shall be available to all members employed by the community college district who meet the conditions set forth in this section.

(d) The amount of service credit shall be two years.

(e) Any employee who retires with service credit granted under this section and Section 22714 and subsequently reinstates, shall forfeit the service credit granted under this section and Section 22714.

(f) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement Defined Benefit Program.

SEC. 322. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:

(A) Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.

(B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.

(C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to

January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).

SEC. 323. Section 3543.2 of the Government Code is amended to read:

3543.2. (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22316 of the Education Code, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

(b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

(c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply.

(d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

(e) Pursuant to Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate a salary schedule based on criteria other than a uniform allowance for years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code requiring a salary schedule based upon a uniform allowance for years of training and years of experience shall apply. A salary schedule established pursuant to this subdivision shall not result in the reduction of the salary of any teacher.

SEC. 324. Section 22009.03 of the Government Code is amended to read:

22009.03. "Public agency" also includes a school district, a county superintendent of schools, and a regional occupational center or program established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, with respect to

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employees eligible for membership in the State Teachers' Retirement System.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 325. Section 22009.1 of the Government Code is amended to read:

22009.1. "Retirement system" includes:

(a) A pension, annuity, retirement or similar fund or system established by a public agency and covering only positions of that agency.

(b) The Public Employees' Retirement System with respect only to employees of the state and employees of the University of California in positions covered by that system.

(c) The Public Employees' Retirement System with respect to employees of all school districts in positions covered under each contract entered into by a county superintendent of schools and the system.

(d) The State Teachers' Retirement System with respect to all employees in positions subject to coverage under the Defined Benefit Program system except employees of a public agency having any employees in positions covered by such system who are also in positions covered by a local retirement system for the retirement of teachers, or for membership in which public school teachers are eligible, operated by city, city and county, county or other public agency or combination of public agencies of the state.

(e) The Legislators' Retirement System with respect to all employees in positions covered by that system.

(f) The Judges' Retirement System with respect to all employees in positions covered by that system.

(g) The University of California Retirement System only with respect to all employees in positions covered by that system.

(h) The San Francisco City and County Employees' Retirement System with respect to all employees in positions covered by that system.

(i) Any other retirement system with respect only to employees of any two or more of the public agencies having employees in positions covered by such system, as designated by the board and with regard to which the board authorizes conduct of a referendum.

(j) Any retirement system with respect only to employees of a hospital which is an integral part of a city incorporated between January 15, 1898 and July 15, 1898 in positions covered by the system, as designated by the board on request of the city.

(k) Except as otherwise provided in subdivisions (b) through (j) above, any retirement system with respect to employees of each of the public agencies having employees in positions covered by the system.

(l) Each division or part of a retirement system, as defined in subdivisions (a), (b), (c), (e), (g), (h), (i), (j), (k), and (m) of this section, which is divided pursuant to this chapter into two parts:

(1) The part composed of the positions of members of such system who desire coverage under the federal system.

(2) The part composed of the positions of members of such system who do not desire coverage under the federal system.

(m) The State Teachers' Retirement System with respect to all employees of each public agency, as defined by Section 22009.03, in positions covered by that system. This subdivision shall become inoperative on July 1, 2004.

SEC. 326. Section 22156 of the Government Code is amended to read:

22156. (a) A division of the State Teachers' Retirement System is hereby authorized by the Legislature to provide Medicare coverage for employees of a public agency as defined in Section 22009.03, upon the request of the public agency.

(b) The division authorized by subdivision (a) shall be conducted pursuant to this article.

(c) A member of the State Teachers' Retirement System on whose

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behalf a request is made pursuant to subdivision (a), may elect to be covered by Medicare, pursuant to Section 218 of the federal Social Security Act (42 U.S.C. Sec. 418), and applicable federal regulations if (1) the member was employed in a position covered by the system on March 31, 1986, and (2) the member has not since been mandated into Medicare coverage due to the enactment of Public Law 99-272, and (3) the member is in a position covered or the member is eligible to elect to be covered by the retirement system on the date of the division.

(d) The public agency shall, immediately after the elections authorized in subdivision (b) have been made, make application pursuant to Chapter 2 (commencing with Section 22200) of this part for Medicare coverage for those members who have elected to receive Medicare coverage.

(e) The effective date of the coverage may be retroactive a maximum of five years but not earlier than January 1, 1987.

(f) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 327. Section 22208 of the Government Code is amended to read:

22208. With respect to each retirement system coverage group, the legislative or governing body of every public agency having employees in positions covered by a retirement system, may, upon the affirmative vote of a majority of eligible retirement system employees of the retirement system coverage group at a referendum conducted in accordance with Article 2 (commencing with Section 22300) of this chapter and the rules and regulations promulgated by the board pursuant to this part, make formal application to the board for the inclusion of the employees in each retirement system coverage group in the agreement. With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the formal application shall be deemed to be made, if made prior to July 1, 2004, by the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 2004, by the Teachers' Retirement Board.

SEC. 328. Section 22302 of the Government Code is amended to read:

22302. In the case of employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, if prior to July 1, 2004, the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 2004, the Teachers' Retirement Board shall conduct the referendum; if the referendum is authorized by the Legislature.

In the case of employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1 the board shall authorize the referendum upon the request of the regents of the University of California and the regents shall conduct the referendum.

SEC. 329. Sections 56, 57, 58, 256, 262, 263, 266, 312, and 319 of this act shall not become operative if SB 2085 of the 1997-98 Regular Session is enacted prior to this act and amends Sections 22601.5, 22602, 22604, 26301, 26400, 26401, 26504, 27410, and 28100 of the Education Code, in which case Sections 11, 12, 13, 40, 42, 43, 50, 51, 64, and 66 of SB 2085 of the 1997-98 Regular Session shall be given effect and Sections 56, 57, 58, 256, 263, 266, 312, and 319 of this act shall be repealed on January 1, 1999.

SEC. 330. Section 72.5 of this act shall only become operative if SB 2126 of the 1997-98 Regular Session is enacted, in which case Section 72 of this act shall not become operative and shall be repealed on January 1, 1999. If SB 2126 of the 1997-98 Regular Session is not enacted, then Section 72.5 shall not become operative and shall be repealed on January 1, 1999 and Section 72 shall become operative.

SEC. 331. Section 132.5 of this bill incorporates amendments to Section 23203 of the Education Code proposed by both this bill and SB 2126. It shall only become operative if (1) both bills are enacted

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and become effective on or before January 1, 1999, (2) each bill amends Section 23203 of the Education Code, and (3) this bill is enacted after SB 2126, in which case Section 132 of this bill shall not become operative.

SEC. 332. Section 309.5 of this act shall become operative only if SB 2085 of the 1997-98 Regular Session is not enacted. If SB 2085 of the 1997-98 Regular Session is enacted, Section 309.5 shall not become operative and shall be repealed on January 1, 1999.

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CHAPTER 967

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AMENDED IN ASSEMBLY APRIL 28, 1998

INTRODUCED BY Committee on Public Employees, Retirement and Social Security (Honda (Chair), Migden, Scott, Shelley, and Wildman)

(Principal coauthor: Senator Solis)

(Coauthors: Assembly Members Baca, Bowler, Bustamante, Campbell, Cedillo, Cunneen, Ducheny, Knox, Ortiz, Prenter, Strom-Martin, and Villaraigosa)

(Coauthors: Senators Burton, Hughes, Johnston, Karnette, and O'Connell)

MARCH 12, 1998

An act to amend Sections 22951 and 22955 of, and to repeal Section 22952 of, the Education Code, relating to public retirement systems, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2804, Committee on Public Employees, Retirement and Social Security. Public retirement systems: benefits.

(1) Existing law provides a continuous appropriation from the General Fund to the Teachers' Retirement Fund of an amount equal to 4.3% of the annual total creditable compensation for purposes of meeting certain obligations and benefit costs.

This bill would change that appropriation on July 1, 1999, to 3.102% of the annual total creditable compensation. The bill would require another additional specified continuous annual appropriation to be made from the General Fund to the Teachers' Retirement Fund commencing on October 1, 1998, and require those funds to be first transferred to eliminate unfunded actuarial liabilities on or before June 30, 2027. The bill would require specified additional employer contributions to be paid on account of liabilities for sick leave credit benefits and would repeal provisions requiring additional employer contributions for specified retirement allowance increases. The bill would make legislative findings and declarations regarding the provisions.

(2) The bill would become operative only if AB 1102, AB 1150, and SB 1528 are all enacted and become operative.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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SECTION 1. (a) The Legislature finds and declares that:

(1) There have been many recent research studies which indicate that in future years California will face a significant shortage of qualified teachers.

(2) It is in the best public policy interest of the people of California that the Legislature act aggressively to insure that the conditions of employment for teachers are conducive to the growth of the work force.

(3) A substantive and sound retirement plan is a critical aspect of creating a stable and secure employment environment for the teaching profession.

(4) Since its inception the State Teachers' Retirement System has been in an underfunded status. While the State Teachers' Retirement System has been underfunded, there have been no significant increases in retirement benefits for teachers. Instead, teachers and other interested parties have worked in a collaborative effort with the Legislature to ensure that the system become fully funded.

(5) Pursuant to Section 22955 of the Education Code, the Legislature has required the General Fund to contribute 4.3 percent of prior year teacher payroll to be deposited in the Teachers' Retirement Fund for the purpose of accomplishing full funding of the State Teachers' Retirement System.

(6) A recent study by the State Teachers' Retirement System revealed that retirement benefits for California teachers lag behind those of other states.

(7) The most recent valuation by the State Teachers' Retirement System has indicated that the system is approaching full-funding and should reach that goal within the next three years.

(8) It is therefore appropriate that the Legislature continue to provide the funding designated by Section 22955 of the Education Code to improve benefits for the past, present, and future members of the State Teachers' Retirement System to ensure the proper growth and stability of the teaching work force in the State of California.

(b) In enacting this act, it is the intent of the Legislature to:

(1) Provide California teachers with retirement benefits which are competitive with other states.

(2) Provide a final compensation benefit which best reflects the highest earnings of State Teachers' Retirement System members and is commensurate with the benefit which is predominantly applicable to other public employees in the State of California.

(3) Provide a cost-of-living adjustment that is compounded annually.

(4) Provide appropriate early retirement incentives which allow work force flexibility for school districts and options for teachers who desire to leave the profession early.

(5) Ensure that teachers who have devoted their lives to the education of the children of California receive health benefits upon retirement.

(6) Provide retirement options which encourage mature and experienced teaching professionals to continue their careers after normal retirement age.

SEC. 2. Section 22951 of the Education Code is amended to read: 22951. In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions are based.

SEC. 3. Section 22952 of the Education Code is repealed.

SEC. 4. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby

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annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 3.102 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary.

If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability in the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, and (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate that occurs after July 1, 1990.

(g) The amendments to this section during the 1991-92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

SEC. 5. This act shall become operative only if Assembly Bill 1102, Assembly Bill 1150, and Senate Bill 1528 of the 1997-98 Regular Session of the Legislature are all enacted and become operative.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate

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effect. The facts constituting the necessity are:

In order for enhanced retirement benefits to be available to members of the State Teachers' Retirement System at the commencement of the school year, this act must take effect immediately.

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PUBLIC EMPLOYEES—RETIREMENT AND SICK LEAVE—BENEFITS

CHAPTER 1006

A.B. No. 1102

AN ACT to amend Sections 22717, 22719, 24209, 24210, 24415, and 24417 of, to add Section 24203.5 to, to repeal and add Section 22954 of, and to repeal Section 24414 of, the Education Code, and to add Sections 20837 and 20963.5 to the Government Code, relating to public employers, and making an appropriation therefor.

[Approved by Governor September 29, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, Knox. Public employees retirement: sick leave.

(1) The State Teachers' Retirement Law provides for service credit at retirement for unused sick leave for persons who were members prior to July 1, 1980.

This bill would make that benefit applicable to any member who retires on or after January 1, 1999.

(2) The State Teachers' Retirement Law requires specified amounts to be annually transferred to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund for the purpose of funding supplemental benefit payments.

This bill would repeal that provision and instead require a continuous appropriation to be annually made from the General Fund to that account in a specified amount for purposes of funding these supplemental payments. The bill would make a statement of legislative intent respecting the contractual obligation of those annual appropriations and would make related changes.

(3) The State Teachers' Retirement Law prescribes a 2% at age 60 service retirement formula.

The bill would provide that members with 30 or more years of credited service would receive an additional increase.

(4) The Public Employees' Retirement Law provides that state, school, and school safety members receive, at retirement, service credit for unused sick leave. The benefit is inapplicable to persons who became school or school safety members on or after July 1, 1980.

This bill would make that benefit applicable to school members who retire on or after January 1, 1999. The bill would require their employers to make additional contributions fixed and determined by the board of administration.

(5) The bill would provide that the State Teachers' Retirement Law provisions would become operative only if AB 2804 and AB 1150 are also enacted and become operative.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares as follows:

(a) The success of the class size reduction law and the effectiveness of public education generally requires that students be taught by competent, effective, credentialed teachers.

(b) Benefits provided members of the State Teachers' Retirement System are insufficient compared to those of members of the Public Employees Retirement System and other retirement systems, including teachers' retirement systems in other western states.

(c) State Teachers' Retirement System benefits are inadequate to make teaching attractive as a profession, and to encourage the retention of teachers in teaching.

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(d) It is the intent of the Legislature to provide benefit improvements to members of the State Teachers' Retirement System that will provide comparability to those of school members of the Public Employees' Retirement System and encourage qualified people to choose teaching as a career.

(e) It is the intent of the Legislature that the benefit improvements enacted by this act be funded pursuant to the amendments to Section 22955 of the Education Code proposed by Assembly Bill 2804 of the 1997-98 Regular Session unless provided otherwise.

This act shall be known and may be cited as the Ralph Dills Teacher Recruitment and Retention Act of 1998.

SEC. 2. Section 22717 of the Education Code is amended to read:

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 be applicable to any person who * * * retires on or after * * * January 1, 1999.

SEC. 3. Section 22719 of the Education Code is amended to read:

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 * * *.

SEC. 4. Section 22954 of the Education Code is repealed.

SEC. 5. Section 22954 is added to the Education Code, to read:

22954. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based for purposes of funding the supplemental payments authorized by Section 24415.

(b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

(c) It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415.

SEC. 6. Section 24203.5 is added to the Education Code, to read:

24203.5. The percentage of final compensation used to compute the allowance pursuant to Section 24202.5 or 24203 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5 or 24203, including any adjustments for retiring before the normal

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retirement age, and the additional percentage provided by this section does not exceed 2.40 percent.

SEC. 7. Section 24209 of the Education Code is amended to read:

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, 24202.5, 24203, 24203.5, or 24206 on service credited subsequent to the most recent termination of retirement allowance, the member's age at retirement, and final compensation.

SEC. 8. Section 24210 of the Education Code is amended to read:

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, 24202.5, 24203, 24203.5, 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. 9. Section 24414 of the Education Code is repealed.

SEC. 10. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall * * * 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 75 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 75 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 * * * vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

SEC. 11. Section 24417 of the Education Code is amended to read:

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24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, 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 75 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 and Section 24415.

(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 and Section 24415, 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 benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(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, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are * * * vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Section 22140 and 22141.

SEC. 12. Section 20837 is added to the Government Code, to read:

20837. Each school employer and each contracting agency that is a school district, on account of liability for the benefits provided by Section 20963.5 shall make contributions in addition to those otherwise specified in this chapter in amounts to be fixed and determined by the board.

SEC. 13. Section 20963.5 is added to the Government Code, to read:

20963.5. (a) Notwithstanding any other provision of law, Section 20963 shall not apply to school safety members who were employed on or after July 1, 1980, and who retired prior to January 1, 1999.

(b) Notwithstanding any other provision of law, Section 20963 shall apply to school members who retire on or after January 1, 1999.

SEC. 14. Sections 1 to 11, inclusive, of this act shall only become operative if Assembly Bill 2804 and Assembly Bill 1150 of the 1997-98 Regular Session of the Legislature are also enacted and become operative.

TEACHERS—RETIREMENT SYSTEM—CASH BALANCE PLAN

CHAPTER 1048

S.B. No. 2085

AN ACT to amend Sections 22110.1, 22122.5, 22155.5, 22200, 22202, 22304, 22307, 22311, 22402, 26000, 26000.5, 26004, 26105, 26112, 26114, 26115, 26116, 26128, 26129, 26134, 26137, 26200, 26201, 26202, 26204, 26206, 26207.5, 26209, 26300, 26301, 26400, 26401, 26402, 26501, 26503, 26504, 26506, 26603, 26701, 26702, 26703, 26704, 27301, 27401, 27409, 28100, and 28101 of, to add Sections 22001.5, 22403, and 26000.5 to, and to repeal Sections 26111, and 26207 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 30, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2085, Burton. State Teachers' Retirement System Cash Balance Plan.

The State Teachers' Retirement Law prescribes retirement benefits for eligible teachers in the public schools and the State Teachers' Retirement System Cash Balance Plan provides retirement benefits for other persons employed in instructional programs for less than 50% of the full-time equivalent by school employers who have elected to provide those benefits for those employees. The separate retirement programs and their separate retirement funds are both administered by the Teachers' Retirement Board.

This bill would merge those programs, would provide that both are included in the State Teachers' Retirement Law, and that they would both be known and cited as the State Teachers' Retirement Plan. The bill would provide that costs of administration be divided proportionately between the assets of the separate programs. The bill would provide that a prior loan from the Teachers' Retirement Fund to the Cash Balance Plan would be discharged by the creation of the State Teachers' Retirement Plan. The bill would delete the Cash Balance Fund and its various accounts, would require contributions, earnings, and any other amounts provided under that plan to be deposited in the Teachers' Retirement Fund and would provide that the Teachers' Retirement Fund is continuously appropriated for the payment of benefits under the Cash Balance Benefit Program. The bill would delete the Cash Balance Benefit Plan Expense Account and would authorize all administrative costs of the Cash Balance Benefit Program from the Teachers' Retirement Fund. The bill would make other related changes.

Appropriation: yes.

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

SECTION 1. Section 22001.5 is added to the Education Code, to read:

22001.5. The Legislature hereby finds and declares that on July 1, 1996, the State Teachers' Retirement System Cash Balance Plan was created and established to provide a retirement plan for persons employed to perform creditable service for less than 50 percent of the full-time equivalent for the position. The persons eligible for the Cash Balance Plan were excluded from mandatory membership in the State Teachers' Retirement System Defined

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Benefit Plan. Both plans are administered by the Teachers' Retirement Board. Prior to the creation and establishment of the Cash Balance Plan, the State Teachers' Retirement System Defined Benefit Plan had been identified simply as the State Teachers' Retirement System. As a result, the system was identified as both the administrative body and the retirement plan. The State Teachers' Retirement Law was amended to identify the retirement plan as the State Teachers' Retirement System Defined Benefit Plan in order to distinguish that plan from the Cash Balance Plan. Because both plans were intended to provide for the retirement of teachers and other persons employed in connection with public schools of this state and schools supported by this state, a merger of these two plans is now hereby made for the purpose of establishing a single retirement plan that shall be known and may be cited as the State Teachers' Retirement Plan consisting of the different benefit programs set forth in this part and Part 14 (commencing with Section 26000). This plan shall be administered by the Teachers' Retirement Board as set forth in this part and Part 14 (commencing with Section 26000). This part, together with Part 14 (commencing with Section 26000) shall be known and may be cited as the Teachers' Retirement Law.

SEC. 2. Section 22110.1 of the Education Code is amended to read:

22110.1. "Cash Balance * * * Benefit Program" means the benefit program of the State Teachers' Retirement * * * Plan as set forth in Part 14 (commencing with Section 26000).

SEC. 3. Section 22122.5 of the Education Code is amended to read:

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

SEC. 4. Section 22155.5 of the Education Code is amended to read:

22155.5. "Plan" means the State Teachers' Retirement * * * Plan * * *.

SEC. 5. Section 22200 of the Education Code is amended to read:

22200. (a) The plan and the system * * * are administered 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 either members of the Defined Benefit Program or participants in the Cash Balance * * * Benefit Program, as follows:
 - (A) Two persons who, at the time of appointment, are classroom teachers in kindergarten or grades 1 through 12.
 - (B) One person who, at the 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 either a retired member * * * under this part or a retired participant under Part 14 (commencing with Section 26000).
 - (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.

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(b) Deposit in the United States mail of a warrant drawn as directed by the participant or beneficiary and addressed as directed by the participant or beneficiary constitutes distribution of the benefit under this part.

(c) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefit under this part.

(d) Distribution under subdivision (b) or (c) 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 payments under this part.

SEC. 48. Section 27401 of the Education Code is amended to read:

27401. For purposes of this chapter, "nonparticipant spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the benefit determined by reference to the amounts credited to a participant's employee and employer accounts or the participant's annuity. A nonparticipant spouse who is awarded separate nominal accounts is not a participant in the * * * Cash Balance Benefit Program. A nonparticipant spouse who receives * * * or is awarded an interest in a participant's annuity is not a participant in the * * * Cash Balance Benefit Program.

SEC. 49. Section 27409 of the Education Code is amended to read:

27409. Upon being awarded separate nominal accounts or an interest in the annuity of a participant, a nonparticipant 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. 50. Section 28100 of the Education Code is amended to read:

28100. (a) The employer may discontinue providing the Cash Balance * * * Benefit Program at anytime in accordance with the terms and conditions of the employer's governing board's formal action to provide the program.

(b) The employer shall notify the system of the decision to discontinue the plan no less than 90 calendar days prior to the effective date of discontinuance. Such notice shall be submitted on a form prescribed by the system.

SEC. 51. Section 28101 of the Education Code is amended to read:

28101. (a) Upon discontinuation of the * * * Cash Balance Benefit Program by the employer, the system will hold the employee and employer accounts for the benefit of the participant. The participant is immediately vested in both employee and employer accounts including accrued interest.

(b) Both employee and employer accounts will continue to be credited with interest at the minimum interest rate so long as there is an undistributed balance in such accounts

BILL NUMBER: SB 2126 CHAPTERED 09/30/98

CHAPTER 1076
 FILED WITH SECRETARY OF STATE SEPTEMBER 30, 1998
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 PASSED THE SENATE AUGUST 30, 1998
 PASSED THE ASSEMBLY AUGUST 27, 1998
 AMENDED IN ASSEMBLY AUGUST 25, 1998
 AMENDED IN SENATE APRIL 22, 1998

INTRODUCED BY Committee on Public Employment and Retirement
 (Senators Schiff (Chair), Burton, and Karnette)

FEBRUARY 20, 1998

An act to amend Sections 22801, 22803, 22820, 23203, and 24201 of, and to add Sections 17193.5, 17199.5, 22147.5, 22260, and 22826 to, the Education Code, relating to the State Teachers' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

SB 2126, Committee on Public Employment and Retirement. State Teachers' Retirement System: benefits.

- (1) The State Teachers' Retirement Law authorizes members to receive additional service credit upon payment of contributions. This bill would require those payments to be made in not more than 120 monthly installments. The bill would authorize purchase of up to 5 years of nonqualified service, as defined.
- (2) Existing law authorizes redeposited refunded accumulated contributions to be made in not more than 60 monthly installments. This bill would authorize repayment in 120 monthly installments.
- (3) Existing law authorizes purchase of out-of-state service and excludes that service from vesting requirements. This bill would delete that exclusion, except as specified.
- (4) The California School Finance Authority Act authorizes the Controller, upon receipt of a deficiency notice from any school district or county office of education, to make specified apportionments to trustees. This bill would require the Controller to allocate apportionments to public credit providers, as defined, rather than the trustee if the bonds were subject to a credit enhancement agreement. The bill would authorize the State Teachers' Retirement System to provide credit enhancement for bonds, notes, certificates of participation, or other evidence of indebtedness of school employees.
- (5) The bill would incorporate additional changes in Section 24201 of the Education Code proposed by SB 610, that would become operative only if SB 610 and this bill are both chaptered and became effective on or before January 1, 1999, and this bill is chaptered last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17193.5 is added to the Education Code, to read:

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17193.5. (a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, which consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other provision of law, a public credit provider may, in connection with providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a school district or county office of education, require the school district or county office of education to agree to the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement.

The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason a public credit provider is required to make principal or interest payments or both pursuant to a credit enhancement agreement, the public credit provider shall immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from moneys designated for apportionments to the school district pursuant to Section 42238 or to the county office of education pursuant to Section 2558 or to the community college district pursuant to Section 84750.

(b) The amount apportioned for a school district, a county office of education, or a community college district pursuant to this section shall be deemed to be an allocation to the district or the county office of education or the community college district for purposes of subdivision (b) or Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits or revenue levels pursuant to Section 42338 for any school district or pursuant to Section 2558 for any county office of education or pursuant to Section 84750 for any community college district, the revenue limit or revenue level for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a).

SEC. 2. Section 17199.5 is added to the Education Code, to read:

17199.5. Notwithstanding Section 17199.4, if the bonds were subject to a credit enhancement agreement provided by a public credit provider pursuant to Section 17193.5 for which a payment for principal or interest, or both, has been made by the public credit provider, the Controller shall allocate to the public credit provider, rather than the trustee, the percentage of the apportionment to be made pursuant to this paragraph equal to the percentage of the outstanding indebtedness which is subject to the credit enhancement agreement.

SEC. 3. Section 22147.5 is added to the Education Code, to read:

22147.5. "Nonqualified service" means time during which creditable service subject to coverage by the plan is not performed, excluding time a member is eligible to purchase as permissive or additional service credit pursuant to Chapter 14 (commencing with

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Section 22800), Chapter 14.2 (commencing with Section 22820), and Chapter 14.5 (commencing with Section 22850).

SEC. 4. Section 22260 is added to the Education Code, to read:

22260. Notwithstanding any other provision of law, the system may provide credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of an employer, provided that any credit enhancement transaction satisfies the requirement of Section 22250 and does not constitute a prohibited transaction for purposes of Section 503 of the United States Internal Revenue Code.

SEC. 5. Section 22801 of the Education Code is amended to read:

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, adopted by the board as a plan amendment, in effect at the time of election. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(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) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) 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.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments.

SEC. 6. Section 22803 of the Education Code is amended to read:

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

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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.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (11), 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. 7. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance Plan under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit in this plan pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under this plan pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Contributions made to a plan qualified under Section 403(b) of the Internal Revenue Code may not be used to purchase credit for out-of-state service.

(e) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(f) The credited service purchase under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 8. Section 22826 is added to the Education Code, to read:

22826. (a) A member may elect to receive up to five years of

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credit for nonqualified service provided the member is vested in the plan as provided in Section 22156.

(b) A member who elects to receive credit for nonqualified service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan.

(1) Payment that a member may make to the system to obtain credit for nonqualified service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase nonqualified service prior to the effective date of the applicable allowance, the member may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for nonqualified service credit shall be made in a lump sum or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 9. Section 23203 of the Education Code is amended to read:

23203. Redeposit of refunded accumulated retirement contributions shall be made in one sum, or in not more than 120 monthly installments; provided that no installment, except the final installment, shall be less than twenty-five dollars (\$25).

SEC. 10. Section 24201 of the Education Code is amended to read:

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 service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security 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 System.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 11. Section 24201 of the Education Code is amended to read:

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 service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security 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, county retirement

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systems established under the County Employee Retirement Law of 1937, or the San Francisco City and County Employees' Retirement System.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 12. Section 11 of this bill incorporates amendments to Section 24201 of the Education Code proposed by both this bill and SB 610. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 24201 of the Education Code, and (3) this bill is enacted after SB 610, in which case Section 10 of this bill shall not become operative.

TEACHERS—RETIREMENT—TECHNICAL CHANGES

CHAPTER 938

S.B. No. 1074

AN ACT to amend Sections 22000, 22007, 22008, 22119.2, 22128, 22134, 22135, 22136, 22138.5, 22147.5, 22148, 22161, 22163, 22306, 22327, 22360, 22400, 22455.5, 22457, 22458, 22459, 22502, 22503, 22504, 22508, 22508.5, 22514, 22516, 22601.5, 22602, 22604, 22664, 22713, 22714, 22717, 22718, 22801, 22803, 22805, 22820, 22823, 22826, 22955, 23003, 23004, 23006, 23201, 23702, 23851, 24101.5, 24201, 24203.5, 24211, 24212, 24213, 24300, 24305.5, 24306, 24307, 24600, 24615, 26135, 26202, 26215, 26301, 26303, 26401.5, 26504, 26603, 26604, 27410, 44494, and 47611 of, to add Sections 22104.5, 22106.1, 22106.2, 22109.5, 22115.2, 22115.5, 22156.1, 22156.2, 22156.5, 22170.5, 22360.5, 22724, and 23805.5 to, to repeal and add Section 24205 of the Education Code, and to amend Section 20639 of the Government Code, relating to the State Teachers' Retirement System.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1074, Committee on Public Employment and Retirement, State Teachers' Retirement System.

The State Teachers' Retirement Law prescribes the retirement benefits of eligible teachers in the public schools who are participants in the Defined Benefit Program and the Cash

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Additions or changes indicated by underline; deletions by asterisks: * * *

Balance Benefit Program. Those programs were separately administered by the Teachers' Retirement Board until they were merged by Chapter 1048 of the Statutes of 1998.

This bill would revise various provisions to reflect that merger, make related technical changes, update various provisions, and codify various existing regulations. The bill would define various terms for purposes of benefit computations.

The State Teachers' Retirement Law prescribes retirement benefits for a nonmember spouse who is awarded a separate account upon legal separation or dissolution of marriage.

This bill would incrementally increase the maximum benefit factor for calculation of benefits for a nonmember spouse whose retirement is effective on or after January 1, 1999, and at an age greater than normal retirement age, as specified.

The State Teachers' Retirement Law provides increased benefits for members who have 30 or more years of credited service, subject to certain conditions:

The bill would specify types of credited service that are excluded from or included in the calculation of credited service for determining eligibility for those increased benefits and provide that nonmember spouses are eligible for those increased benefits if the member had 30 or more years of credited service on the date the parties separated. The bill would state that certain of these provisions are declaratory of existing law.

Existing law, known as the Daye Elder State Teachers' Retirement System Home Loan Program Act, establishes a member home loan financing program and requires the Teachers' Retirement Board to adopt regulations governing the program.

This bill would modify the terms and conditions of that program and add an authorization for personal loans, secured by a portion of a member's accumulated retirement contributions, to be used to finance a portion of the purchase price of the member's home, subject to specified terms.

The bill would provide that any other act enacted by the Legislature during 1999 that affects any section of the bill shall prevail over the provisions of the bill.

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

SECTION 1. Section 22000 of the Education Code is amended to read:

22000. This part * * * may be known and cited as the E. Richard Barnes Act and together with Part 14 (commencing with Section 26000) shall be known as the Teachers' Retirement Law.

SEC. 2. Section 22007 of the Education Code is amended to read:

22007. The obligations of any member, or the member's beneficiaries, to this system and the * * * Defined Benefit Program continue throughout membership, and thereafter until all of the obligations of this system and the * * * Defined Benefit Program to or in respect to the member or the member's beneficiaries have been discharged.

SEC. 3. Section 22008 of the Education Code is amended to read:

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions with respect to the Defined Benefit Program, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, or beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, or beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, or beneficiary to receive benefits under the plan, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, or

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other party in relation to or on behalf of a member * * * or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

SEC. 4. Section 22104.5 is added to the Education Code, to read:

22104.5. "Actuary" means a person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields who has been appointed by the board for the purpose of actuarial services required under this part.

SEC. 5. Section 22106.1 is added to the Education Code, to read:

22106.1. "Base days" means the number of days of creditable service required to earn one year of service credit.

SEC. 6. Section 22106.2 is added to the Education Code, to read:

22106.2. "Base hours" means the number of hours of creditable service required to earn one year of service credit.

SEC. 7. Section 22109.5 is added to the Education Code, to read:

22109.5. "Break in service," for purposes of determining a member's final compensation, means:

(a) With respect to service of a member employed as a full-time employee and service performed by a member employed as a part-time employee, any period of time covering a pay period during which a member is on an unpaid leave or absence or a pay period in which a member has not performed any creditable service.

(b) For a member who has been employed in a substitute position:

(1) And has a change in assignment during a school year to a full-time or part-time position, a break in service is determined on the same basis as for the full-time or part-time employment during the same school year.

(2) For less than 50 percent of their teaching career for which service is credited, a break in service is determined on the same basis as full-time employment.

(3) For more than 50 percent of their teaching career for which service is credited, a break in service is any period of time within a school year for which compensation is not paid and service is not credited.

(c) If a member commenced performing service at the beginning of a school term, July and August of the school year are not a break in service; however, if the member commenced performing service after the school term begins, the previous July and August are a break in service.

(d) Earnable salaries for a full pay period, but not beyond the effective date of retirement, shall be used in determining final compensation when the member performed service within that pay period.

SEC. 8. Section 22115.2 is added to the Education Code, to read:

22115.2. "Concurrent membership" means membership in the Defined Benefit Program by an individual who is credited with service that is not used as a basis for benefits under any other public retirement system and is also a member of the California Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco City and County Employees' Retirement System. A member with concurrent membership shall have the right to the following:

(a) Have final compensation determined pursuant to subdivision (c) of Section 22134.

(b) Redeposit accumulated retirement contributions pursuant to Section 23201.

(c) Apply for retirement pursuant to paragraph (2) of subdivision (a) of Section 24201.

SEC. 9. Section 22115.5 is added to the Education Code, to read:

22115.5. (a) "Concurrent retirement" entitles a member of the Defined Benefit Program to retire for service from the State Teachers' Retirement System and from at least one of the retirement systems with which the member has concurrent membership, as defined in Section 22115.2, on the same date or on different dates provided that the member does not perform creditable service subject to coverage under the other system or the Defined Benefit Program between the two retirement dates.

(b) A retired member who is subsequently employed in a position subject to membership in a public retirement system, specified in Section 22115.2, shall not be eligible for concurrent retirement.

SEC. 10. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of * * * the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or

403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the * * * Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the * * * Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

SEC. 11. Section 22128 of the Education Code is amended to read:

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

SEC. 12. Section 22134 of the Education Code is amended to read:

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member:

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who * * * has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or * * * a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under * * * the Defined Benefit Program.

(3) Retirement under * * * the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.2392

(e) * * * If a member has received service credit for part-time service performed prior to July 1, 1956, * * * the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 13. Section 22135 of the Education Code is amended to read:

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, "final compensation" means the highest annual compensation earnable by an active member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the * * * plan's Defined Benefit Program. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

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

(c) As used in this section, "classroom teacher" means any of the following:

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

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

(d) As used in this section, "classroom teacher" does not include any of the following:

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

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

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

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

(5) Classified employees.

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

(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in allowances provided by this section and

related administrative costs * * * and a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the * * * plan's Defined Benefit Program, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is a member of the Public Employees' Retirement System pursuant to Section 22508, that he or she may, within 60 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this * * * plan's Defined Benefit Program. However, only service credited under * * * the Defined Benefit Program subsequent to the date of that election shall be subject to this section.

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the applicability of this section to a member pursuant to the criteria set forth in this section when a retirement, disability, or family allowance becomes payable.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payments not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

SEC. 14. Section 22136 of the Education Code is amended to read:

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 * * * Defined Benefit Program 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. 15. Section 22138.5 of the Education Code is amended to read:

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 paragraphs (2) and (3).

(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 employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

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

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(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 employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per year for all * * * instructors employed on a part-time basis. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per year for all adult education instructors. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) 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. 16. Section 22147.5 of the Education Code is amended to read:

22147.5. "Nonqualified service" means time during which creditable service subject to coverage by the * * * Defined Benefit Program is not performed, excluding time a member is eligible to purchase as permissive or additional service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), and Chapter 14.5 (commencing with Section 22850).

SEC. 17. Section 22148 of the Education Code is amended to read:

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

SEC. 18. Section 22156.1 is added to the Education Code, to read:

22156.1. "Present value," for purposes of Section 22723, means the amount of money needed on the effective date of retirement to reimburse the system for the actuarially determined cost of the portion of a member's retirement allowance attributable to unused excess sick leave days. The present value on the effective date of retirement shall equal the number of unused excess sick leave days divided by the number of base days, multiplied by the prior year's compensation earnable multiplied by the present value factor.

SEC. 19. Section 22156.2 is added to the Education Code, to read:

22156.2. "Present value factor," for purposes of Section 22156.1, means an overall average rate based upon the demographics of members who recently retired under the Defined Benefit Program and regular interest that shall determine present value on the effective date of retirement.

SEC. 20. Section 22156.5 is added to the Education Code, to read:

22166.5. "Prior year's compensation earnable" means the compensation earnable for the most recent school year in which the member earned service credit that precedes the last school year in which the member earned service credit.

SEC. 21. Section 22161 of the Education Code is amended to read:

22161. "Public school" means any day or evening elementary school, * * * any day or evening secondary school, community college, technical school, kindergarten school, and prekindergarten school established by the Legislature, or by municipal or district authority.

SEC. 22. Section 22163 of the Education Code is amended to read:

22163. "Reinstatement" means the * * * change in status with respect to the Defined Benefit Program under this part from a disabled or retired member to an active or inactive member and termination of one of the following:

- (a) A service retirement allowance * * * pursuant to Section 24208.
- (b) A disability retirement allowance pursuant to Section 24117.
- (c) A disability allowance pursuant to Section 24004 or 24015.
- (d) A service retirement allowance or disability retirement allowance pursuant to Section 23404.

SEC. 23. Section 22170.5 is added to the Education Code, to read:

22170.5. (a) "Sick leave days" means the number of days of accumulated and unused leave of absence for illness or injury.

(b) "Basic sick leave day" means the equivalent of one day's paid leave of absence per pay period due to illness or injury.

(c) "Excess sick leave days" means the day or total number of days, granted by an employer in a pay period as defined in Section 22154 after June 30, 1986, for paid leave of absence due to illness or injury, in excess of a basic sick leave day.

SEC. 24. Section 22306 of the Education Code is amended to read:

22306. (a) Information filed with the system by a member, participant, or beneficiary of the plan 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, participant, or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

- (1) To the member, participant, or beneficiary to whom the information relates.
- (2) To the authorized representative of the member, participant, or beneficiary.
- (3) To the governing board of the member's or participant'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.
- (6) Pursuant to subpoena.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the member or participant 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. 25. Section 22327 of the Education Code is amended to read:

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 * * * under the Defined Benefit Program. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving disability benefits * * * under the Defined Benefit Program. 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 shall be obtained from the Employment Development Department upon

request by the board. 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. 26. Section 22360 of the Education Code is amended to read:

22360. (a) Notwithstanding any other provision of law, the board may pursuant to Section 22203 and in conformance with its fiduciary duty set forth in Section 22250, enter into correspondent agreements with private lending institutions in this state to utilize the retirement fund to invest in residential mortgages, including assisting borrowers, through financing, to obtain homes in this state.

(b) The * * * program * * * shall, among other things, provide:

(1) That home loans be made available to borrowers * * * 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 recipients of the loans occupy the homes as their principal residences in accordance with * * * policies established by the board.

(3) That the home loans shall be available only for the purchase or refinance of homes in this state.

(4) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan * * * of up to 100 percent of the appraised value. In no event shall the loan amount exceed three hundred fifty thousand dollars (\$350,000). 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.

(5) That there may be prepayment penalties assessed on the loans in accordance with * * * policies established by the board.

(6) That the criteria and terms for its loans shall be consistent with the financial integrity of the program and the sound investment of the retirement fund.

(7) Any other terms and conditions as the board shall deem appropriate.

(c) It is the intent of the Legislature that the provisions of this section be used to establish an investment program for residential mortgages, including assisting * * * borrowers in purchasing homes in this state; or refinancing a mortgage loan. The Legislature intends that home loans made pursuant to this section shall be secured primarily by the property * * * purchased or refinanced and shall not exceed the * * * appraised value of that property.

(d) Appropriate administrative costs of implementing this section and Section 22360.5 shall be paid by the * * * participating borrowers. Those costs may be included in the loan amount.

(e) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to borrowers consistent with the financial integrity of the home loan program and the sound and prudent investment of the retirement fund. Under no circumstances, however, shall the interest rates offered to borrowers be below current market rate.

(f) The board shall administer this section and Section 22360.5 under other terms and conditions it deems appropriate and in keeping with the investment standard. The board may adopt * * * policies as necessary for its administration of this section and Section 22360.5 and to assure compliance with applicable state and federal laws.

(g) This section and Section 22360.5 shall be known as, and may be cited as, the Dave Elder State Teachers' Retirement System Home Loan Program Act.

SEC. 27. Section 22360.5 is added to the Education Code, to read:

22360.5. (a) The board may include in any investment program established pursuant to Section 22360 a procedure whereby a member may obtain 100 percent financing for the purchase for a single-family dwelling unit in accordance with the following criteria:

(1) The member shall obtain one loan secured by the purchased home, pursuant to Section 22360, and a second personal loan secured by a portion of the accumulated retirement contributions in the member's individual account. The personal loan shall only be used for the purchase of the member's principal residence and not for a loan to refinance the member's existing mortgage.

(2) The loan secured by the purchased home shall be consistent with the requirements imposed by Section 22360.

(3) In no event may the personal loan secured by the accumulated retirement contributions in the member's individual account exceed the lesser of 50 percent of the current value amount of the accumulated retirement contributions or fifty thousand dollars (\$50,000).

(4) If two members are married, the personal loan secured by the sum total of accumulated retirement contributions in both members' accounts shall not exceed 5 percent of the loan.

(5) The pledge of security under this section shall remain in effect until the personal loan is paid in full.

(b) The pledge of security under this section shall take binding effect. In the event of a default on the personal loan secured by the member's retirement contributions as authorized by this section, the board shall deduct an amount from the member's accumulated retirement contributions on deposit and adjust the member's accumulated retirement contributions as necessary to recover any outstanding loan balance prior to making any disbursement of a refund or a lump-sum distribution.

(c) In the event of a default on the personal loan by a member, the board shall deduct the monthly principal plus appropriate interest from the member's benefit, when the member begins receiving a benefit, until the loan is paid in full.

(d) In the event of a default on the personal loan by a member receiving a benefit, the board shall deduct the monthly principal and interest from the member's benefit until the personal loan is paid in full.

(e) The secured personal loan permitted under this section shall be made available only to members who meet eligibility criteria as determined by the board.

(f) In the event of a refund or lump-sum distribution of the accumulated retirement contributions, the member's account shall be adjusted as necessary to recover any outstanding loan balance.

(g) If the member is married at the time the home is purchased with a personal loan secured by the member's accumulated retirement contributions as authorized by this section, then the member's spouse shall agree in writing to the pledge of security, as to his or her community interest in the amount pledged, regardless of whether title to the home is held in joint tenancy.

(h) For purposes of the section only, "member" means any person who is entitled to receive an allowance funded by the system pursuant to this part or Part 14, notwithstanding any vesting requirement and without regard to present eligibility to retire, and who is not retired or disabled.

SEC. 28. Section 22400 of the Education Code is amended to read:

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 and Part 14. 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 * * *.

(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. 29. Section 22455.5 of the Education Code is amended to read:

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 * * * Defined Benefit Program, 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's Defined Benefit Program 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 with respect to the Defined Benefit Program 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. 30. Section 22457 of the Education Code is amended to read:

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 * * * Defined Benefit Program.

(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 * * * Defined Benefit Program.

SEC. 31. Section 22458 of the Education Code is amended to read:

22458. Each employer shall provide the system with information regarding the compensation to be paid to employees subject to the * * * Defined Benefit Program 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. 32. Section 22459 of the Education Code is amended to read:

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 * * * Defined Benefit Program or to pay amounts due from the members to the * * * fund with respect to the Defined Benefit Program.

(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. 33. Section 22502 of the Education Code is amended to read:

22502. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of subsequent employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26789).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 34. Section 22503 of the Education Code is amended to read:

22503. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 35. Section 22504 of the Education Code is amended to read:

22504. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member * * * as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed * * * by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 36. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district, community college district, or a county superintendent to perform service that requires membership in a different public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) A member of the Public Employees' Retirement System who is employed by a school district, community college district, or a county superintendent and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of * * * this plan may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire to perform creditable service. If that election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

(c) An election made by a member pursuant to this section shall be irrevocable.

SEC. 37. Section 22508.5 of the Education Code is amended to read:

22508.5. (a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement Plan employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that * * * are subject to membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the Defined Benefit Program. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the program.

(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage * * * under the

Defined Benefit Program, may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage under the Defined Benefit Program pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998.

SEC. 38. Section 22514 of the Education Code is amended to read:

22514. Members who have not achieved plan vesting shall become eligible for benefits under the Defined Benefit Program when total service under the Defined Benefit Program 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 under the Public Employees' Retirement System.

SEC. 39. Section 22516 of the Education Code is amended to read:

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in the Defined Benefit Program any person employed to perform creditable service at a level that requires mandatory membership in the program for which he or she has the right to elect membership in the program 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 the Defined Benefit Program.

(b) Service performed after becoming a member of another retirement system shall not be credited to the member under this part, nor shall contributions or benefits under this part 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 22134.

SEC. 40. Section 22601.5 of the Education Code is amended to read:

22601.5. (a) Any person employed to perform creditable service who is not already a member in the Defined Benefit Program and whose basis of employment is less than 50 percent of the full-time equivalent for the position is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 41. Section 22602 of the Education Code is amended to read:

22602. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member in the Defined Benefit Program and who performs less than 100 complete days of creditable service in one school district, community college district, or county superintendent's office during the school year is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who perform service for employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 42. Section 22604 of the Education Code is amended to read:

22604. (a) Any person employed to perform creditable service on a part-time basis who is not already a member in the Defined Benefit Program and who performs less than 60 hours of creditable service in a 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, during the school year in one school district, community college district, or county superintendent's office is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 43. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited 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. 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, out-of-state service, and permissive service credit that 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 under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that 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 or court order pursuant to Section 22652 was entered.

(c)(1) Upon service retirement at * * * normal retirement age under this part, 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.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part 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.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

<u>Age at Retirement</u>	<u>Percentage</u>
60 $\frac{1}{4}$	2.033
60 $\frac{1}{2}$	2.067
60 $\frac{3}{4}$	2.10
61	2.133
61 $\frac{1}{4}$	2.167
61 $\frac{1}{2}$	2.20
61 $\frac{3}{4}$	2.233
62	2.267
62 $\frac{1}{4}$	2.30
62 $\frac{1}{2}$	2.333
62 $\frac{3}{4}$	2.367
63 and over	2.40

(4) 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.

(5) 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 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable 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 under this part 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 under the Defined Benefit Program 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 under the Defined Benefit Program, 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 under this part. 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 under this part, 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. 44. Section 22713 of the Education Code is amended to read:

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 of the Defined Benefit Program 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, in part, on final compensation determined from the

compensation earnable the member would have been entitled to 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 under the Defined Benefit Program 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, time 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 ~~reduced~~ workload shall be performed for a period of time, as specified in the regulations. The period of time specified in the regulations shall not exceed 10 years.

(6) The reduced workload shall be equal to at least 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 creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced 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 make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 45. Section 22714 of the Education Code is amended to read:

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 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 credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) 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.

(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 * * * pursuant to 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 * * * service credit pursuant to this section and the amount the member would have received without the * * * 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 * * * Section 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 subparagraph (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 * * * costs to 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 subparagraph (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 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 of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates 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. 46. Section 22717 of the Education Code is amended to read:

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 * * * Defined Benefit Program.

(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 * * * Defined Benefit Program; which shall not be less than the minimum standard specified in Section 22138.5. The number of days shall not include school and legal holidays. In no event shall the divisor be less than 175. For members employed less than full time, the standards identified in Section 22138.5 shall be considered as the minimum full-time equivalent. For those standards identified in Section 22138.5 that are applicable to teachers or instructors and that are expressed only in terms of hours or instructional hours, the number of hours or instructional hours shall be divided by six to determine the number of days.

(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 be applicable to any person who retires on or after January 1, 1999.

SEC. 47. Section 22718 of the Education Code is amended to read:

22718. (a) The Teachers' Retirement Board shall * * * bill school employers for service credit granted for unused excess sick leave under this part, * * * subject to the following provisions:

(1)(A) In addition to the certification of sick leave days, the employer shall also certify the number of unused excess sick leave days.

(B) Excess sick leave days granted by an employer other than the member's last employer shall be deemed to be granted by the last employer and shall be included in the certification if the member was eligible to use those excess sick leave days while he or she was employed by the last employer.

(2) 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 Defined Benefit Program.

(3) The employer shall be billed only for the present value of the unused excess sick leave days * * * and any subsequent adjustments to the billing shall be billed or refunded, as appropriate, to the employer.

(4)(A) The employer shall remit the amount billed to the system with the certification required by Section 22717 within 30 days after the effective date of the member's retirement or within 30 days after the date the system has notified the employer that a certification must be made, whichever is later.

(B) If payment is not received within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(C) If the system has billed the employer for an additional amount, the employer shall remit the additional amount within 30 days after the date of the billing. If payment is not received for the additional amount within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(b) If a school employer fails to pay a bill charged according * * * 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. 48. Section 22724 is added to the Education Code, to read:

22724. (a) To determine the number of excess sick leave days to which a member is entitled when he or she retires, the employer shall deduct the days of sick leave used by the member from the member's accumulated and unused sick leave balance according to the following method:

(1) Sick leave usage shall first be deducted from the accumulated and unused sick leave balance existing on July 1, 1986.

(2) Sick leave usage shall next be deducted from basic sick leave days granted to the member by an employer after June 30, 1986.

(3) Sick leave usage shall then be deducted from any excess sick leave days granted to the member by an employer after June 30, 1986.

(b) Upon request from the board, the employer shall submit sick leave records of past years for audit purposes.

SEC. 49. Section 22801 of the Education Code is amended to read:

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, adopted by the board as a plan amendment, in effect at the time of election. If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(b) If the member is employed to perform creditable service subject to coverage by the * * * Defined Benefit Program 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 * * * Defined Benefit Program 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) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) 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.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments. Regular interest shall not be charged or be payable for the period of a delay caused by the system's inability or failure to determine and inform the member or beneficiary of the amount of contributions and interest that is payable. The period of delay shall commence on the 20th day following the day on which the member or beneficiary who wishes to make payment evidences in writing to the system that he or she is ready, willing, and able to make payment to the system. The period of delay shall cease on the first day of the month following the mailing of notification of contributions and interest payable.

SEC. 50. Section 22803 of the Education Code is amended to read:

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 * * * under the Defined Benefit Program within one year prior to entering the * * * job corps and returned to employment to perform creditable service subject to coverage * * * under the Defined Benefit Program 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.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), 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 * * * Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 51. Section 22805 of the Education Code is amended to read:

22805. (a) A member may elect to receive credit under this part 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 Congress or the * * * 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 * * * under the Defined Benefit Program 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 was absent without compensation for other cause, on leave, or otherwise, shall not be included.

SEC. 52. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance * * * Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit * * * under the Defined Benefit Program pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under * * * the Defined Benefit Program pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Contributions made to a plan qualified under Section 403(b) of the Internal Revenue Code may not be used to purchase credit for out-of-state service.

(e) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(f) The * * * service * * * credit purchased under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 53. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall * * * pay all contributions with respect to that service at the contribution rate for additional service credit adopted by the board as a plan amendment, in effect at the time of election.

(b)(1) Any payment that a member may make to the system to obtain credit for out-of-state service pursuant to this chapter shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member or beneficiary of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member or beneficiary may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 54. Section 22826 of the Education Code is amended to read:

22826: (a) A member may elect to receive up to five years of credit for nonqualified service provided the member is vested in the Defined Benefit Program as provided in Section 22156.

(b) A member who elects to receive credit for nonqualified service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan with respect to the Defined Benefit Program.

(1) Payment that a member may make to the system to obtain credit for nonqualified service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase nonqualified service prior to the effective date of the applicable allowance, the member may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for nonqualified service credit shall be made in a lump sum or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 55. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 3.102 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section 22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The amendments to this section during the 1991-92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

SEC. 56. Section 23003 of the Education Code is amended to read:

23003. (a) If a county superintendent of schools or employing agency * * * or school district or community college district that reports directly to the system fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions under this part * * *

SEC. 57. Section 23004 of the Education Code is amended to read:

23004. The county superintendent of schools or employing agency * * * shall, or a school district * * * or community college district * * * may, with approval of the board, submit a report monthly to the system containing such information as the board may require in the administration of the plan.

SEC. 58. Section 23006 of the Education Code is amended to read:

23006. (a) If a county superintendent of schools or employing agency * * * or school district or community college district that reports directly to the system, submits monthly reports late or in unacceptable form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required under this part by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars (\$500), whichever is greater.

SEC. 59. Section 23201 of the Education Code is amended to read:

23201. Any person whose accumulated retirement contributions were refunded, who wishes to establish concurrent membership, and who has received, or will qualify to receive, a retirement allowance from one or more of the * * * retirement systems * * * defined in Section * * * 22115.2, 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 under the Defined Benefit Program. * * *

SEC. 60. Section 23702 of the Education Code is amended to read:

23702. (a) All members * * * in the Defined Benefit Program 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 * * * Defined Benefit Program on October 15, 1992, only, and not on prior or subsequent events.

SEC. 61. Section 23805.5 is added to the Education Code, to read:

23805.5. (a) A parent claiming a benefit under Section 23805 is dependent if all of the following apply:

(1) The parent was receiving one-half or more of his or her support from the member for the tax year preceding the member's death.

(2) The parent was declared as a dependent on the income tax return of the member for at least one of the two tax years preceding the member's death.

(3) No one else has assumed at least one-half of the parent's support in the tax year of the member's death.

(4) The parent has net assets of not more than twenty-five thousand dollars (\$25,000), excluding his or her personal residence and personal property therein.

(b) A person claiming a benefit under Section 23805 or his or her guardian shall furnish the board a state or federal income tax return and any other evidence regarding his or her financial status as the board may require.

SEC. 62. Section 23851 of the Education Code is amended to read:

23851. (a) A death payment of not less than 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 creditable compensation is paid.

(2) Within four months after termination of creditable service or termination of employment, whichever occurs first.

(3) Within 12 months of the last day for which creditable compensation was paid, if the member was on an approved leave of absence without creditable 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 and adopt as a plan amendment with respect to the Defined Benefit Program any adjusted amount.

(d) A designated beneficiary may waive * * * the right to the death payment in accordance with the requirements established by the system.

SEC. 63. Section 24101.5 of the Education Code is amended to read:

24101.5. A member shall not be eligible for disability retirement * * * under the Defined Benefit Program while on a leave of absence to serve as a full-time, elected officer of an employee organization, even if * * * the member receives service credit under Section 22711.

SEC. 64. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service under this part upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained the age of 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820. The number of years of credited service performed in California shall not be less than the number of years necessary to determine final compensation pursuant to Section 22134 or 22135, whichever is applicable to the member.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if * * * the member has attained the age of 55 years or older and retires concurrently under one or more of the * * * retirement systems * * * with which the member has concurrent membership as defined in Section 22115.2.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made * * * even if the member has not earned five years of service.

SEC. 65. Section 24203.5 of the Education Code is amended to read:

24203.5. (a) The percentage of final compensation used to compute the allowance pursuant to Section 24202.5, 24203, or 24205 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, excluding service credited pursuant to Section 22714, 22715, or 22717, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5, 24203, or 24205, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent. For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall include credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. A nonmember spouse shall also be eligible for the increased allowance pursuant to this section if the member had 30 or more years of credited service on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(b) Nonqualified service credit for which contributions pursuant to Section 22826 were made in a lump sum on or after January 1, 2000, or for which the first installment was made on or after January 1, 2000, shall not be included in determining the eligibility for an increased allowance pursuant to this section.

(c) The amendments made to subdivision (a) in the first year of the 1999-2000 Regular Session are declaratory of existing law.

SEC. 66. Section 24205 of the Education Code is repealed.

SEC. 67. Section 24205 is added to the Education Code, to read:

24205. Any member retiring prior to the age of 60 years, and who has attained the age of 55 years, may elect to receive one-half of the service retirement allowance for normal retirement age for a limited time and then revert to the full retirement allowance for normal retirement age.

(a) The retirement allowance shall be based on service credit and final compensation as of the date of retirement for service and shall be calculated with the factor for normal retirement age.

(b) If the member elects a joint and survivor option under Section 24300, the actuarial reduction shall be based on the member's and beneficiary's ages as of the effective date of the early retirement. If the member elected a preretirement option under Section 24307, the actuarial reduction shall be based on the member's and beneficiary's ages as determined by provisions of that section.

(c) One-half of the retirement allowance as of the age of 60 years shall be paid for a period of time equal to twice the elapsed time between the effective date of retirement and the date of the retired member's 60th birthday.

(d) The full retirement allowance as calculated under subdivision (a) or (b) shall begin to accrue as of the first of the month following the reduction period as specified in subdivision (c). The full retirement allowance shall not begin to accrue prior to this time under any circumstances, including, but not limited to, divorce or death of the named beneficiary.

(e) The annual improvement factor provided for in Sections 22140 and 22141 shall be based upon the retirement allowance as calculated under subdivision (a) or (b). The improvement factor shall begin to accrue on September 1 following the retired member's 60th birthday. These increases shall be accumulated and shall become payable when the full retirement allowance for normal retirement age first becomes payable.

(f) Any ad hoc benefit increase with an effective date prior to the retired member's 60th birthday shall not affect any allowance payable under this section. Only those ad hoc improvements with effective dates on or after the retired member's 60th birthday shall be accrued and accumulated and shall first become payable when the full retirement allowance for normal retirement age becomes payable.

(g) The cancellation of an option election in accordance with Section 24305 shall not cancel the election under this section. Upon cancellation of the joint and survivor option, one-half of the retired member's retirement allowance as calculated under subdivision (a) shall become payable for the balance of the reduction period specified in subdivision (c).

(h) If a retired member who has elected a joint and survivor option dies during the period when the reduced allowance is payable, the beneficiary shall receive one-half of the allowance payable to the beneficiary until the date when the retired member would have received the full retirement allowance for normal retirement age. At that time, the beneficiary's allowance shall be increased to the full amount payable to the beneficiary plus the appropriate annual improvement factor increases and ad hoc increases.

SEC. 68. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 69. Section 24212 of the Education Code is amended to read:

24212. (a) If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage * * * under the Defined Benefit Program, the member's service retirement allowance, when payable, shall be based on projected service, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

(b) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 70. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no

dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820). The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance. The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and projected final compensation to normal retirement age.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 71. Section 24300 of the Education Code is amended to read:

24300. (a) Any member prior to the effective date of the member's retirement under this part may elect an option that would provide an actuarially modified retirement allowance payable throughout the life of the member and * * * the member's option beneficiary as follows:

(1) Option 2. 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.

(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.

(7) Option 8. (A) Any member prior to the effective date of the member's retirement may designate multiple option beneficiaries. The member who has designated more than one option beneficiary shall select an option for each beneficiary designated that would provide an actuarially modified retirement allowance payable throughout the lives of the member and * * * the member's option beneficiaries.

(B) The modified retirement allowance shall be paid to the retired member as long as the retired member and at least one of the option beneficiaries are living. Upon the retired member's death, an allowance shall be paid to each surviving option beneficiary in accordance with the option elected respective to that beneficiary. However, if one or more of the option beneficiaries predeceases the retired member, the retired member's allowance shall be adjusted in accordance with the option elected for the deceased beneficiary. The member shall determine the percentage of the unmodified allowance that will be modified by the election of Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 under this option, the

aggregate of which shall be no greater than 100 percent of the member's unmodified allowance. The election of this option is subject to approval by the board.

(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 under this part.

(d) This section shall become operative on January 1, 2000.

SEC. 72. Section 24305.5 of the Education Code is amended to read:

24305.5. (a) An option elected under Section 24300 may be canceled by a retired member if the option beneficiary is not the retired member's spouse or former spouse. A retired member may cancel the option before or after issuance of the first retirement allowance payment and shall designate his or her spouse as the new option beneficiary and the same or a different joint and survivor option described in Section 24300.

(b) The retired member shall notify the board, in writing on a form provided by the system, of the designation of the new option beneficiary. Notification shall include a certified copy of the marriage certificate and a properly executed form for the change.

(c) The effective date of the new election shall be six months following the date notification is received by the board, provided both the retired member and the new designated option beneficiary are then living.

(d) The selection of the new option beneficiary and the new option under this section and Section 24300 * * * shall be subject to a further actuarial modification * * * of the modified retirement allowance. * * * In no event may a retired member elect a joint and survivor option that would result in any additional liability to the fund. Modification of the retirement allowance because of the new option beneficiary and the new option * * * shall be based on the ages of the retired member and the new option beneficiary as of the effective date of the new election.

SEC. 73. Section 24306 of the Education Code is amended to read:

24306. (a)(1) If an option beneficiary designated in the election of an Option 2, Option 3, Option 4, or Option 5, or in the election of Option 2, Option 3, Option 4, or Option 5 under Option 8, predeceases the retired member, the retired member 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 * * * six months following the date notification is received by the board, provided both the retired member and the designated option beneficiary are then living. Notification 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 a further actuarial modification of the modified retirement allowance. In no event may a retired member elect a joint and survivor option that would result in any additional liability to the fund.

(b) If an option beneficiary designated in the election of an Option 6 or Option 7 or in the election of Option 6 or Option 7 under Option 8, pursuant to Section 24300 or 24307 predeceases the retired member, that portion of the retirement allowance attributable to Option 6 or Option 7 without modification for the option shall be payable to the 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.

(c) This section shall become operative on January 1, 2000.

SEC. 74. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 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 * * * a properly executed form prescribed by the system is signed, providing the election is received in the system's office in Sacramento within 80 days after the date of signature.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary as named in the prior preretirement election, as an option under Option 8.

(c) 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, under 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.

(d) 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.

(e) 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.

(f) 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.

(g) The system shall inform members who are qualified to make * * * a preretirement election of an option, through the annual statements of account, that the election of an option * * * can be made.

(h) This section shall become operative on January 1, 2000.

SEC. 75. Section 24600 of the Education Code is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or

the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again, on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $\frac{1}{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $\frac{1}{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the * * * Defined Benefit Program or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 76. Section 24615 of the Education Code is amended to read:

24615. (a) If the board determines that contributions are due the system under this part 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.

(b) Any payment of contributions that a member or beneficiary is required by law to make to the system shall be paid upon receipt of written notice from the system. Payment may be made either in a lump sum or installments as permitted by the system. Payment of contributions due the system not discovered or unpaid, for whatever reason, prior to the time of retirement, disability, or death shall be paid prior to granting an allowance or benefit to the member or beneficiary unless, in the opinion of the board, the making of the payment prior to receipt of an allowance or benefit would impose an undue hardship, in which case payment may be made by the system withholding not more than 18 consecutive monthly installments from payments due from the system. Those installments shall not be less than twenty-five dollars (\$25) per month except for the last installment, that may be less.

SEC. 77. Section 26135 of the Education Code is amended to read:

26135. "Plan year" means the * * * calendar, policy, or fiscal year on which the records of the plan are kept, with respect to the Cash Balance Benefit Program. The board by means of plan amendment shall determine the plan year.

SEC. 78. Section 26202 of the Education Code is amended to read:

26202. (a) The board shall establish a Gain and Loss Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Gain and Loss Reserve to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the minimum interest rate during years in which the investment earnings of the plan with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and, where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

(b) The board shall establish and periodically review goals regarding the sufficiency of the Gain and Loss Reserve based on the recommendation of the actuary.

(c) In the event that the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for any plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate for the plan year plus the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, the board shall determine the amount, if any, that is to be credited to the Gain and Loss Reserve for the plan year. That determination shall be made * * * upon recommendation of the * * * actuary following the adoption by the board of the actuarial valuation undertaken following the plan year pursuant to Section 26202, but no later than June 30 following the end of the plan year. In determining whether an amount is to be credited to the Gain and Loss Reserve, the board shall consider the sufficiency of the reserve in light of the goal established for the sufficiency and the recommendations of the actuary.

SEC. 79. Section 26215 of the Education Code is amended to read:

26215. (a) Information filed with the system by a participant 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 participant or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the participant or beneficiary to whom the information relates;

(2) To the authorized representative of the participant or beneficiary;

(3) To the governing board of the participant'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.

(6) Pursuant to subpoena.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the participant 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 statute to make inspections.

SEC. 80. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay period, along with all other information required by the system no later than * * * 10 working days following the last day of the pay period in which the salary was earned, and the report * * * shall be delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 81. Section 26303 of the Education Code is amended to read:

26303. (a) Employers shall transmit to the plan the employee contributions and employer contributions with respect to the Cash Balance Benefit Program for salary paid to each participant during the pay period no later than 10 working days following the last day of the pay period in which the salary was earned.

(b) Payments shall be delinquent on the 11th working day thereafter, and interest shall begin to accrue at the minimum interest rate from that day until payment * * * for the contribution report is received in full by the system. The board may collect interest for late payment from the employer under this subdivision * * *

SEC. 82. Section 26401.5 of the Education Code is amended to read:

26401.5. (a) A member of the Defined Benefit Program who is employed by more than one employer to perform creditable service for less than 50 percent of the full-time equivalent for the position with each employer shall not be eligible to make an election as provided in Section 26401 unless and until all employers by which the member is employed to perform creditable service provide the benefits of this part for their employees.

(b) If a member of the Defined Benefit Program who pursuant to subdivision (a) has made an election as provided in Section 26401 * * * is subsequently employed to perform creditable service for an employer that does not provide the benefits of this part for its employees, contributions shall no longer be made to the Cash Balance * * * Benefit Program on his or her behalf and creditable service performed for all employers shall be subject to coverage under the Defined Benefit Program with no subsequent right of election pursuant to Section 26401 or subdivision (a).

SEC. 83. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate * * * may exceed the employer contribution rate but in no event shall the employer contribution rate be less than 4 percent.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notification to the system and shall remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is so provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions, if any, that would have been required if the contribution rates had been in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month after the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 84. Section 26603 of the Education Code is amended to read:

26603. All employee contributions shall be credited to employee accounts and all employer contributions shall be credited to employer accounts as of the first working day following the date all contributions to fully satisfy the contribution report as submitted by the employer are received by the system.

SEC. 85. Section 26604 of the Education Code is amended to read:

26604. (a) Beginning June 1, 1996, prior to the Cash Balance Plan becoming effective, and * * * prior to the beginning of each plan year thereafter, the board, by plan amendment with respect to the Cash Balance Benefit Program, shall declare the minimum interest rate * * * for crediting employee accounts and employer accounts with respect to the Cash Balance Benefit Program during the following plan year * * *

(b) All interest shall be computed at the minimum interest rate on the balance of the employee account and the employer account * * * and shall be compounded daily.

(c) Interest for contributions credited during that month to the respective account shall * * * accrue at the minimum interest rate from the * * * first working day following the date contributions are received in full by the system pursuant to Section 26603.

(d) Interest shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity.

SEC. 86. Section 27410 of the Education Code is amended to read:

27410. (a) The nonparticipant spouse who is awarded separate nominal accounts shall have the right to designate, pursuant to Sections 27100 to 27102, inclusive, a beneficiary or beneficiaries to receive the amounts credited to the separate nominal accounts of the nonparticipant spouse on his or her date of death, and any annuity attributable to the separate nominal accounts which is unpaid on the date of the death of the nonparticipant spouse.

(b) This section shall not be construed to provide the nonparticipant spouse with any right to elect a joint and survivor annuity pursuant to paragraphs (3) and (4) of subdivision (b) of Section 26807.

SEC. 87. Section 44494 of the Education Code is amended to read:

44494. (a) On or before September 1 of each year, participating school districts that receive funding pursuant to subdivision (a) of Section 44492 shall allocate no less than four thousand dollars (\$4,000) to provide each qualified mentor with an additional annual stipend over and above the regular salary to which he or she is entitled. The amount of the annual stipend shall be four thousand dollars (\$4,000) for a full school year of service as a mentor, or a pro rata share of that amount for less than a full school year of service as a mentor, except that participating school districts that receive funding pursuant to subdivision (b) of Section 44492 shall allocate the full amount so received to provide a qualified mentor with an additional annual stipend over and above the regular salary to which he or she is entitled. This stipend shall not be counted as salary or wages for purposes of calculating employer * * * and employee contributions or employee benefits under the Defined Benefit Program of the State Teachers' Retirement Plan.

(b) A mentor may propose that the district allocate all or part of the stipend for his or her professional growth or release time.

(c) The governing board may designate certificated employees as mentor teachers pursuant to Section 44491 and pay these persons the additional annual stipend authorized under subdivision (a) for a period not to exceed three consecutive school years. Upon completing three years as a mentor teacher, an individual may be reviewed and renominated.

(d) The subject of participation by a school district or an individual certificated classroom teacher in a mentor teacher program shall not be included within the scope of representation in collective bargaining among a public school employer and eligible employee organizations.

SEC. 88. Section 20639 of the Government Code is amended to read:

20639. The compensation earnable during any period of service as a member of the Judges' Retirement System, the Legislators' Retirement System, or the Defined Benefit Program of the State Teachers' Retirement Plan shall be considered compensation earnable as a member of this system for purposes of computing final compensation for the member, if he or she retires concurrently under both systems.

A member shall be deemed to have retired concurrently under this system and under the Defined Benefit Program of the State Teachers' Retirement Plan, if the member is enrolled as a * * * disabled member under the Defined Benefit Program of the State Teachers' Retirement Plan and for retirement under this system on the same effective date.

SEC. 89. Section 47611 of the Education Code is amended to read:

47611. If a charter school chooses to * * * make the State Teacher's Retirement * * * Plan available, all employees of the charter school who * * * perform creditable service shall be entitled to have that service covered under the * * * plan's Defined Benefit Program or Cash Balance Benefit Program, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as * * * the provisions apply to other public schools in the school district that granted the charter.

SEC. 90. Any section of any act enacted by the Legislature during the 1999 calendar year that takes effect on or before January 1, 2000, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is

Ch. 939, § 90

STATUTES OF 1999

enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section or any other act that is enacted by the Legislature during the 1999 calendar year and takes effect on or before January 1, 2000, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

5408

Additions or changes indicated by underline; deletions by asterisks. * * *

Ch. 401, § 1.

STATUTES OF 2000.

RETIREMENT—STATE EMPLOYEES—ELECTIONS

CHAPTER 402

A.B. No. 649.

AN ACT to amend Section 1094.5 of the Code of Civil Procedure, to add Sections 22508.6, 22717.5, and 22801.5 to the Education Code, to amend Sections 18670, 19175, 19582, 19816.20, 19876.5, 20395, 20405.1, 21159, 21160, 21161, 21195, and 22825.01 of, to add Sections 19576.6, 20309.5, and 20407.5 to, and to repeal Section 22754.2 of, the Government Code, and to amend Section 10295 of the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 11, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

2448

Additions or changes indicated by underline; deletions by ~~asterisks~~ * * *

On this date I have signed AB 649 with a reduction. This bill would appropriate funding for various programs agreed to during collective bargaining. However, the appropriation in this bill for the special fund deficiency is in excess of the amount needed to fund the employee compensation increases agreed to through collective bargaining. Therefore, I am reducing the special fund appropriation contained in this bill by \$17,000,000 to reflect the actual amount needed to fund the employee compensation increases. The revised appropriation shall be \$30,600,000.

GRAY DAVIS, Governor

AB 649, Machado. State employees.

(1) Under existing law, members of the Defined Benefit Program of the State Teachers' Retirement Plan who become employed by any of a list of other public employers to perform service that requires membership in a different public retirement system, may elect to be excluded from membership in that different system and continue to have their service subject to their existing system.

This bill would make this election available to members of the State Teachers' Retirement System who became employed by the state, during a specified period, to perform service subject to Second Tier benefits in the Public Employees' Retirement System and who satisfy certain requirements. The bill would require persons making that election to make specified contributions to the Teachers' Retirement Fund with respect to their pre-election state service and would also require specified assets to be transferred from the Public Employees' Retirement System to that fund on account of that state service, thereby making an appropriation to the Teachers' Retirement Fund, a continuously appropriated fund.

(2) Under existing law, members of the Defined Benefit Program of the State Teachers' Retirement Plan are entitled to service credit at service retirement for accumulated and unused leave of absence for illness or injury, as specified.

This bill would provide that members who are eligible state employees and who retire on or after January 1, 2000, shall receive, subject to the terms of a memorandum of understanding or the authorization of the Department of Personnel Administration, service credit at service retirement for accumulated unused leave of absence for education, as specified.

(3) Existing law includes procedures for disciplining state employees, including State Personnel Board investigations and hearings, the review of administrative decisions, and suspensions.

This bill would provide that certain of these procedures do not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. The bill would require the state employer, if the collective bargaining agreement has expired and an answer has been filed, to follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated.

(4) Existing law, the Public Employees' Retirement Law, establishes the Public Employees' Retirement System, and sets forth the provisions for its administration and the delivery of benefits to its members. Member contributions to the Public Employees' Retirement System are deposited into the Public Employees' Retirement Fund, which is a continuously appropriated fund. Existing law includes in the state safety membership category state employees in state bargaining units that have agreed in a memorandum of understanding between the state employer and the recognized employee organization that the classifications or positions of these state employees are found to meet specified state safety membership criteria, if the Department of Personnel Administration has agreed to their inclusion. Existing law excludes from the state peace officer/firefighter membership category security officers employed by the Department of Justice.

This bill would include state employees excluded from the Ralph C. Dills Act and officers or employees of the executive branch of state government who are not members of the civil service within the classification of state safety members, if the department has approved their inclusion, and would delete the exclusion of security officers employed by the Department of Justice from the classification of state peace officer/firefighter members. To the extent the

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bill would enlarge the class of persons eligible for state safety or state peace officer/firefighter membership, it would make an appropriation by increasing the amount of contributions to the Public Employees' Retirement Fund.

(5) Existing law establishes the Rural Health Care Equity Trust Fund, which is administered by the Department of Personnel Administration to provide subsidies and reimbursements for certain health care premiums and health care costs incurred by state employees and annuitants in rural areas on or after January 1, 2000. The fund ceases to be operative on January 1, 2005, or earlier, as specified. Existing law requires each fund in the State Treasury to reimburse the General Fund for specified contributions to the Rural Health Care Equity Trust Fund for the employees and annuitants paid from each fund.

This bill would change references to the fund to the Rural Health Care Equity Program and specify the means by which the General Fund reimbursements are to be made.

(6) Existing law, the Public Employees' Retirement Law, provides increased industrial disability retirement benefits for certain state membership categories who are incapacitated for the performance of their present duties as a result of injury or illness arising out of and in the course of their employment on or after January 1, 1993.

This bill would provide that these provisions do not apply to a job-related or job-incurred illness or injury that occurs on or after January 1, 2000. The bill would declare the intent of the Legislature that these provisions be given retroactive effect to January 1, 2000.

(7) Under the Public Employees' Retirement Law, specified officers and employees of the State Department of Mental Health are classified as state safety members; however, those members have the option to irrevocably elect, within a specified time period, to remain subject to the miscellaneous membership classification.

This bill would provide that a specified group of those officers and employees who elected to remain subject to the miscellaneous membership classification shall have the right to elect to become safety members, as specified.

(8) Existing law, the Public Employees' Medical and Hospital Care Act, provides health benefits plan coverage to public employees and annuitants meeting the eligibility requirements prescribed by the Board of Administration of the Public Employees' Retirement System.

This bill would revise the definition of "eligible employees" for the purposes of the act to delete a definition applicable only to state employees in State Bargaining Unit 19.

(9) Existing law, with specified exceptions, provides that all contracts entered into by any state agency for the hiring or purchase of goods and services, including equipment, supplies, textbooks, and repair or maintenance, are void unless approved by the Department of General Services. Contracts entered into by the Department of Personnel Administration for employee benefits, occupational health and safety, training services, or any combination thereof, for state employees in state bargaining units that have agreed to this exemption in a memorandum of understanding are exempt from this approval requirement.

This bill would revise this provision to make it applicable to all contracts, with specified exceptions, entered into by any state agency for the acquisition of goods and services. The bill would expand the exemption for contracts entered into by the Department of Personnel Administration for employee benefits, occupational health and safety, training services, and any combination thereof, for state employees, as specified.

(10) This bill would appropriate \$65,414,288 from the General Fund and unallocated special funds, in specified amounts, for allocation for various state employee benefits or programs, including state employee compensation, the Work and Family Fund, and the Rural Area Health Subsidy Program.

(11) This bill would incorporate additional changes in Section 10295 of the Public Contract Code proposed by AB 1441, to become operative if both this bill and AB 1441 are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

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

Appropriation: yes.

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

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Personnel Board and invoke arbitration proceedings pursuant to a State Bargaining Unit 11 collective bargaining agreement.

SEC. 2. Section 22508.6 is added to the Education Code, to read:

22508.6. (a) Any person who is a member of the Defined Benefit Program and who subsequently became employed and continues to be employed by the state to perform service that requires membership in the Public Employees Retirement System and who meets the requirements of subdivision (b) may elect to have that state service subject to coverage by the Defined Benefit Program and excluded from coverage by the Public Employees Retirement System.

(b)(1) Only a person who has achieved program vesting shall be eligible to make the election under this section.

(2) A person is eligible to make the election if he or she left employment with a school district, county superintendent of schools, or community college district and began employment with the state within 30 days without any intervening employment and that change in employment occurred on or after July 1, 1991 and prior to the effective date of this section.

(3) A person is eligible to make the election if, at the time of the election, he or she is a member of the Public Employees Retirement System subject to Second Tier benefits and is one of the following:

(A) Represented by a State Bargaining Unit that has agreed by a memorandum of understanding to become subject to Section 20309.5 of the Government Code.

(B) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in subparagraph (A).

(C) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in subparagraph (A).

(c) The election under this section shall be made in writing to each system within 90 days after the effective date of this section or within 60 days after the eligible member is notified by the system of his or her right to make the election, whichever is later. The member's election shall be effective on the day following the date on which the election is received by the Public Employees Retirement System.

(d) If the election is made, the state service performed from and after the date of the election shall be considered creditable service for purposes of this part and the provisions of Section 22801.5 shall be applicable with respect to service performed prior to that date.

SEC. 3. Section 22717.5 is added to the Education Code, to read:

22717.5. (a) A member shall be credited at service retirement for each day of accumulated and unused leave of absence for education for which full salary is allowed on the member's final day of employment with the state.

(b) The amount of service credit to be granted shall be 0.004 years of service for each unused day of educational leave credit.

(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 education 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 apply to eligible state employees in state bargaining units that have agreed to this section in a memorandum of understanding, or as authorized by the Director of the Department of Personnel Administration for classifications of state employees that are excluded from the definition of "state employee" by paragraph (c) of Section 3513 of the Government Code.

(e) The provisions of this section shall be effective for eligible members who retire directly from state employment on or after January 1, 2000.

SEC. 4. Section 22801.5 is added to the Education Code, to read:

Additions or changes indicated by underline; deletions by asterisks

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22801.5. (a) A member who elects pursuant to Section 22508.6 to have his or her state service subject to coverage by the Defined Benefit Program shall receive additional service credit for the time spent subject to coverage by the Public Employees' Retirement System between July 1, 1991, and the effective date of the election.

(b) A member described in subdivision (a) shall pay all contributions with respect to his or her state service as a member of the Public Employees' Retirement System at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of the election. Contributions shall be made in a lump sum or in not more than 120 monthly installments. Payment shall be made or shall commence within 120 days after the date of the election. No installment, except the final installment, shall be less than twenty-five dollars (\$25). The member shall not be credited with any service pursuant to this section until the contributions have been paid in full.

(c) If the member is employed to perform creditable service 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.

(d) If the member is not employed to perform creditable service 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.

(e) The total amount of contributions due from the member under subdivision (b) shall be reduced by the amount received from the Public Employees' Retirement System pursuant to Section 20309.5 of the Government Code. Under no circumstances shall the assets received from the Public Employees' Retirement System, pursuant to that section, be allocated or awarded to individual members or their spouses or beneficiaries.

SEC. 5. Section 18670 of the Government Code is amended to read:

18670. (a) The board may hold hearings and make investigations concerning all matters relating to the enforcement and effect of this part and rules prescribed * * * under this part. It may inspect any state institution, office, or other place of employment affected by this part to ascertain whether this part and the board rules are obeyed.

The board shall make investigations and hold hearings at the direction of the Governor or the Legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of this part and to enforce the observance of Article VII of the Constitution and of this part and the rules made under this part.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of subdivision (a), any discipline, as defined by Section 19576.1, is not subject to either a board investigation or hearing. Board review shall be limited to acceptance or rejection of discipline imposed pursuant to Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. For the purposes of subdivision (a), any discipline, as defined by the memorandum of understanding or Section 19576.5, is not subject to either a board investigation or hearing.

(d) This subdivision shall apply only to state employees in State Bargaining Unit 11 who have been disciplined or rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. For purposes of subdivision (a) and in the context of positive drug test results, any discipline, as defined by the memorandum of understanding, and rejections on probation are not subject to either a board investigation or a hearing.

SEC. 6. Section 19175 of the Government Code is amended to read:

19175. The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the board may do any of the following:

- (a) Affirm the action of the appointing power.
- (b) Modify the action of the appointing power.
- (c) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided, that his or her name shall not be certified to the

SEC. 22. The Legislature hereby declares its intent that Sections 19876.5, 21159, 21160, 21161, and 21195 of the Government Code, as amended by this act, shall be given retroactive effect to January 1, 2000.

SEC. 23. The sum of sixty-five million four hundred fourteen thousand two hundred eighty-eight dollars (\$65,414,288) is hereby appropriated as follows:

(a) Five million dollars (\$5,000,000) from the General Fund to the Controller for allocation to the Work and Family Fund, a continuously appropriated fund, for expenditure by the Department of Personnel Administration for the purposes of establishing and maintaining work and family programs for state employees. These programs may include, but are not limited to, financial assistance to aid in the development of child care centers administered by either nonprofit corporations formed by state employees or child care providers, or to provide grants, subsidies, or both grants and subsidies for child care and elder care. Other programs may include enhancement or supplementation of existing employee assistance program services and other work and family programs.

(b) Forty-seven million six hundred thousand dollars (\$47,600,000) from unallocated special funds for expenditure in the 1999-2000 fiscal year in augmentation and for the purposes of state employee compensation as provided in Item 9800-001-0494 of Section 2.00 of the Budget Act of 1999 (Chapter 50, Statutes of 1999).

(c) Twelve million six hundred thirty-nine thousand two hundred eighty-eight dollars (\$12,639,288) from the General Fund to the Department of Personnel Administration for the purpose of funding the Rural Health Care Equity Program, as established by Section 22825.01 of the Government Code, as added by Chapter 743 of the Statutes of 1999.

The funds appropriated pursuant to this subdivision shall be used for the subsidization and reimbursement of premium costs, deductibles, coinsurance, and other out-of-pocket health care costs of active state employees and annuitants living in rural areas. The funds appropriated by this subdivision shall be available for expenditure until January 1, 2005.

(d) The sum of one hundred seventy-five thousand dollars (\$175,000) from the General Fund in augmentation of Item 8380-001-0001 of Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999). The funds appropriated pursuant to this subdivision shall be used to contract with a third-party administrator to provide recordkeeping services for the Rural Health Care Equity Program, as established by Section 22825.01 of the Government Code, as added by Chapter 743 of the Statutes of 1999.

SEC. 24. Section 21.5 of this bill incorporates amendments to Section 10295 of the Public Contract Code proposed by both this bill and AB 1441. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, but this bill becomes operative first; (2) each bill amends Section 10295 of the Public Contract Code, and (3) this bill is enacted after AB 1441, in which case Section 10295 of the Public Contract Code, as amended by Section 21 of this bill, shall remain operative only until the operative date of AB 1441, at which time Section 21.5 of this bill shall become operative.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act relating to state employees may become effective at the earliest possible time, it is necessary that this act go into immediate effect.

TEACHERS—RETIREMENT—MEMBER ELECTIONS

CHAPTER 880

S.B. No. 1694

AN ACT to amend Section 22508 of the Education Code and to amend Section 20309 of the Government Code, relating to retirement.

[Filed with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1694, Ortiz. Public employees' retirement: membership election.

Under existing law, members of the State Teachers' Retirement System or the Public Employees' Retirement System, who become employed by any of a list of other public employers to perform service that requires membership in a different public retirement system, may elect to be excluded from membership in that different system and continue to have their service subject to their existing system.

This bill would make this election available to (1) members of the State Teachers' Retirement System who become employed by the state to perform that type of service and who meet specified criteria and (2) members of the Public Employees' Retirement System employed by the State Department of Education who are subsequently employed to perform service subject to coverage by the State Teachers' Retirement System.

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

SECTION 1. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school * * * district or community college district, or a county superintendent, or who becomes employed by the state in a position described in subdivision (b), to perform service that requires

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membership in a different public retirement system, and who is not excluded from membership in that public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) Subdivision (a) shall apply to a member who becomes employed by the state only if the member is also one of the following:

(1) Represented by a state bargaining unit that represents educational consultants, professional educators, or librarians employed by the state.

(2) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(3) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(c) A member of the Public Employees' Retirement System who is employed by a school district, community college district, * * * a county superintendent, or the State Department of Education and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that subsequent service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program pursuant to Section 20309 of the Government Code. If the election * * * is made, creditable service performed for the employer after the date of hire * * * shall be subject to coverage by the Public Employees' Retirement System.

(d) An election made by a member pursuant to this section shall be irrevocable.

SEC. 2. Section 20309 of the Government Code is amended to read:

20309. (a) A member of the * * * system who is employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education and who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan, may elect to retain coverage by * * * this system for that subsequent service. An election to retain coverage under * * * this system shall be submitted in writing by the * * * member to the system on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers' Retirement System, within 60 days * * * after the member's * * * date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan. * * * A member who elects to retain coverage under this system pursuant to this section shall be deemed to be a school member while employed by a school employer.

(b) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

1999-2000 REGULAR SESSION

Ch. 1020

TEACHERS—RETIREMENT—BENEFIT PROGRAM CONDITIONS

CHAPTER 1020

A.B. No. 820

AN ACT to amend Sections 22652, 22662, 22705, 22802, 23200, 23201, 23202, 24750, and 24751 of, to add Sections 24300.5, 26144.5, 26403, 26501.5, and 26503.5 to, and to repeal Section 26401.5 of, the Education Code, relating to teachers' retirement, and making an appropriation therefor.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 820, Committee on Public Employees, Retirement and Social Security. Teachers' retirement.

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Existing law establishes the State Teachers' Retirement System to provide retirement benefits to participating teachers.

(1) Under existing law, if a member whose accumulated retirement contributions have been refunded again becomes a member or another specified condition exists, or if a nonmember spouse is awarded a separate account and accumulated contributions have been previously refunded to the member, the member or nonmember spouse may elect to redeposit those contributions with regular interest from the date of refund to the date of payment.

This bill would authorize the member or nonmember spouse, effective July 1, 2001, to redeposit a portion of the refunded contributions, as specified, and make additional changes with respect to the division of accounts between a member and a nonmember spouse.

(2) Existing law provides that a member, prior to retirement, may elect one of several options for a modified retirement allowance payable for the life of the member and the member's designated option beneficiary, as specified.

This bill would, effective July 1, 2001, authorize a retired member, who was unmarried at the time of retirement and who did not elect one of the options, to make such an election if he or she marries after retirement, and to designate the member's new spouse as the option beneficiary, subject to specified conditions.

(3) Under the Teachers' Retirement Law, the Cash Balance Benefit Program provides a retirement plan for persons who perform creditable service, as defined, on a part-time basis. If an employer elects to provide the benefits of the program, and an eligible employee elects to participate, the employer and employee make contributions to the program, as specified, which are deposited in the Teachers' Retirement Fund, a continuously appropriated special fund. Under existing law, a part-time employee who performs creditable service for multiple employers may elect to participate in the program only if all of his or her employers provide benefits under the program.

This bill would repeal that provision with respect to multiple employers. The bill would also authorize persons who provide trustee service, as defined, to elect to participate in the program and, upon that election, would require those persons and their employers to make contributions, as specified, thereby making an appropriation.

(4) Existing law prohibits a member from receiving credit under the Defined Benefit Program for service for which the member is entitled to receive a retirement benefit from another retirement system, as specified.

This bill would provide that that prohibition would not apply to any retirement benefit received from a qualified defined contribution plan.

Appropriation: yes.

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

SECTION 1. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program, or an amount equal to the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member in the Defined Benefit Program or the Defined Benefit Supplement Program, as applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse, including, but not limited to, the following:

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(1) The right to a retirement allowance under * * * the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions under the * * * Defined Benefit Program and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit all or a portion of accumulated retirement contributions * * * previously refunded to the member which the member is eligible to redeposit * * * pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse * * *.

(4) The right to purchase additional service credit * * * that the member is eligible to purchase * * * pursuant to Sections 22800 to 22810, inclusive, and * * * shall specify the shares of the additional service credit awarded to the member and the nonmember spouse * * *.

SEC. 2. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under * * * the Defined Benefit Program 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 under this part 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 * * * that specifies the redeposit rights of the nonmember spouse is entered. The nonmember * * * spouse's election to redeposit shall be made 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 under * * * the Defined Benefit Program, he or she shall repay * * * all or a portion of the member's refunded accumulated retirement contributions that were awarded to the nonmember spouse 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 or a part of accumulated retirement contributions previously refunded under * * * the Defined Benefit Program in which the nonmember spouse has a community property interest. All payments shall be received by the system before the effective date of * * * the nonmember * * * spouse's retirement under the Defined Benefit Program. 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.

(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 under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 3. Section 22705 of the Education Code is amended to read:

22705. No service shall be included under this part for which a member of the Defined Benefit Program 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 the San Francisco City and County Employees Retirement System. If a retired member under this part 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. This section shall not apply to any retirement

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benefit received from a defined contribution plan that is qualified under Section 401(a), Section 408(b), or Section 457 of the Internal Revenue Code.

SEC. 4. Section 22802 of the Education Code is amended to read:

22802. (a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

- (1) Service as a substitute excluded under Section 22602.
- (2) Service performed on a part-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 under the Defined Benefit Program.

(6) Service subject to coverage under the Defined Benefit Program 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 under this part for service performed while excluded from membership under the Defined Benefit Program shall pay all of the required contributions for all * * * or the portion of that service for which the member elects to receive credit.

SEC. 5. Section 23200 of the Education Code is amended to read:

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the Defined Benefit Program or is subject to Section 23201, the person may elect to redeposit all or a portion of those contributions with regular interest from the date of refund to the date of payment. * * *

(b) For time prior to July 1, 1944, regular interest shall be at 2½ percent compounded annually.

(c) If a nonmember spouse, as defined in Section 22651, withdraws accumulated contributions in accordance with Section 22661, the member may redeposit * * * all or a portion of those contributions pursuant to subdivision (a), providing he or she is not receiving an allowance under Chapter 26 (commencing with Section 24100) or Chapter 27 (commencing with Section 24201).

(d) If a member elects to redeposit a portion of all accumulated retirement contributions that were previously refunded subject to requirements imposed by the board, the member shall receive pro rata service credit in proportion to the amount redeposited.

SEC. 6. Section 23201 of the Education Code is amended to read:

23201. Any person whose accumulated retirement contributions were refunded, who wishes to establish concurrent membership, and who has received, or will qualify to receive, a retirement allowance from one or more of the retirement systems defined in Section 22115.2, may elect to redeposit all or a portion of 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 under the Defined Benefit Program.

SEC. 7. Section 23202 of the Education Code is amended to read:

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 under this part.

(b) An election to redeposit refunded accumulated retirement contributions shall be considered as an election to repay * * * accumulated retirement contributions previously

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refunded, up to but not exceeding the amount required to restore the total service credit refunded, under the provisions of this chapter.

(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 * * *, the member shall receive credit for the payments made under the election or, at the request of the member, those payments shall be refunded.

(d) If the election is canceled, the member may at any time prior to the effective date of retirement under this part, 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. 8. Section 24300.6 is added to the Education Code, to read:

24300.6. (a) Any retired member who was unmarried on the effective date of retirement who did not elect an option pursuant to Section 24300, and who thereafter marries, may, after the effective date of the member's retirement under this part, elect an option described in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 24300, naming his or her new spouse as the option beneficiary, subject to all of the following:

(1) The retired member shall have been married for at least one year prior to making the election of the option.

(2) The retired member shall notify the board, in writing on a form provided by the system, of the election of the option and the designation of the member's new spouse as the option beneficiary.

(3) The election of an option under this section is subject to approval by the board. A retired member may not elect a joint and survivor option that would result in any additional liability to the retirement fund. A retired member may not elect Option 8.

(4) The election shall be effective six months after the date the notification is received by the board, provided that both the retired member and the retired member's designated spouse are then living.

(b) The election of the option and designation of the option beneficiary under this section shall result in an actuarial modification of the member's retirement allowance that shall be payable through the life of the member and the member's new spouse. Modification of the member's retirement allowance pursuant to this section shall be based on the ages of the retired member and the retired member's new spouse as of the effective date of the election.

(c) This section shall be operative July 1, 2001.

SEC. 9. Section 24750 of the Education Code is amended to read:

24750. 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 have former Permanent Fund contributions only on deposit related to former local system service shall have those accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit * * * all or a portion of the accumulated retirement contributions required to bring the account into full balance with regular interest prior to retirement under this part.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

SEC. 10. Section 24751 of the Education Code is amended to read:

24751. Those members who took a refund of their accumulated retirement 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 with respect to the Defined Benefit Program, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers'

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Retirement System with respect to the Defined Benefit Program, shall redeposit * * * all or a portion of the accumulated retirement 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 under this part. The redeposit shall be made in a lump sum or by installment payments as specified by the chief executive officer.

SEC. 11. Section 26144.5 is added to the Education Code, to read:

26144.5. "Trustee service" means duties performed by a member of the governing body of an employer.

SEC. 12. Section 26401.5 of the Education Code is repealed.

SEC. 13. Section 26403 is added to the Education Code, to read:

26403. A person who performs trustee service for an employer who has elected to provide benefits pursuant to this part to its employees may elect to participate in the Cash Balance Benefit Program for that service.

SEC. 14. Section 26501.5 is added to the Education Code, to read:

26501.5. A person who elects, pursuant to Section 26403, to participate in the Cash Balance Benefit Program shall make contributions, as provided in Section 26501, based on his or her salary or other compensation earned for trustee service.

SEC. 15. Section 26503.5 is added to the Education Code, to read:

26503.5. If a person elects, pursuant to Section 26403, to participate in the Cash Balance Benefit Program, his or her employer shall make contributions, as provided in Section 26503, based on the salary or other compensation paid for trustee service.

SEC. 16. Sections 1, 2, 5, 6, 7, 8, 9, and 10 of this act shall become operative July 1, 2001.

TEACHERS—RETIREMENT—DEFINED BENEFIT
SUPPLEMENT PROGRAM

CHAPTER 1021

A.B. No. 2700

AN ACT to amend Sections 22102, 22115, 22161.5, 22170, 22206, 22453, 22651, 22652, 22655, 22656, 22659, 22660, 22661, 22662, 22664, 22703, 22706, 22901.5, 24616, 24617, 25000, 25000.5, 25001, 25002, 25006, 25008, 25009, 25010, 25011, 25012, 25014, 25015, 25016, 25017, 25018, 25019, 25020, 25021, 25023, and 25024 of, to amend and renumber Section 22302 of, to amend, repeal, and add Sections 22119.2, 22905, 22954, 22955, and 24600 of, to add Sections 22101.5, 22144.5, 22146.7, 22177, 22311.5, 22955.5, and 24305.3 to, and to repeal and add Sections 22158, 22460, and 22906 of, the Education Code, relating to retirement, and making an appropriation therefor.

[Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2700, Lempert. State teachers' retirement: Defined Benefit Supplement Program.

(1) Existing law establishes the Defined Benefit Program in the Teachers' Retirement Plan that provides retirement and disability benefits to members of the program. If Chapter 74 of the Statutes of 2000 becomes effective, it will establish the Defined Benefit Supplement Program for members of the Defined Benefit Program, pursuant to which members and employers will receive supplemental retirement, disability, final, or termination benefits, payable in a lump-sum or annuity, as specified.

This bill would make technical and conforming changes relating to the Defined Benefit Supplement Program and would make an appropriation of \$600,000 from the Teachers' Retirement Fund to the Teachers' Retirement Board for the administrative costs of imple-

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menting the program. These provisions would become operative only if Chapter 74 of the Statutes of 2000 becomes effective on January 1, 2001.

(2) Existing law authorizes the Teachers' Retirement Board to audit the records of any public agency as the board determines necessary.

This bill would authorize the board to excuse certain adverse audit findings occurring prior to January 1, 2002, and relating to changes in the law that will become operative on that date. The bill would make other technical changes that would become operative on specified dates subject to certain increases in school funding.

(3) The bill would incorporate additional changes to Sections 22652 and 22662 of the Education Code proposed by AB 820 to take effect if this bill and that bill are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

(4) The bill would reappropriate to the board, for specified administrative costs, unexpended funds previously appropriated to the board in 1999.

Appropriation: yes.

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

SECTION 1. Section 22101.5 is added to the Education Code, to read:

22101.5. "Accumulated Defined Benefit Supplement account balance" means credits equal to the sum of member contributions, the member contributions picked up by an employer, employer contributions, interest credited pursuant to Section 25006 and additional earnings credited pursuant to Section 25006.

SEC. 2. Section 22102 of the Education Code is amended to read:

22102. "Accumulated retirement contributions" means the sum of the member contributions * * *, the member contributions * * * picked up by an employer pursuant to Sections 22903 and 22904* * *, and credited interest * * * on those contributions. Accumulated retirement contributions shall not include accumulated annuity deposit contributions, accumulated tax-sheltered annuity contributions, accumulated Defined Benefit Supplement account balance, or additional earnings credit.

SEC. 3. Section 22115 of the Education Code is amended to read:

22115. (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) * * * When service credit for a school year is less than 1.000, compensation earnable shall be * * * the product obtained when creditable compensation * * * paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least .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. When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than .900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) The amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999-2000 Regular Session shall become operative on July 1, 2003.

SEC. 4. Section 22119.2 of the Education Code is amended to read:

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22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the

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system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 22119.2 is added to the Education Code, to read:

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

(1) Salary paid in accordance with a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary, providing it is payable to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).

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

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

(6) Any other payments the board determines to be "creditable compensation."

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

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

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

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

Additions or changes indicated by underline; deletions by asterisks * * *

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(3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

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

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

(6) Fringe benefits provided by an employer.

(7) Job-related expenses paid or reimbursed by an employer.

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

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

(d) An employer or individual who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (c) shall reimburse the plan for benefit overpayments that occur because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it would be paid to any person who meets the qualifications or requirements specified in a collective bargaining agreement or an employment agreement as a condition of receiving the remuneration.

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

(g) The section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

SEC. 6. Section 22144.5 is added to the Education Code, to read:

22144.5. "Liability gains and losses" means the difference between actual noninvestment related experience and the experience expected based upon a set of noninvestment related actuarial assumptions during the period between two actuarial valuation dates, as determined in accordance with assumptions adopted by the board pursuant to Section 22311.5.

SEC. 7. Section 22146.7 is added to the Education Code, to read:

22146.7. "Minimum interest rate" means the annual interest rate determined by the board by plan amendment at which interest shall be credited to Defined Benefit Supplement accounts for a plan year.

SEC. 8. Section 22158 of the Education Code is repealed.

SEC. 9. Section 22158 is added to the Education Code, to read:

22158. (a) "Projected service" means the sum of credited service plus the credited service that would have been earned for the school years during which a disability allowance was payable if the member had performed creditable service during that time.

(b) Projected service for a school year shall be determined on the basis of the highest credited service earned by the member during any one of the three school years immediately preceding the member's death or the date the disability allowance began to accrue.

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ries of the Defined Benefit Supplement Program; and participants and beneficiaries of the Cash Balance Benefit Program.

(c) Make an annual actuarial review of the goals regarding the sufficiency of the Gain and Loss Reserves with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program and make recommendations to the board for maintaining a sufficient Gain and Loss Reserves for the Defined Benefit Supplement Program and the Cash Balance Benefit Program.

(d) Recommend to the board the amount, if any, to be transferred to the separate Gain and Loss Reserves from the investment earnings of the plan with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program.

(e) At least once every six years with respect to the Defined Benefit Program and annually with respect to the Defined Benefit Supplement Program and the Cash Balance Benefit Program, using actuarial assumptions adopted by the board, perform an actuarial valuation of each program that identifies the assets and liabilities, and report the findings to the board. The report of the actuary on the results of each actuarial valuation shall identify and include the components of normal cost, if applicable, and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on each actuarial valuation shall be transmitted to the Governor and the Legislature.

(f) Recommend to the board all rates and factors necessary to administer the plan, including, but not limited to, mortality tables; annuity factors; interest rates; and additional earnings credits.

(g) Recommend to the board a strategy for amortizing any unfunded actuarial obligation.

(h) As requested by the board, perform any other actuarial services that may be required for administration of the plan.

SEC. 15. Section 22453 of the Education Code is amended to read:

22453. (a) Except as provided in Section 22454, the signature of the spouse of a member shall be required under the Defined Benefit Program on any application for, or cancellation of, an unmodified allowance; the election, change, or cancellation of an option; or any request for a refund of the member's accumulated retirement contributions or accumulated annuity deposit contributions* * *; and under the Defined Benefit Supplement Program on any application for, or cancellation of, a retirement benefit, disability benefit, or termination benefit; and under either the Defined Benefit Program or the Defined Benefit Supplement Program on any 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 is not married.

(2) The current spouse has no identifiable community property interest in the benefit.

(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 spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(5) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(b) This section shall not be applicable to an application for a disability allowance under the Defined Benefit Program.

(c) The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member.

SEC. 16. Section 22460 of the Education Code is repealed.

SEC. 17. Section 22460 is added to the Education Code, to read:

22460. (a) If a member terminates employment with less than five years of credited service, the employer shall notify the member of the following:

(1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement pursuant to paragraph (2) of subdivision (a) of Section 24201, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the member's accumulated Defined Benefit Supplement account balance.

(2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.

(3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

(b) Employers shall transmit to a member who terminates employment with less than five years of credited service the information specified in subdivision (a) as part of the usual separation documents.

SEC. 18. Section 22651 of the Education Code is amended to read:

22651. For purposes of this chapter and Section 23300, "nonmember spouse" means * * * a member's spouse or former spouse who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or * * * benefits of the member under this part. A nonmember spouse * * * shall not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation or dissolution of marriage: a separate account of service credit and accumulated retirement contributions * * *, a retirement allowance * * *, or * * * an interest in the member's retirement allowance under * * * the Defined Benefit Program; or a separate account based on the member's Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member's retirement benefit under the Defined Benefit Supplement Program.

SEC. 19. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, other than a retired member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the member's accumulated retirement contributions and service credit under the Defined Benefit Program or the member's Defined Benefit Supplement account balance, or both, under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit and accumulated retirement contributions under the Defined Benefit Program and any accumulated Defined Benefit Supplement account balance under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member under the Defined Benefit Program or the Defined Benefit Supplement Program, whichever is applicable.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse under this part, including, but not limited to, the following:

(1) The right to a retirement allowance under * * * the Defined Benefit Program and, if applicable, a retirement benefit under the Defined Benefit Supplement Program.

(2) The right to a refund of accumulated retirement contributions * * * and the return of the accumulated Defined Benefit Supplement account balance that were awarded to the nonmember spouse.

(3) The right to redeposit accumulated retirement contributions * * * previously refunded to the member which the member * * * is eligible to redeposit pursuant to Sections 23200 to 23203, inclusive, and shall specify the shares of the redeposit amount awarded to the member and the nonmember spouse * * *.

Ch. 1021, § 69

STATUTES OF 2000

SEC. 69. The provisions of this act, other than Sections 3, 4, 8, 13, 27, 30, 31, 34, 35, 36, 37, and 68, shall become operative only if Chapter 74 of the Statutes of 2000 becomes effective on or before January 1, 2001.

SEC. 70. The Teachers' Retirement Board shall promptly notify the Secretary of State if and when the condition specified in Sections 3, 4, 5, 27, 30, and 31 of this act has been satisfied to cause those sections to become operative on July 1, 2002.

SEC. 71. The Teachers' Retirement Board shall promptly notify the Secretary of State if and when the condition specified in Sections 34, 35, 36, and 37 of this act has been satisfied to cause those sections to become operative on July 1, 2003.

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Additions or changes indicated by underline; deletions by asterisks * * *

1999-2000 REGULAR SESSION

Ch. 1025

~~TEACHERS—RETIREMENT—BENEFITS~~

CHAPTER 1025

A.B. No. 816

AN ACT to amend Sections 22106, 22128, 22138.5, 22141, 22146, 22147.5, 22148, 22149, 22151, 22156, 22156.1, 22160, 22163, 22165, 22307, 22402, 22500, 22508, 22701, 22713, 22900, 22951, 22956, 23001, 23008, 23102, 23800, 23850, 24201, 24209, 24211, 24307, 24410.5, 24415, 24417, 26104, 44922, and 47611 of, and to repeal and add Section 23300 to, the Education Code, relating to state teachers' retirement.

[Filed with Secretary of State September 30, 2000.]

Additions or changes indicated by underline; deletions by asterisks * * *

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LEGISLATIVE COUNSEL'S DIGEST

AB 816, Committee on Public Employees, Retirement and Social Security. State Teachers' Retirement System.

(1) The Teachers' Retirement Law authorizes a member of the Defined Benefit Program to designate, or change the designation of, a beneficiary to receive benefits payable under the program, except as specified.

This bill would additionally authorize an option beneficiary to designate a death beneficiary to receive those benefits.

(2) The Teachers' Retirement Law prescribes enhanced retirement benefits for members with 30 years or more of credited service. That law also prescribes retirement benefits for members who retire following reinstatement from retirement.

This bill would provide that a member who retires on or after January 1, 1999, following reinstatement from retirement with 30 years or more of total credited service shall be entitled to those enhanced retirement benefits, as specified.

(3) The Teachers' Retirement Law defines various terms for purposes of calculating and providing retirement benefits under the Defined Benefit Program and the Cash Balance Benefit Program, provides a specified membership option to employees of a community college district who have been previously or are subsequently employed by the Board of Governors of the California Community Colleges, prescribes reporting and payment requirements for specified employing agencies, specifies eligibility requirements for service retirement, prescribes allowances payable to designated beneficiaries under specified preretirement options, prescribes minimum annual allowances payable to a retired member, an option beneficiary, or a surviving spouse receiving specified death benefits, and authorizes the transfer and disbursement of funds from the Teachers' Retirement Fund.

This bill would make technical changes to those and other provisions.

(4) Existing law provides that all employees of a charter school who perform creditable service shall be entitled to have that service covered under the Defined Benefit Program of the Teachers' Retirement Plan, if the school elects to make that plan available.

This bill would require a charter school that elects to make that or another plan available to inform all applicants for employment of the retirement options for employees of the school, as specified.

(5) The bill would make and incorporate additional changes to Sections 23300, 24415, and 24417 of the Education Code to take effect if this bill and AB 1509 are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

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

SECTION 1. Section 22106 of the Education Code is amended to read:

22106. "Annuity deposit contributions" means additional contributions made by a member prior to July 1, 1972, above those required for credited service for the purpose of providing additional retirement income.

SEC. 2. Section 22128 of the Education Code is amended to read:

22128. "Early retirement" and "early retirement age" mean the age of 55 years, which is the age upon attainment of which the member becomes eligible under the Defined Benefit Program for a service retirement allowance with reduction because of age and without special qualifications.

SEC. 3. Section 22138.5 of the Education Code is amended to read:

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:

(b) * * * Creditable service performed on or after July 1, 1972, and credited under the Defined Benefit Program, shall be credited in the proportion that * * * the member's creditable compensation for that service bears to the member's compensation earnable.

SEC. 20. Section 22713 of the Education Code is amended to read:

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 of the Defined Benefit Program 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, in part, on final compensation determined from the compensation earnable the member would have been entitled to 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 under the Defined Benefit Program for at least 10 years including five years of full-time employment 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. * * *

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations shall not exceed 10 years.

(6) The reduced workload shall be equal to at least 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 creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced 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 make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 21. Section 22900 of the Education Code is amended to read:

22900. * * * By accepting employment, a person consents to make contributions pursuant to Section 22901 for service and compensation credited under this part.

SEC. 22. Section 22951 of the Education Code is amended to read:

22951. In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers'

Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based.

SEC. 23. Section 22956 of the Education Code is amended to read:

22956. Employer and state contributions made to the plan * * * pursuant to this part * * * for * * * service credited under the Defined Benefit Program * * * shall not be credited to the individual member accounts. 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 with respect to the Defined Benefit Program. Under no circumstances shall these employer and state contributions be allocated or awarded to individual members, their spouses, or beneficiaries.

SEC. 24. Section 23001 of the Education Code is amended to read:

23001. Each county superintendent, district superintendent, chancellor of a community college district, or other employing agency that reports directly to the system shall draw * * * 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, district superintendent, chancellor of a community college district, or other employing agency 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. 25. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any payment of creditable compensation to a member, proper adjustments shall be made on a monthly report, by the county superintendent, district superintendent, chancellor of a community college district, or other employing agency * * * who submitted the report, within 60 days after discovery or 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 pursuant to Section 23006. 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 Teacher's Retirement Fund based on that information, the county superintendent, district superintendent, chancellor of a community college district, or other employing agency who submitted the report shall reimburse the retirement fund in full for the amount of the erroneous disbursement. Reimbursement shall be made immediately upon notification by the system.

SEC. 26. Section 23102 of the Education Code is amended to read:

23102. Prior to the system paying a refund of accumulated retirement contributions under this part, the employer shall certify that the member's employment has been terminated unless the employment was terminated 12 months or more prior to the date the member signed the refund application.

SEC. 27. Section 23300 of the Education Code is repealed.

SEC. 28. Section 23300 is added to the Education Code, to read:

23300. (a) A member of the Defined Benefit Program 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 under this part when any 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.

SEC. 43. (a) Section 41 of this act shall not apply to amendments made by this act to Section 24415 of the Education Code.

(b) Section 36.5 of this bill incorporates amendments to Section 24415 of the Education Code proposed by both this bill and AB 1509. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001; (2) each bill amends Section 24415 of the Education Code; and (3) this bill is enacted after AB 1509, in which case Section 36 of this bill shall not become operative.

(c) Notwithstanding any other provision of this act, AB 429 and SB 1505, or either of them, (1) are enacted and become effective on or before January 1, 2001, and (2) amend Section 24415 of the Education Code, the prevailing amendments to that section made by either or both of those bills shall prevail over the amendments to that section made by this bill, whether those acts, or either of them, are enacted prior to, the enactment of this act.

SEC. 44. (a) Section 41 of this act shall not apply to amendments made by this act to Section 24417 of the Education Code.

(b) Section 37.5 of this bill incorporates amendments to Section 24417 of the Education Code proposed by both this bill and AB 1509. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000; (2) each bill amends Section 24417 of the Education Code; and (3) this bill is enacted after AB 1509, in which case Section 37 of this bill shall not become operative.

(c) Notwithstanding any other provision of this act, if AB 429 and SB 1505, or either of them, (1) are enacted and become effective on or before January 1, 2001, and (2) amend Section 24417 of the Education Code, the prevailing amendments to that section made by either of them or both of those bills shall prevail over the amendments to that section made by this bill, whether those acts, or either of them, are enacted prior to, or subsequent to, the enactment of this act.

TEACHERS—RETIREMENT—HEALTH BENEFITS

CHAPTER 1032

S.B. No. 1435

AN ACT to amend Section 22950 of, to amend and renumber Section 25000 of, to add Section 25923 to, and to add Chapter 3 (commencing with Section 25930) and Chapter 4 (commencing with Section 25940) to Part 13.5 of Division 1 of Title 1 of, the Education Code, relating to teachers' health benefits, and making an appropriation therefor.

[Filed with Secretary of State September 30, 2000.]

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Additions or changes indicated by underline; deletions by asterisks: * * *

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LEGISLATIVE COUNSEL'S DIGEST

SB 1435, Johnston. Teachers' health benefits: Medicare premiums.

Existing law requires the State Teachers' Retirement System to develop a health care benefits program for members of the Defined Benefit Program and related persons, subject to appropriation of funds and further legislative authorization, as specified.

This bill would recast that provision to delete that requirement and to instead provide that development of any health care benefits programs shall be subject to appropriation of funds and further legislative authorization, as specified.

The bill would also establish the Teachers' Health Benefits Fund, a continuously appropriated special trust fund in the State Treasury, and provide that moneys from that fund shall be used to pay the premiums associated with Medicare Part A for members of the Defined Benefit Program who retired prior to January 1, 2001, and meet specified criteria. The bill would authorize the Teachers' Retirement Board to additionally pay from the fund those premiums for certain members who retire on or after January 1, 2001, subject to certain findings by the board based on an actuarial valuation of the payment program, as specified. The bill would provide that a certain portion of the employer contributions to the Teachers' Retirement Fund shall instead be deposited into the Teachers' Health Benefits Fund for purposes of the payment program and would appropriate \$500,000 from that fund to the board for administration of the bill's provisions.

Appropriation: yes.

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

SECTION 1. Section 22950 of the Education Code is amended to read:

22950. (a) Employers shall contribute monthly to the * * * system 8 percent of the creditable compensation upon which members' contributions under this part are based.

(b) From the contributions required under subdivision (a), there shall be deposited in the Teachers' Retirement Fund an amount, determined by the board, that is not less than the amount, determined in a actuarial valuation of the Defined Benefit Program pursuant to Section 22311.5, necessary to finance the liabilities associated with the benefits of the Defined Benefit Program over the funding period adopted by the board, after taking into account the contributions made pursuant to Sections 22901, 22951, and 22955.

(c) The amount of contributions required under subdivision (a) that is not deposited in the Teachers' Retirement Fund pursuant to subdivision (b) shall be deposited directly into the Teachers' Health Benefits Fund, as established in Section 25930, and shall not be deposited into or transferred from the Teachers' Retirement Fund.

SEC. 2. Section 25000 of the Education Code is amended and renumbered to read:

25900. (a) All costs incurred by the system to develop health care benefit programs pursuant to this part shall be paid by allocations from the Teachers' Retirement Fund as appropriated for that purpose.

* * *

(b) Any health care benefits program developed by the system pursuant to this part shall not be implemented by the system unless specifically authorized by a statute enacted by the Legislature.

SEC. 3. Section 25923 is added to the Education Code, to read:

25923. "Fund" means the Teachers' Health Benefits Fund.

SEC. 4. Chapter 3 (commencing with Section 25930) is added to Part 13.5 of Division 1 of Title 1 of the Education Code, to read:

Chapter 3. Establishment and Control of Fund

25930. There is in the State Treasury a special trust fund to be known as the Teachers' Health Benefits Fund. There shall be deposited in the fund the employer contributions required under subdivision (c) of Section 22950, income on investments, other interest income,

Additions or changes indicated by underline; deletions by asterisks * * *

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income from fees and penalties, premiums paid by members, donations, legacies, bequests made to the fund and accepted by the board, and any other amounts provided by this part. Notwithstanding Section 11340 of the Government Code, the proceeds of the fund are hereby continuously appropriated without regard to fiscal year for purposes of this part. The design and administration of the fund and any program financed from the fund shall comply with Section 115 of Title 26 of the United States Code.

25931. The board shall have exclusive control of the administration of the fund. No transfers or disbursements of any amount from the fund shall be made except upon the authorization of the board for the purpose of carrying into effect the provisions of this part. Except as otherwise limited by the California Constitution and by law, the board may, in its discretion, invest the assets of the fund through the purchase, holding, or sale of any investment, financial instrument, or financial transaction, when the investment, financial instrument, or financial transaction is prudent in the informed opinion of the board.

25932. Return on investments shall be collected by the State Treasurer and, together with any other moneys received for the fund, shall be immediately deposited to the credit of the fund and reported immediately to the system. Money in whatever form received directly by the system for the fund shall be deposited immediately in the State Treasury to the credit of the fund.

25933. (a) For purposes of this section, "plan" means any health benefits program that is financed from the proceeds of the fund.

(b) The board shall maintain all data necessary to perform an actuarial investigation of the demographic and economic experience of the plan and for the actuarial valuation of the assets and liabilities of the plan.

(c) The board shall retain the services of an actuary to do all of the following:

(1) Make recommendations to the board for the adoption of actuarial assumptions that, in the aggregate, are reasonably related to the past experience of the plan and reflect the actuary's informed estimate of the future experience.

(2) Make an actuarial investigation of the demographic and economic experience, including the mortality, service, and other experience, of the plan with respect to members or any other persons eligible to receive benefits from the plan.

(3) At least biennially, using actuarial assumptions adopted by the board, perform an actuarial valuation of the plan that identifies the assets and liabilities of the plan, and report the findings to the board. The report of the actuary on 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.

(4) Recommend to the board all rates and factors necessary to administer the plan, including, but not limited to, mortality tables and interest rates.

(5) Recommend to the board a strategy for amortizing any unfunded actuarial obligation.

SEC. 5. Chapter 4 (commencing with Section 25940) is added to Part 13.5 of Division 1 of Title 1 of the Education Code, to read:

Chapter 4. Medicare Benefits Program

25940. (a) Effective July 1, 2001, the system shall pay to the federal Health Care Financing Administration the premiums associated with Medicare Part A for retired members described in this section.

(b) This section shall apply only to a retired member of the Defined Benefit Program who: (1) retired prior to January 1, 2001, (2) is not eligible for Medicare Part A without payment of a premium, (3) is at least 65 years of age, and (4) enrolled in Medicare Parts A and B at the age of 65 years or as of July 1, 2001, whichever is later.

(c) The board may extend eligibility for the payments described in this section to members of the Defined Benefit Program who meet the requirements of subdivision (d) and who retire on or after January 1, 2001, within a calendar year specified by the board, if the board finds

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Additions or changes indicated by underline; deletions by asterisks * * *

that the cost of the payments for members retiring during the specified calendar year may be paid within the anticipated resources available in the fund, as determined by the actuarial valuation of the plan established by this chapter, conducted pursuant to Section 25933. Any extension of eligibility to members who retire on or after January 1, 2001, shall be provided equally to any member who meets the requirements of subdivision (d) and retires during the calendar year specified by the board.

(d) Eligibility for the payments described in this section pursuant to subdivision (c) shall be limited to members of the Defined Benefit Program who retire from a school district that either: (1) completed a division pursuant to Section 22156 of the Government Code prior to January 1, 2001; or (2) completed or is conducting a division pursuant to that section on or after January 1, 2001, and, if the member was less than 58 years of age at the time of the division, the member elected to be covered by Medicare.

(e) The amount paid to the federal Health Care Financing Administration pursuant to this section shall include any penalties applicable to enrollment in Medicare Part A or Part B by members who enroll after the age of 65 years. Notwithstanding any other provision of this section, this subdivision shall apply only to members who are over the age of 65 years on July 1, 2001. The board may require a member on whose behalf a penalty would be paid pursuant to this subdivision to authorize the system to deduct the Part B premium from the member's retirement allowance as a condition of having the system pay the Part A premium pursuant to this section.

SEC. 6. There is hereby appropriated from the Teachers' Health Benefits Fund to the Teachers' Retirement Board the sum of five hundred thousand dollars (\$500,000) for administration of the provisions of this act.

**PUBLIC OFFICERS AND EMPLOYEES—RETIREMENT
AND PENSIONS—TEACHERS**

CHAPTER 77

S.B. No. 165

AN ACT to amend Section 22508 of the Education Code and to amend Section 20309 of the Government Code, relating to retirement.

[Filed with Secretary of State July 19, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 165, O'Connell. Public employees' retirement: membership election.

Under existing law, members of the Public Employees' Retirement System employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education who are subsequently employed to perform service subject to

Additions or changes indicated by underline; deletions by asterisks * * *

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coverage by the Defined Benefit Program of the State Teachers' Retirement Plan may elect to be excluded from membership under that plan and retain coverage under the system for that service.

This bill would additionally make that election available to members of the Public Employees' Retirement System who have at least 5 years of credited service and who are subsequently employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan.

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

SECTION 1. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district or community college district, or a county superintendent; or who becomes employed by the state in a position described in subdivision (b), to perform service that requires membership in a different public retirement system, and who is not excluded from membership in that public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) Subdivision (a) shall apply to a member who becomes employed by the state only if the member is also one of the following:

(1) Represented by a state bargaining unit that represents educational consultants, professional educators, or librarians employed by the state.

(2) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(3) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(c)(1) A member of the Public Employees' Retirement System * * * described in paragraph (2) who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that subsequent service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program pursuant to Section 20309 of the Government Code. If the election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

(2) This subdivision shall apply to a member of the Public Employees' Retirement System who either (A) is employed by a school district, community college district, a county superintendent, or the State Department of Education or (B) has at least five years of credited service under the system.

(d) An election made by a member pursuant to this section shall be irrevocable.

SEC. 2. Section 20309 of the Government Code is amended to read:

20309. (a) A member of the system * * * described in subdivision (b) who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan, may elect to retain coverage by this system for that subsequent service. An election to retain coverage under this system shall be submitted in writing by the member to the system on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers' Retirement System, within 60 days after the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan. A member who elects to retain coverage under this system pursuant to this section shall be deemed to be a school member while employed by a school employer.

(b) This section shall apply to a member of the system who either (1) is employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education or (2) has at least five years of credited service under this system.

(c) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

MAINTENANCE OF CODES

CHAPTER 159

S.B. No. 662

AN ACT to amend Sections 27, 113, 130, 144, 350, 1647.11, 2570.6, 2570.8, 2570.19, 2995, 3059, 3364, 3403, 4059, 4312, 4980.80, 4980.90, 4996.6, 5111, 5536, 6403, 6716, 6730.2, 6756, 7092, 7583.11, 8027, 8773.4, 10167.2, and 21702 of the Business and Professions Code, to amend Sections 1748.10, 1748.11, 1810.21, 2954.4, 2954.5, and 3097 of, and to amend and renumber Section 1834.8 of, the Civil Code, to amend Sections 403.020, 645.1, 674, and 699.510 of the Code of Civil Procedure, to amend Sections 9323, 9331, and 9408 of the Commercial Code, to amend Sections 2200, 6810, 17540.3, 25102, 25103, and 25120 of the Corporations Code, to amend Sections 313, 406, 426, 427, 11700, 17071.46, 17210, 17317, 17610.5, 22660, 22950, 25933, 33126.1, 37252, 37252.2, 37619, 41329.1, 42239, 44114, 45023.1, 48664, 52054, 52270, 52485, 54749, 56045, 56845, 69432.7, 69434.5, 69437.6, 69439, 69613.1, 87164, and 92901 of, and to amend and renumber Sections 45005.25 and 45005.30 of, the Education Code, to amend Sections 1403, 8040, 9118, and 15375 of the Elections Code, to amend Section 17504 of the Family Code, to amend Sections 761.5, 4827, 16024, 16501, and 18586 of the Financial Code, to amend Sections 1506, 2921, and 8276.3 of the Fish and Game Code, to amend Sections 492, 6046, and 75131 of the Food and Agricultural Code, to amend Sections 3543.4, 3562.2, 3583.5, 6254, 6516.6, 6599.2, 7074, 18935, 20028, 20300, 20392, 21006, 21547.7, 30064.1, 31461.3, 31681.55, 31835.02, 38773.6, 55720, 65584, 65585.1, and 75059.1 of the Government Code, to amend Sections 444.21, 1358.11, 11836, 11877.2, 17922, 25358.6.1, 39619.6, 104170, 105112, 111656.5, 111656.13, 114145, 123111, and 124900 of, to amend and renumber Section 104320 of, and to amend and renumber the heading of Article 10.5 (commencing with Section 1399.801) of Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 789.8, 1215.1, 1871, 1872.83, 10123.135, 10178.3, 10192.11, 10231.2, 10236, 10506.5, 11621.2, 11784, 11786, 11787, and 12698 of the Insurance Code, to amend Sections 90.5, 129, 230.1, 4455, and 4609 of the Labor Code, to amend Section 1048 of the Military and Veterans Code, to amend Sections 272, 417.2, 646.94, and 3058.65 of the Penal Code, to amend Sections 1813 and 16062 of the Probate Code, to amend Sections 10129 and 20209.7 of the Public Contract Code, to amend Sections 5090.51, 14581, 36710, and 42923 of the Public Resources Code, to amend Sections 383.5, 2881.2, 7943, 9608, 9610, and 12702.5 of, and to amend and renumber Section 399.15 of, the Public Utilities Code, to amend Sections 75.11, 75.21, 97.3, 214, 23622.8, 23646, 44006, and 45153 of the Revenue and Taxation Code, to amend Section 1110 of the Unemployment Insurance Code, to amend Section 4000.37 of the Vehicle Code, to amend Sections 1789.5, 4098.1, 5614, 8102, 10082, 14005.28, 14005.35, 14008.6, 14087.32, and 14105.26 of the Welfare and Institutions Code, and to amend Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), Section 1 of Chapter 352 of the Statutes of 2000, Section 1 of Chapter 661 of the Statutes of 2000, Section 2 of Chapter 693 of the Statutes of 2000, Sections 5 and 6 of the Naval Training Center San

Additions or changes indicated by underline; deletions by asterisks * * *

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Diego Public Trust Exchange Act (Chapter 714 of the Statutes of 2000), Section 228 of Chapter 862 of the Statutes of 2000, and Sections 2 and 3 of Chapter 975 of the Statutes of 2000, relating to maintenance of the codes.

[Filed with Secretary of State August 9, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 662, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 2001, and would not make any substantive change in the law.

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b), on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information shall not include personal information, including * * * home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

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Additions or changes indicated by underline; deletions by asterisks * * *

22660. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions under the Defined Benefit Program and to designate a payee to receive the accumulated Defined Benefit Supplement account balance under the Defined Benefit Supplement Program remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance or accrued benefit under the Defined Benefit Supplement Program that is attributable to the separate account of the nonmember spouse and that is unpaid on the date of the death of the nonmember spouse.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance under Section 24300 or to elect a joint and survivor annuity under the Defined Benefit Supplement Program.

SEC. 60. Section 22950 of the Education Code is amended to read:

22950. (a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based.

(b) From the contributions required under subdivision (a), there shall be deposited in the Teachers' Retirement Fund an amount, determined by the board, that is not less than the amount, determined in an actuarial valuation of the Defined Benefit Program pursuant to Section 22311.5, necessary to finance the liabilities associated with the benefits of the Defined Benefit Program over the funding period adopted by the board, after taking into account the contributions made pursuant to Sections 22901, 22951, and 22955.

(c) The amount of contributions required under subdivision (a) that is not deposited in the Teachers' Retirement Fund pursuant to subdivision (b) shall be deposited directly into the Teachers' Health Benefits Fund, as established in Section 25930, and shall not be deposited into or transferred from the Teachers' Retirement Fund.

SEC. 61. Section 25933 of the Education Code is amended to read:

25933. (a) For purposes of this section, "plan" means any health benefits program that is financed from the proceeds of the fund.

(b) The board shall maintain all data necessary to perform an actuarial investigation of the demographic and economic experience of the plan and for the actuarial valuation of the assets and liabilities of the plan.

(c) The board shall retain the services of an actuary to do all of the following:

(1) Make recommendations to the board for the adoption of actuarial assumptions that, in the aggregate, are reasonably related to the past experience of the plan and reflect the actuary's informed estimate of * * * future experience.

(2) Make an actuarial investigation of the demographic and economic experience, including the mortality, service, and other experience, of the plan with respect to members or any other persons eligible to receive benefits from the plan.

(3) At least biennially, using actuarial assumptions adopted by the board, perform an actuarial valuation of the plan that identifies the assets and liabilities of the plan, and report the findings to the board. The report of the actuary on 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.

(4) Recommend to the board all rates and factors necessary to administer the plan, including, but not limited to, mortality tables and interest rates.

(5) Recommend to the board a strategy for amortizing any unfunded actuarial obligation.

SEC. 62. Section 33126.1 of the Education Code is amended to read:

33126.1. (a) The State Department of Education shall develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.

(b) The standardized template shall include fields for the insertion of data and information by the State Department of Education and by local educational agencies. When the template

(e) The meetings of the Bipartisan California Commission on Internet Political Practices shall be open and public. The commission members shall receive one hundred dollars (\$100) per diem for each day of attendance at a meeting of the commission, not to exceed 10 meetings.

(f) The Bipartisan California Commission on Internet Political Practices shall report its findings and recommendations to the Legislature not later than December 1, 2001. The commission shall cease to exist on January 1, 2002.

SEC. 207. Section 3 of Chapter 975 of the Statutes of 2000 is amended to read:

Sec. 3. The sum of two hundred twenty thousand dollars (\$220,000) is hereby appropriated from the General Fund to the Controller for allocation to the Bipartisan California Commission on Internet Political Practices to defray the costs of the commission in conducting the study and preparing the report required by this act.

SEC. 208. Any section of any act enacted by the Legislature during the 2001 calendar year that takes effect on or before January 1, 2002, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2001 calendar year and takes effect on or before January 1, 2002, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

Ch. 801, § 1

STATUTES OF 2001

PROFESSIONS AND OCCUPATIONS—TEACHERS—
RETIREMENT AND PENSIONS

CHAPTER 802

S.B. No. 499

AN ACT to amend Sections 22360 and 22802 of, to amend and repeal Sections 22123 and 24600 of, and to repeal Section 22139 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Filed with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 499, Soto. State Teachers' Retirement System.

The Teachers' Retirement Law provides that, prior to January 1, 2002, dependent, unmarried children of members of the Defined Benefit Program of the State Teachers' Retirement Plan are eligible for disability and family benefits if they are under 22 years of age on the date of the member's disability or death; however, on and after January 1, 2002,

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dependent, unmarried children of those members are eligible for those benefits only if they are under 18 years of age or under 22 years of age and full-time students, as defined, on the date of the member's disability or death.

This bill would instead provide that, on and after January 1, 2002, dependent, unmarried children of those members shall continue to be eligible for disability and family benefits if they are under 22 years of age on the date of the member's disability or death. The bill would also make technical changes to that provision.

Existing law, known as the Dave Elder State Teachers' Retirement System Home Loan Program Act, establishes a member home loan financing program and specifies that the maximum amount of any loan under that program shall not exceed \$350,000.

This bill would provide, instead, that the maximum amount of any loan under the program may not exceed 200% of the conforming loan limit set by either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, as specified.

Under the existing Teachers' Retirement Law, members of the Defined Benefit Program of the State Teachers' Retirement Plan may elect to receive service credit for time spent in certain types of service or activities that would not otherwise be creditable.

This bill would authorize those members to elect to receive service credit for time spent in a position subject to coverage by the Cash Balance Benefit Program of the State Teachers' Retirement Plan, subject to specified conditions.

The bill would appropriate \$1,000,000 from the Teachers' Retirement Fund to the Teachers' Retirement Board for the administrative costs of implementing benefit changes, as specified.

Appropriation: yes.

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

SECTION 1. Section 22123 of the Education Code, as added by Section 9 of Chapter 1165 of the Statutes of 1996, is amended to read:

22123. (a) "Dependent child" or "dependent children" under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is not older than 22 years of age and who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death.

(b) "Offspring" shall include the member's child who is born within the 10-month period commencing on the earlier of the member's disability allowance effective date or the date of the member's death.

(c) "Offspring" shall include a child adopted by the member.

(d) "Dependent child" shall not include the member's offspring or stepchild who is adopted by a person other than the member's spouse.

(e) "Dependent child" under the family allowance program shall not include:

(1) The member's offspring or stepchild who was financially dependent on the member on the date of the member's death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(f) "Financially dependent" for purposes of this section means that at least one-half of the child's support was being provided by the member on the member's disability allowance effective date or the date of the member's death. The system may require that income tax records or other data be submitted to substantiate the child's financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member's disability allowance or the date of the member's death.

(g) "Member" as used in this section shall have the same meaning specified in Section 23800.

* * *

SEC. 2. Section 22123 of the Education Code, as added by Section 9.5 of Chapter 1165 of the Statutes of 1996, is repealed.

SEC. 3. Section 22139 of the Education Code, as added by Section 12.5 of Chapter 1165 of the Statutes of 1996, is repealed.

SEC. 4. Section 22360 of the Education Code is amended to read:

22360. (a) Notwithstanding any other provision of law, the board may pursuant to Section 22203 and in conformance with its fiduciary duty set forth in Section 22250, enter into correspondent agreements with private lending institutions in this state to utilize the retirement fund to invest in residential mortgages, including assisting borrowers, through financing, to obtain homes in this state.

(b) The program shall, among other things, provide:

(1) That home loans be made available to borrowers 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 recipients of the loans occupy the homes as their principal residences in accordance with policies established by the board.

(3) That the home loans shall be available only for the purchase or refinance of homes in this state.

(4) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan of up to 100 percent of the appraised value. In no event shall the loan amount exceed * * * 200 percent of the conforming loan limit set by the Federal National Mortgage Association (FNMA) or 200 percent of the conforming loan limit set by the Federal Home Loan Mortgage Corporation (FHLMC), whichever is greater. 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.

(5) That there may be prepayment penalties assessed on the loans in accordance with policies established by the board.

(6) That the criteria and terms for its loans shall be consistent with the financial integrity of the program and the sound investment of the retirement fund.

(7) Any other terms and conditions as the board shall deem appropriate.

(c) It is the intent of the Legislature that the provisions of this section be used to establish an investment program for residential mortgages, including assisting borrowers in purchasing homes in this state, or refinancing a mortgage loan. The Legislature intends that home loans made pursuant to this section shall be secured primarily by the property purchased or refinanced and shall not exceed the appraised value of that property.

(d) Appropriate administrative costs of implementing this section and Section 22360.5 shall be paid by the participating borrowers. Those costs may be included in the loan amount.

(e) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to borrowers consistent with the financial integrity of the home loan program and the sound and prudent investment of the retirement fund. Under no circumstances, however, shall the interest rates offered to borrowers be below current market rate.

(f) The board shall administer this section and Section 22360.5 under other terms and conditions it deems appropriate and in keeping with the investment standard. The board may adopt policies as necessary for its administration of this section and Section 22360.5 and to assure compliance with applicable state and federal laws.

(g) This section and Section 22360.5 shall be known as, and may be cited as, the Dave Elder State Teachers' Retirement System Home Loan Program Act.

SEC. 5. Section 22802 of the Education Code is amended to read:

22802. (a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

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Additions or changes indicated by underline; deletions by asterisks * * *

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(1) Service as a substitute excluded under Section 22602.

(2) Creditable service subject to coverage under the Cash Balance Benefit Program, excluding service credited pursuant to Section 26402, if the member has terminated all service subject to coverage under the Cash Balance Benefit Program. Upon electing to receive credit under this paragraph, the member shall cease to be eligible for a benefit for the same service or time previously credited under the Cash Balance Benefit Program pursuant to Part 14 (commencing with Section 26000).

(3) Service performed on a part-time basis excluded under Section 22601.5 or Section 22604, other than service credited under paragraph (2).

(4) Adult education service excluded under Section 22603, as it read on December 31, 1995.

(5) Service as a school nurse excluded under Section 22606, as it read on December 31, 1995.

(6) Service performed in a position prior to the date the position was made subject to coverage under the Defined Benefit Program.

(7) Service subject to coverage under the Defined Benefit Program 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 under this part for service performed while excluded from membership under the Defined Benefit Program shall pay all of the required contributions for all or the portion of that service for which the member elects to receive credit.

(c) A member may not elect to receive credit for service or time described in paragraphs (1) and (3) to (7), inclusive, of subdivision (a) if, after the election, the member would continue to receive credit for the same service or time in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 6. Section 24600 of the Education Code, as amended by Section 40 of Chapter 1021 of the Statutes of 2000, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

* * *

Additions or changes indicated by underline; deletions by asterisks * * *

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(g) Supplemental payments issued under this part pursuant to Sections * * * 24411, 24412, and 24415 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections * * * 24411, 24412, and 24415 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended, and related regulations. The required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of * * * the calendar year in which the member attains age 70½ years * * * of age or the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, * * * not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains * * * 70½ years * * * of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of:

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

* * *

SEC. 7. Section 24600 of the Education Code, as added by Section 42 of Chapter 1021 of the Statutes of 2000, is repealed.

SEC. 8. There is hereby appropriated the sum of one million dollars (\$1,000,000) from the Teachers' Retirement Fund to the Teachers' Retirement Board for the payment of administrative costs of implementing benefit changes that shall become operative on or after January 1, 2002.

BILL NUMBER: SB 501 CHAPTERED 10/13/01

CHAPTER 803

FILED WITH SECRETARY OF STATE OCTOBER 13, 2001

APPROVED BY GOVERNOR OCTOBER 12, 2001

PASSED THE SENATE SEPTEMBER 4, 2001

PASSED THE ASSEMBLY AUGUST 30, 2001

AMENDED IN ASSEMBLY AUGUST 27, 2001

AMENDED IN ASSEMBLY JULY 5, 2001

AMENDED IN SENATE MAY 16, 2001

INTRODUCED BY Committee on Public Employment and Retirement
(Senators Soto (Chair), Karnette, and Ortiz)

FEBRUARY 22, 2001

An act to amend Sections 22119.2, 22138.6, 22151, 22352, 22664, 22820, 22900, 24001, 24001.5, 24101, 24203.5, 24203.6, 24209, 24211, 24212, 24255, 24260, 24300.5, 24307, 24402, 24404, 24410.6, 25011, 25014, 25015, 25018, 25019, 25021, 25024, 25925, 25930, 25940, 26400, 26401, 26807, 26906, 26914, 27007, and 27008 of, to amend the heading of Chapter 4 (commencing with Section 25940) of Part 13.5 of Division 1 of, to amend and renumber the heading of Article 6 (commencing with Section 25024) of Chapter 38 of Part 13 of Division 1 of, to amend and repeal Section 26402 of, to add Sections 22811, 25921, and 25926 to, to repeal Sections 22136.5 and 25026 of, and to repeal and add Section 27004 of, the Education Code, and to amend Sections 22878.2 and 22878.3 of the Government Code, relating to state teachers' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 501, Committee on Public Employment and Retirement. State teachers' retirement.

(1) The Teachers' Retirement Law defines "creditable compensation," "full-time equivalent," and "overtime" for purposes of calculating benefits under that law.

This bill would make technical changes to those definitions.

(2) The Teachers' Retirement Law provides an optional, alternative method for calculating the final compensation, for purposes of benefits under that law, applicable to a member whose salary was reduced due to a reduction in school funds.

This bill would repeal that provision.

(3) Existing law requires the Teachers' Retirement Board to provide a specified annual report to, among others, the Joint Public Pension Fund Investments Committee.

This bill would delete the reference to that committee.

(4) Existing law prescribes service and disability benefits for members of the Defined Benefit Program of the State Teachers' Retirement Plan, which benefits are calculated, in part, based upon the member's credited service; however, with respect to certain benefit calculations, specified types of credited service, such as credit for unused sick leave, are excluded.

This bill would additionally exclude from those benefit calculations service credited for an unused leave of absence for education, as specified.

(5) The Teachers' Retirement Law prescribes contribution rates, service and disability retirement benefits, survivor benefits, and

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benefits for former spouses of members, and establishes a replacement benefits program for members of the Defined Benefit Program and the Cash Balance Benefit Program of the State Teachers' Retirement Plan.

This bill would make technical and clarifying changes to those provisions.

(6) Existing law authorizes members of the Defined Benefit Program of the State Teachers' Retirement Plan to elect to receive service credit for various types of nonqualified service, subject to the payment of certain contributions, or to elect to redeposit previously refunded contributions, as specified.

This bill would authorize the member to pay or redeposit those contributions by transferring funds from eligible retirement plans, subject to applicable federal and state laws.

(7) The Teachers' Retirement Law prescribes specified benefit increases applicable to retirement, disability, and other allowances, and to annuities payable under the Defined Benefit Supplement Program.

This bill would make those increases inapplicable to those annuities.

(8) Existing law authorizes members and participants of the Defined Benefit Supplement Program and the Cash Balance Benefit Program of the State Teachers' Retirement Plan to elect from among several forms of annuity payments. Existing law provides that, upon election of an annuity under the Cash Balance Benefit Program, the credits in the participant's employee and employer accounts are transferred to the Annuitant Reserve.

This bill would authorize members of the Defined Benefit Supplement Program to receive a lump-sum payment instead of annuity payments in specified circumstances. The bill would provide, with respect to certain annuity payment options under of the Cash Balance Benefit Program, an increased payment if the participant's designated beneficiary predeceases the member and provide that upon reemployment of a participant receiving a disability annuity, his or her employee and employer's accounts shall be credited, and the Annuitant Reserve reduced, by the actuarial equivalent of the participant's annuity. The bill would also make technical and clarifying changes to those provisions.

(9) Existing law requires the State Teachers' Retirement System to pay the premiums associated with Medicare Part A for members of the Defined Benefit Program who retired prior to January 1, 2001, and meet specified criteria. Existing law also authorizes the Teachers' Retirement Board to pay those premiums for certain members who retire on or after January 1, 2001, subject to certain findings by the board.

This bill would make technical and clarifying changes to those provisions.

(10) Existing law provides that certain permanent or regular employees of a school or agency shall be subject to the Public Employees' Retirement System, provided they are not members of the State Teachers' Retirement System.

This bill would clarify that those employees shall be subject to the Public Employees' Retirement System if they are neither members nor participants of the State Teachers' Retirement Plan.

(11) This bill would declare that if any other bill affects any code section contained in this bill, the provisions of that other bill shall prevail as to that code section, regardless of the date of enactment.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet

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the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 22136.5 of the Education Code is repealed.

SEC. 3. Section 22138.6 of the Education Code is amended to read:

22138.6. "Full-time equivalent" means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time in that part-time position.

SEC. 4. Section 22151 of the Education Code is amended to read:

22151. "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.

SEC. 5. Section 22352 of the Education Code is amended to read:

22352. (a) Upon a finding by the board that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board, the board may contract with qualified investment managers having demonstrated expertise in the management of large and diverse investment portfolios to render service in connection with the

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act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

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TEACHERS—RETIREMENT AND PENSIONS—BENEFITS

CHAPTER 375

A.B. No. 2982

AN ACT to amend Sections 22119.5, 22138.5, 22140, 22515, 22657, 22664, 22713, 22905, 24002, 24010, 24012, 24102, 24109, 24111, 24114, 24209.3, 24216, 24705, 24950, 24975, 25007, 25011, 25012, 25017, 25018, 25020, 25021, 25022, 25023, 25940, 26400, and 27004 of, to add Sections 24221, 25000.9, 25018.5, 25022.5, and 25955 to, and to repeal Chapter 27.1 (commencing with Section 24230) of Part 13 of Division 1 of Title 1 of, the Education Code, relating to state teachers' retirement.

[Filed with Secretary of State September 6, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2982, Committee on Public Employees, Retirement and Social Security. State teachers' retirement.

(1) Under existing law, "creditable service," for purposes of calculating retirement benefits under the Defined Benefit Program of the State Teachers' Retirement Plan, is defined to include, among other things, performance of certain school activities related to the instructional and guidance program of a school, if those activities are performed within normal work hours, as specified.

This bill would include those activities within the definition of creditable service, irrespective of when the activities are performed.

(2) The Teachers' Retirement Law defines "full time" as the days or hours of creditable service the employer requires to be performed by a specified class of employees in order to earn "earnable compensation," as specified. Existing law further defines "improvement factor" for the purposes of the Defined Benefit Supplement Program to mean an increase of 2% in monthly annuities, to be applied as specified.

This bill would require certain collective bargaining agreements or employment agreements to specify the number of hours of creditable service that equals "full time" and make reference to certain provisions. This bill would delete the definition of improvement factor with regard to the Defined Benefit Supplement Program.

(3) Existing law authorizes substitute teachers and other part-time employees who perform creditable service, as defined, to elect membership in the Defined Benefit Program of the State Teachers' Retirement Plan, which election is irrevocable and remains in effect until the member terminates employment and receives a refund of accumulated contributions.

This bill would provide that the membership election remains in effect only until the member terminates employment.

(4) Under existing law, specified provisions of the Teachers' Retirement Law relating to the Defined Benefit Program apply to a nonmember spouse, as defined, as if he or she were a member of the program.

This bill would additionally make specified provisions of that law relating to the Defined Benefit Supplement Program applicable to a nonmember spouse, as defined. This bill would also clarify that, upon service retirement, a nonmember spouse is entitled to receive a retirement benefit based on the balance of credits in the nonmember spouse's Defined Benefit Supplement account, as specified. The bill would also make explicit the amount and procedure for payment of annuities upon the death of a member, a nonmember spouse, or an annuity beneficiary under the Defined Benefit Supplement Program.

(5) Existing law authorizes school boards to establish regulations to allow an employee to reduce his or her workload to part time and still receive full-time service credit under the Defined Benefit Program of the State Teachers' Retirement Plan if, among other things, the

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Additions or changes indicated by underlining; deletions by asterisks.

employee has not had a break in service during the 5 years immediately preceding the reduction in workload.

This bill would require that an employee have a minimum of 10 years of credited service, and would provide that, with respect to an employee who reinstates from retirement, his or her period of retirement shall be considered a break in service.

(6) Existing law provides for a disability allowance and disability retirement allowance for specified members of the Defined Benefit Program of the State Teachers' Retirement Plan. Existing law allows the Teachers' Retirement Board to authorize payment of a disability allowance, and permits the member to apply for a disability retirement allowance, if, among other things, the application is made during specified periods. Existing law requires that specified disability allowances and disability retirement allowances be reduced in relation to specified benefits paid by other public systems.

This bill would clarify when application may be made for a disability allowance or a disability retirement allowance and would clarify the circumstances under which these payments may be reduced. The bill would also make technical changes regarding how supplemental earnings of a member retired for disability are calculated. The bill would also require that a member who is receiving a disability allowance or a disability retirement allowance also receive a disability benefit under the Defined Benefit Supplement Program, as specified. The bill would specify the circumstances under which certain forms of payment may be made when the member elects to receive a disability benefit as an annuity. The bill would clarify the calculation of the date upon which a member first became disabled when the member attempts to return to work and has a recurrence of the original disability.

(7) The Teachers' Retirement Law prescribes the requirements a member must satisfy, until January 1, 2003, for a service retirement and provides exemptions from the postretirement earning limitation for a member who is appointed to certain positions.

This bill would extend the operation of these provisions to January 1, 2008.

(8) Existing law requires that an annuity contract and custodial account be offered to specified employees who are members of the Defined Benefit Program of the State Teachers' Retirement Plan. Existing law permits the Teachers' Retirement Board to develop one or more deferred compensation plans, as specified.

This bill would clarify the circumstances under which a 3rd-party administrator may provide investment options and the employees to whom a deferred compensation plan may be offered.

(9) Existing law provides a Medicare Premium Payment Program for specified retired members of the Defined Benefit Program of the State Teachers' Retirement Plan.

This bill would authorize the reduction, as specified, of a member's benefit under the Defined Benefit Program to recover an overpayment under the Medicare Premium Payment Program and would make a technical change.

(10) Existing law prescribes service retirement and disability retirement benefits for members of the Defined Benefit and Defined Benefit Supplement Programs of the State Teachers' Retirement Plan who retire following reinstatement and for members of those programs who were formerly members of the San Francisco local system. Existing law also provides a Cash Balance Benefit Program for certain part-time employees.

This bill would make technical and clarifying changes to those provisions.

(11) Existing law establishes, until January 1, 2011, the Retirement Option Program within the Defined Benefit Program of the State Teachers' Retirement Plan. This program permits a member who retires for service on or after January 1, 2002, and who has reached normal retirement age to elect to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to its provisions.

This bill would revise and recast these provisions. The bill would prohibit the application of the lump-sum payment for the purpose of redepositing previously refunded retirement contributions, as specified, with a certain exception.

Additions or changes indicated by underline; deletions by asterisks. * * *

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(12) This bill would provide that any other act enacted during the 2002 calendar year that amends, adds, renumbers, or repeals a provision that this bill also amends, adds, renumbers, or repeals shall supersede this bill.

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

SECTION 1. Section 22119.5 of the Education Code, as amended by Chapter 608 of the Statutes of 1996, is amended to read:

22119.5. (a) "Creditable service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section.

* * *

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.

(8) Services as a school librarian.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified.

SEC. 2. Section 22138.5 of the Education Code is amended to read:

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. Each collective bargaining agreement or employment agreement that applies to a member subject to the minimum standard specified in paragraph (5) of subdivision (c) shall specify the number of hours of creditable service that equal "full time" pursuant to this section, and shall make specific reference to 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 paragraphs (2) and (3).

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(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 employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

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

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(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 employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per school year for all instructors employed on a part-time basis, except instructors specified in paragraph (6). If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per school year for all instructors employed in adult education programs. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) 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. 3. Section 22140 of the Education Code is amended to read:

22140. (a) "Improvement factor," with respect to the Defined Benefit Program, means an increase of 2 percent in monthly allowances. The improvement factor shall be added to a monthly allowance each year on September 1, commencing on September 1 following the first anniversary of the effective date of retirement, or the date on which the monthly allowance commenced to accrue to any beneficiary, or other periods specifically stated in this part.

* * *

(b) The improvement factor may 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. Any adjustment of the improvement factor * * * may not reduce the monthly retirement allowance or annuity below that which would be payable to the recipient under this part had this section not been enacted.

SEC. 4. Section 22515 of the Education Code is amended to read:

22515. Persons excluded from membership pursuant to Sections 22601.5, 22602, and 22604 may elect membership in the Defined Benefit Program at any time while employed to perform creditable service subject to coverage under that program. The election shall be in writing on a form prescribed by this system * * * and shall be filed in the office of this system prior to submission of contributions. * * * The amendments to this section enacted

Additions or changes indicated by underline; deletions by asterisks.

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uring the 1995-96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 5. Section 22657 of the Education Code is amended to read:

22657. (a) The following provisions shall apply to a nonmember spouse as if he or she were a member under this part: Sections 22107, 22306, 22306, and 23802, subdivisions (a) and (b) of Section 24600, and Sections 24601, 24602, 24603, 24605, 24606, 24607, 24608, 24611, 24612, 24613, 24616, 24617, 25009, 25010, 25011, 25013, 25020, 25021, and 25022.

(b) Notwithstanding subdivision (a), this section shall not be construed to establish any right for the nonmember spouse under this part that is not explicitly established in Sections 22650 to 22655, inclusive, and Sections 22658 to 22665, inclusive.

SEC. 6. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to service retirement allowance and, if applicable, a retirement benefit under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited 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. 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, out-of-state service, and permissive service credit that the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least 2 1/2 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 under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that 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 or court order pursuant to Section 22652 was entered.

(c)(1) Upon service retirement at normal retirement age under this part, 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.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part 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.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

Age at Retirement	Percentage
60 1/2	2.088
60 3/4	2.067
60 1/2	2.10
61	2.133
61 1/4	2.167
61 1/2	2.20

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(2) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the sum of the balance of the employee account and the employer account on the date of the participant's death. The annuity shall be payable in whole year increments over a period of years specified by the beneficiary, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the beneficiary. The beneficiary may designate a payee to receive the remaining balance of payments if the beneficiary dies prior to the end of the period certain.

SEC. 39. Any section of any act enacted by the Legislature during the 2002 calendar year that takes effect on or before the effective date of this act, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

1164. Additions or changes indicated by underline; deletions by asterisks.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

EDUCATION CODE

§ 22000. Short title

This part may be known and cited as the E. Richard Barnes Act and together with Part 14 (commencing with Section 26000) shall be known as the Teachers' Retirement Law.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1999, c. 939 (S.B. 1074), § 1.)

§ 22002. Declaration of financing policies

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

(a) Members shall contribute a percentage of creditable compensation, unless otherwise specified in this part.

(b) Employers shall contribute a percentage of the total creditable compensation 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 under this part.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 1; Stats.1997, c. 482 (S.B.471), § 1; Stats.1998, c. 965 (A.B.2765), § 1.)

§ 22119.2. Creditable compensation; violation of reporting requirements

*Text of section operative until July 1, 2002, or
July 2, 2003, as set forth in subd. (f).*

(a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

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

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

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

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

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(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

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

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

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

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

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(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats.1996, c. 1165 (A.B.3032), § 7, operative July 1, 1996. Amended by Stats.1997, c. 482 (S.B.471), § 3; Stats.1999, c. 939 (S.B.1074), § 10; Stats.2000, c. 1021 (A.B.2700), § 4; Stats.2001, c. 803 (S.B.501), § 1.)

§ 22119.2. Creditable compensation; violation of reporting requirements

Text of section operative July 1, 2002, or July 1, 2003, as set forth in subd. (g) of this section.

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

(1) Salary paid in accordance with a salary schedule or employment agreement.

(2) Remuneration that is paid in addition to salary, providing it is payable to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).

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

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

(6) Any other payments the board determines to be "creditable compensation."

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

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

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

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

(3) Remuneration that is paid in addition to salary if it is not payable to all persons in the same class of employees in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

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

(5) Annuity contracts, tax-deferred retirement plans, or insurance programs and contributions to plans that ~~872~~ the requirements of Section 125, 401(k), or

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403(b) of Title 26 of the United States Code when the cost is covered by an employer and is not deducted from the member's salary.

(6) Fringe benefits provided by an employer.

(7) Job-related expenses paid or reimbursed by an employer.

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

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

(d) An employer or individual who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (c) shall reimburse the plan for benefit overpayments that occur because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered payable if it would be paid to any person who meets the qualifications or requirements specified in a collective bargaining agreement or an employment agreement as a condition of receiving the remuneration.

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

(g) The section shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001-02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become operative on July 1, 2003.

(Added by Stats.2000, c. 1021 (A.B.2700), § 5.)

For text of section operative until July 1, 2002, or July 1, 2003, as set forth in subd. (g) of this section, see Education Code § 22119.2, ante.

EDUCATION CODE

§ 22119.5. Creditable service.

(a) "Creditable service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section * * *

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.

(8) Services as a school librarian.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified.

(Amended by Stats.2002, c. 375 (A.B.2982), § 1.)

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§ 22146. Member.

"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 creditable compensation for that service and has not received a refund for that service and, as a result, is subject to the Defined Benefit Program. A member's rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any applicable exceptions under other provisions of this part.

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

(b) An inactive member is a member who is not retired or disabled and who has not earned creditable compensation during the school year immediately prior to and the school year during which the member retires for service.

(c) A disabled member is a member to whom a disability allowance is payable under Chapter 25 (commencing with Section 24001):

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable.

(Added by Stats.1995, c. 592 (A.B.1298), § 3. Amended by Stats.1996, c. 634 (S.B. 2041), § 26; Stats.1998, c. 965 (A.B.2765), § 7; Stats.2000, c. 1025 (A.B.816), § 5.)

§ 22455.5. Legislative findings and declarations; public employers; social security coverage or qualified retirement plan membership

(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 Defined Benefit Program, 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's Defined Benefit Program 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 with respect to the Defined Benefit Program 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.

(Added by Stats.1994, c. 603 (A.B.2554), § 1. Amended by Stats.1996, c. 634 (S.B. 2041), § 98; Stats.1999, c. 939 (S.B.1074), § 29.)

EDUCATION CODE

§ 22458. Compensation of employees; documentation

Each employer shall provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program 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.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 101; Stats.1999, c. 939 (S.B.1074), § 31.)

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EDUCATION CODE

§ 22460. Notification to terminating employee of benefits

(a) If a member terminates employment with less than five years of credited service, the employer shall notify the member of the following:

(1) That unless the member is eligible, or becomes eligible in the future, for concurrent retirement pursuant to paragraph (2) of subdivision (a) of Section 24201, the member is eligible only for a refund of accumulated retirement contributions under the Defined Benefit Program and the return of the member's accumulated Defined Benefit Supplement account balance.

(2) The current rate of interest that shall be earned on accumulated retirement contributions that are not refunded and the current minimum interest rate that shall be applied to the member's Defined Benefit Supplement account.

(3) Actions that may be taken by the board if accumulated retirement contributions are not refunded under the Defined Benefit Program and the member's Defined Benefit Supplement account balance is not returned.

(b) Employers shall transmit to a member who terminates employment with less than five years of credited service the information specified in subdivision (a) as part of the usual separation documents.

(Added by Stats.2000, c. 1021 (A.B.2700), § 17.)

§ 22461. Notice of earnings limitation; maintenance of earnings records and reports; liability of employer

(a) Upon retaining the services of a retired member under Section 24116, 24214, or 24215, the 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.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 104.)

§ 22501. Membership eligibility; full time

(a) Any person employed to perform creditable service on a full-time basis who is not already a member of the Defined Benefit Program under the plan shall become a member as of the first day of employment, unless excluded from membership pursuant to Section 22601.

(b) Creditable service in more than one position shall not be aggregated for the purpose of determining mandatory membership under this section.

(c) This section shall be deemed to have become operative on July 1, 1996.
(Added by Stats.1996, c. 634 (S.B.2041), § 107, operative July 1, 1996. Amended by Stats.1998, c. 965 (A.B.2765), § 46.)

§ 22502. Membership eligibility; part time; 50 percent or more of full time

(a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of subsequent employment to perform creditable service for 50 percent or more of the full-time equivalent for the position; unless excluded from membership pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

(Added by Stats.1998, c. 965 (A.B.2765), § 47. Amended by Stats.1999, c. 939 (S.B. 1074), § 33.)

§ 22503. Membership eligibility; substitute teacher

(a) Any person employed to perform creditable service as a substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

(Added by Stats.1998, c. 965 (A.B.2765), § 48. Amended by Stats.1999, c. 939 (S.B. 1074), § 34.)

§ 22504. Membership eligibility; part time; hourly or daily basis

(a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

(Added by Stats.1998, c. 965 (A.B.2765), § 49. Amended by Stats.1999, c. 939 (S.B. 1074), § 35.)

§ 22509. Election to continue membership; forms; filing; effective date

(a) Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election.

(b) Any election made pursuant to subdivision (a) of Section 22508 or subdivision (a) of Section 22508.5 shall be filed with the office of the State Teachers' Retirement System and a copy of the election shall be filed with the other public retirement system. Any election made pursuant to subdivision (b) of Section 22508 or subdivision (b) of Section 22508.5 shall be filed with the office of the Public Employees' Retirement System and a copy of the election shall be filed with the office of this system.

(c) Any election made pursuant to Section 22508 or Section 22508.5 shall become effective as of the first day of employment in the position that qualified the employee to make an election.

(Added by Stats.1996, c. 383 (A.B.3221), § 5. Amended by Stats.1997, c. 838 (S.B.227), § 2.)

§ 22711. Elected officer of employee organization on compensated leave of absence; credit; conditions

(a) A member under this part shall be granted service 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 under this Defined Benefit Program in the month prior to commencement of the leave of absence.

(2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(3) The member's employer contributes to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(b) The maximum period of time during which a member may serve as an elected officer and receive service credit pursuant to this section shall not exceed 12 calendar years.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 134; Stats.1998, c. 965 (A.B.2765), § 82.)

§ 22712.5. Community service teachers; nonqualifying classified positions;
continuing credit.

All members under this part who are employed by a school district, community college district, or superintendent of schools and 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.

(Added by Stats.1996, c. 634 (S.B.2041), § 135. Amended by Stats.1998, c. 965 (A.B.2765), § 84.)

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§ 22713. Part-time employment; reduction of workload from full-time; credit

(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 of the Defined Benefit Program 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, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but may 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 may 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 under the Defined Benefit Program for at least 10 years including five years of full-time employment immediately preceding the reduction in workload and have a minimum of 10 years of credited service.

(3) The member may 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 may not constitute a break in service. For purposes of this subdivision, the period of time during which a member is retired for service shall constitute a break in service and a member who reinstates from retirement shall be required to perform at least five years of full-time creditable service immediately preceding the reduction in workload.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations, up to and including 10 years. The period of time specified in the regulations may not exceed 10 years.

(6) The reduced workload shall be equal to at least 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 creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced 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 make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

(Amended by Stats.2002, c. 875 (A.B.2982), § 7.)

§ 22714. Certificated or academic employees; encouragement of retirement; credit of additional service years; conditions

(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 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 credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) 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.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the differ-

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ence between the allowance the member receives after receipt of service credit pursuant to 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 service credit pursuant to this section and the amount the member would have received without the 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 Section 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 subparagraph (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 costs to 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.

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(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 subparagraph (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 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 of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates 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.

(Added by Stats.1994, c. 20 (S.B.858), § 2, eff. March 15, 1994. Amended by Stats. 1996, c. 634 (S.B.2041), § 137; Stats.1998, c. 965 (A.B.2765), § 86; Stats.1999, c. 939 (S.B.1074), § 45.)

§ 22717. Accumulated and unused leave of absence for illness or injury; credit

(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 Defined Benefit Program.

(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 Defined Benefit Program, which shall not be less than the minimum standard specified in Section 22138.5. The number of days shall not include school and legal holidays. In no event shall the divisor be less than 175. For members employed less than full time, the standards identified in Section 22138.5 shall be considered as the minimum full-time equivalent. For those standards identified in Section 22138.5 that are applicable to teachers or instructors and that are expressed only in terms of hours or instructional hours, the number of hours or instructional hours shall be divided by six to determine the number of days.

(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 be applicable to any person who retires on or after January 1, 1999.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 140; Stats.1998, c. 1006 (A.B.1102), § 2; Stats.1999, c. 939 (S.B.1074), § 46.)

§ 22717.5. Leaves of absence for education; service credits at retirement

(a) A member shall be credited at service retirement for each day of accumulated and unused leave of absence for education for which full salary is allowed on the member's final day of employment with the state.

(b) The amount of service credit to be granted shall be 0.004 years of service for each unused day of educational leave credit.

(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 education 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 apply to eligible state employees in state bargaining units that have agreed to this section in a memorandum of understanding, or as authorized by the Director of the Department of Personnel Administration for classifications of state employees that are excluded from the definition of "state employee" by paragraph (c) of Section 3513 of the Government Code.

(e) The provisions of this section shall be effective for eligible members who retire directly from state employment on or after January 1, 2000.

(Added by Stats.2000, c. 402 (A.B.649), § 3, eff. Sept. 11, 2000.)

§ 22718. Service credit for unused excess sick leave; billing rules; nonpayment

(a) The Teachers' Retirement Board shall bill school employers for service credit granted for unused excess sick leave under this part, subject to the following provisions:

(1)(A) In addition to the certification of sick leave days, the employer shall also certify the number of unused excess sick leave days.

(B) Excess sick leave days granted by an employer other than the member's last employer shall be deemed to be granted by the last employer and shall be included in the certification if the member was eligible to use those excess sick leave days while he or she was employed by the last employer.

(2) 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 Defined Benefit Program.

(3) The employer shall be billed only for the present value of the unused excess sick leave days and any subsequent adjustments to the billing shall be billed or refunded, as appropriate, to the employer.

(4)(A) The employer shall remit the amount billed to the system with the certification required by Section 22717 within 30 days after the effective date of the member's retirement or within 30 days after the date the system has notified the employer that a certification must be made, whichever is later.

(B) If payment is not received within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(C) If the system has billed the employer for an additional amount, the employer shall remit the additional amount within 30 days after the date of the billing. If payment is not received for the additional amount within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(b) If a school employer fails to pay a bill charged according 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.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 141; Stats.1998, c. 965 (A.B.2765), § 89; Stats.1999, c. 939 (S.B.1074), § 47.)

§ 22724. Excess sick leave days; calculation of amount upon retirement

(a) To determine the number of excess sick leave days to which a member is entitled when he or she retires, the employer shall deduct the days of sick leave used by the member from the member's accumulated and unused sick leave balance according to the following method:

(1) Sick leave usage shall first be deducted from the accumulated and unused sick leave balance existing on July 1, 1986.

(2) Sick leave usage shall next be deducted from basic sick leave days granted to the member by an employer after June 30, 1986.

(3) Sick leave usage shall then be deducted from any excess sick leave days granted to the member by an employer after June 30, 1986.

(b) Upon request from the board, the employer shall submit sick leave records of past years for audit purposes.

(Added by Stats.1999, c. 939 (S.B.1074), § 48.)

§ 22800. Corroboration of claims

(a) Claims for permissive and additional service credit under this part 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 under this part 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.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1994, c. 933 (A.B. 3171), § 42, eff. Sept. 28, 1994; Stats.1996, c. 634 (S.B.2041), § 145; Stats.1998, c. 965 (A.B.2765), § 91.)

§ 22801. Payment of unpaid contributions; computations and account interest

(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, adopted by the board as a plan amendment, in effect at the time of election. If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars (\$25).

(b) If the member is employed to perform creditable service subject to coverage by the Defined Benefit Program 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 Defined Benefit Program 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) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) 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.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments. Regular interest shall not be charged or be payable for the period of a delay caused by the system's inability or failure to determine and inform the member or beneficiary of the amount of contributions and interest that is payable. The period of delay shall commence on the 20th day following the day on which the member or beneficiary who wishes to make payment evidences in writing to the system that he or she is ready, willing, and able to make payment to the system. The period of delay shall cease on the first day of the month following the mailing of notification of contributions and interest payable.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 146; Stats.1997, c. 838 (S.B.227), § 3; Stats.1998, c. 1076 (S.B.2126), § 5; Stats.1999, c. 939 (S.B.1074), § 49.)

§ 22803. Credit for services in various teaching positions; credit in other retirement systems

(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 under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program 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.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), 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 Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1994, c. 933 (A.B. 3171), § 43, eff. Sept. 28, 1994; Stats.1996, c. 634 (S.B.2041), § 148; Stats.1997, c. 838 (S.B.227), § 4; Stats.1998, c. 1076 (S.B.2126), § 6; Stats.1999, c. 939 (S.B.1074), § 50.)

§ 22851. Return to employment with previous employer; right to pension benefits

The right to pension benefits under this part of a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, and is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be determined under this section.

(a)(1) A member shall be treated as not having incurred a break in service by reason of that member's eligible period or periods of service in the uniformed services.

(2) Each eligible period of service served by a member in the uniformed services shall, upon return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, be deemed to constitute service with the employer or employers toward plan vesting and eligibility for membership in the Defined Benefit Program.

(3) A member who returns to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall not be entitled to any benefits under this part in respect of service in the uniformed services to which the member would not otherwise have been entitled had the member remained continuously employed and not undertaken such service in the uniformed services.

(b) For purposes of calculating benefits, a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall be entitled to service credit under this part for the eligible period of service in the uniformed services upon his or her payment of the member contributions required under Section 22901 that otherwise would have been due for such period of service had the member remained continuously employed and not undertaken such service in the uniformed services. No such payment of member contributions may exceed the amount the member would have been required to contribute under this part had the member not served in the uniformed services and had remained continuously employed by the employer throughout the eligible period of service in the uniformed services. If a member fails to remit the member contributions that would have been required under Section 22901 in respect of the eligible period of service in the uniformed services no service credit shall be provided under this part for the period to which the omitted contributions relate.

(c) Any payment of member contributions to the Defined Benefit Program in this section shall be made by the member during the period beginning with the date of return to employment and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any payment of member contributions to the Defined Benefit Program in this section by a member who returned to employment prior to January 1, 1997, and qualifies for benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code), shall be made by the member during the period beginning with the date of notification of eligibility by the employer to the system and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any subsequent request to purchase this service shall be subject to the provisions of Chapter 14 (commencing with Section 22800). If all contributions due under this part are not paid to the plan with respect to the Defined Benefit Program within the specified repayment period and in accordance with subdivision (b) of Section 22851 the contributions shall be returned to the member at the end of the repayment period. Interest on member contributions made for the eligible period of service in the uniformed services shall not be credited under this part until after the contributions due are paid and then only prospectively to the member's account in accordance with Section 22216. (Added by Stats.1996, c. 680 898, 1877), § 2. Amended by Stats.1998, c. 965 (A.B. 2765), § 102.)

EDUCATION CODE

§ 22852. Liability for employer contributions

(a) An employer reemploying a member of the Defined Benefit Program with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be liable to the plan for the employer contributions under this part provided that employer was the last employer employing the member immediately prior to the period served by the member in the uniformed services.

(b) For purposes of determining the amount of that liability under this part and any obligation to the plan with respect to the Defined Benefit Program, interest shall not be included in the liability to the plan.

(c) Subject to subdivision (e), the employer shall pay the employer contributions for the eligible period of service in the uniformed services, that would have been required under Sections 22950 and 22951 had the member remained continuously employed during that period of eligible service in the uniformed services.

(d) The employer shall not be liable for employer contributions under this part for the eligible period of service in the uniformed services to the extent that the member fails to remit the member contributions for such period.

(e) The employer shall provide information regarding the reemployment of a member who is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United State Codes¹ on a form prescribed by the system within 30 days of the date of reemployment.

(f) Employers shall remit to the plan with respect to the Defined Benefit Program the employer contributions required under subdivision (c) within 60 working days of the date the system notifies the employer of the amount of contributions due with respect to the member who elects to remit the member contributions for the eligible period of service in the uniformed services.

(g) If the employee does not comply with subdivision (b) of Section 22851 within the time period specified, the employer contributions that were remitted for that period shall be adjusted pursuant to Section 23008.

(Added by Stats.1996, c. 680 (S.B.1877), § 2. Amended by Stats.1998, c. 965 (A.B. 2765), § 103.)

¹ So in enrolled bill.

§ 22950. Monthly contribution percentages

(a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based.

(b) From the contributions required under subdivision (a), there shall be deposited in the Teachers' Retirement Fund an amount, determined by the board, that is not less than the amount, determined in an actuarial valuation of the Defined Benefit Program pursuant to Section 22311.5, necessary to finance the liabilities associated with the benefits of the Defined Benefit Program over the funding period adopted by the board, after taking into account the contributions made pursuant to Sections 22901, 22951, and 22955.

(c) The amount of contributions required under subdivision (a) that is not deposited in the Teachers' Retirement Fund pursuant to subdivision (b) shall be deposited directly into the Teachers' Health Benefits Fund, as established in Section 25930, and shall not be deposited into or transferred from the Teachers' Retirement Fund.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 160; Stats.1997, c. 482 (S.B.471), § 16; Stats.1998, c. 965 (A.B.2765), § 115; Stats.2000, c. 1032 (S.B.1435), § 1; Stats.2001, c. 159 (S.B.662), § 60.)

EDUCATION CODE

§ 22951. Additional monthly contributions

In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based.

(Added by Stats.1993, c. 893 (A.B.1796), § 2. Amended by Stats.1996, c. 634 (S.B. 2041), § 161; Stats.1997, c. 482 (S.B.471), § 17; Stats.1998, c. 965 (A.B.2765), § 116; Stats.1998, c. 967 (A.B.2804), § 2, eff. Sept. 29, 1998; Stats.2000, c. 1025 (A.B.816), § 22.)

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Pre '75 Ed.Code	1010/76 Renumber	Effective 1/1/86	Effective 1/1/87	Effective 1/1/88	Effective 1/1/89	Effective 1/1/90	Effective 1/1/91	Effective 1/1/92	Effective 1/1/93	893/93/1 Repealer
13801	22000									(R)
13802	22001									(R)
13804	22002									(R)
13812	22008									
13824.5	22105									
13828.4	22109									(R)
13829	22110									(R)
13832	22114	1497/85/1	717/86/3	76/87/2				543/91/2		468/93/1
	22115									(R)
13833.7	22117									(R)
	22121									(R)
	22131									(R)
13847	22144									(R)
13852	22151									(R)
13932	22402									(R)
13933	22403									(R)
	22403.1							(A)543/91/7		(R)
13934	22404									(R)
13941	22501									(R)
13943	22502									(R)
13944	22503						1302/90/1			(R)
13946	22504						1372/90/176			(R)
13947	22505									(R)
13950	22506									(R)
	22507.1									(R)
	22515						(A)1004/89/2			(R)
13962	22601									(R)
13963	22602				497/88/1					(R)
13964	22603									(R)
13964.1	22603.1									(R)
13964.2	22603.2									
13964.3	22603.3									
13965	22604				497/88/2					(R)

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Test Claim of Santa Monica Community College District
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 1975-1993

Pre '75 Ed.Code	Effective 1/1/76	Effective 1/1/77	1010/76 Renumbr	Effective 1/1/77	Effective 1/1/78	Effective 1/1/79	Effective 1/1/80	Effective 1/1/81	Effective 1/1/82	Effective 1/1/83	Effective 1/1/84
13966			22605								
13968			22606								
13969			22608	36/77/414							
13981			22702								
			22702.5								
13984			22704				(A)787/79/5 (R)787/79/4				
13986			22705							592/82/1	
13987			22706				(R)787/79/7				
			22706.5					(A)1272/80/1		1389/82/2	
13988			22707				787/79/14				
13989			22708								
13991			22710								
13992			22711								
13994			22713				(R)787/79/10				
13996			22715				(R)787/79/12				
13997			22716	36/77/99			(R)787/79/13				
13998			22717				787/79/14				
14004			22719				1201/79/1		124/81/24	592/82/2	
14004.1			22720								
14004.2			22721								
14009			22724				630/79/1		1023/81/1	1428/82/1.4	
13988.1			22725		(A)143/77/1						
			22725.1	36/77/415	474/77/1	#502/78/5	(R)787/79.16				
13988.2	(A)105/76/2		22726	36/77/416	474/77/2		(R)787/79/17				
13988.3	(A)105/76/3		22727	36/77/417	474/77/3		(R)787/79/18				
			22728		(A)474/77/4		(R)787/79/19				
			22731							(A)680/82/1	1258/83/1
			22732.1								

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Test Claim of Santa Monica Community College District
 Claimant's Index of Statutory History
 1975-1993

Pre '75	1010/76	Effective	Effective	Effective	Effective	Effective	Effective	Effective	Effective	893/93/1
Ed.Code	Renumber	1/1/86	1/1/87	1/1/88	1/1/89	1/1/90	1/1/91	1/1/92	1/1/93	Repealer
13966	22605									(R)
13968	22606									(R)
13969	22608									(R)
13981	22702									(R)
	22702.5								(A)1372/92/5	(R)
13984	22704									(R)
										(R)
13986	22705									(R)
13987	22706									(R)
no	22706.5					118/89/3				(R)
13988	22707									(R)
13989	22708									(R)
13991	22710									(R)
13992	22711									(R)
13994	22713									
13996	22715									
13998	22717									(R)
14004	22719								1166/92/12	(R)
	22720	(A)1597/85/4								(R)
14004.2	22721									(R)
14009	22724		369/86/3							(R)
	22725									(R)
	22725.1									
	22726									
	22727									
	22728									
	22731		297/86/1							(R)
	22732.1								(A)589/92/1	(R)

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Pre '75	Effective	Effective	1010/76	Effective	Effective	Effective	Effective	Effective	Effective	Effective	Effective
Ed.Code	1/1/76	1/1/77	Renumber	1/1/77	1/1/78	1/1/79	1/1/80	1/1/81	1/1/82	1/1/83	1/1/84
14000			Deleted								
14026			22804						124/81/26		
14040			22900				(R)787/79/22				
14041			22901				(R)787/79/24				
			22901				(A)787/79/25			279/82/5	
14043			22902				(R)787/79/26				
			22902				(A)787/79/27				
14044			22903				(R)787/79/28				
			22903				(A)787/79/29				
14050			23000					244/80/3			
14051			23001								
14052			23002			931/78/1		244/80/4		279/82/6	
14054			23004								
14055			23005								
14056			23006	36/77/102						279/82/8	
14058			23008			314/78/1		244/80/5			
14062			23012								
14076	(A)729/75/1	605/76/1	23108	36/77/104							
14100			23400		894/77/6		(R)282/79/10				
			23400				(A)282/79/11				
			23400.1								
14228			23921	36/77/121	355/77/3		(R)796/79/11				

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Pre '75 Ed.Code	1010/76 Renumber	Effective 1/1/86	Effective 1/1/87	Effective 1/1/88	Effective 1/1/89	Effective 1/1/90	Effective 1/1/91	Effective 1/1/92	Effective 1/1/93	893/93/1 Repealer
14000	Deleted									
14026	22804									(R)
	22900									
14041	22901									
	22901	975/85/1					1201/90/1		1272/92/1	(R)
14043	22902									
	22902	975/85/2							1272/92/2	(R)
14044	22903									(R)
	22903									(R)
14050	23000									(R)
	23001									(R)
14052	23002									(R)
14054	23004									(R)
14055	23005									(R)
14055	23006									(R)
	23008									(R)
14062	23012									(R)
14076	23108									(R)
14100	23400									
	23400									(R)
	23400.1	(A)1597/85/5						876/90/1		(R)
14228	23921									

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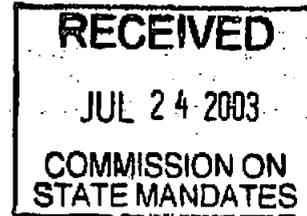
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Ed. Code Sections	Ch 893 1993	Ch 933 1994	1994 As of 1/1 1995	1995 As of 1/1 1996	1996 As of 7/1 1996	1996 As of 1/1 1997	1997 As of 1/1 1998	1998 As of 1/1 1999	1999 As of 1/1 2000	2000 As of 1/1 2001	2001 As of 1/1 2002	As of 7/1 2002	2002 As of 1/1 2003
22000	(A)	(Am)											
22001	(A)												
22002	(A)					634/1	482/1	965/1					
22109	(A)	(R)(A)											
22110.1						(A)634/6		1048/2					
22115	(A)	(R)(A)	933/94/5.5	390/3		634/8	482/2					1021/00/3	
22119.2	old				(A)1165/7		482/3		939/10	1021/4	803/1	(R)	
22119.2	new											(A)1021/00/5	
22119.5				(A)394/1 eff 8/11/95									
22121	(A)	(R)(A)		592/1	608/1			965/4					375/1
22122.5						(A)634/13		1048/3					
22131	(A)	(R)(A)				634/21							
22138.6					(A)390/95/7			965/6			803/3		
22146				(A)592/3		634/26		965/7		1025/5			
22146.5						(A)634/27		965/8					
22151	(A)	(R)(A)						965/10		1025/9	803/4		
22161	(A)	(R)(A)						965/13	939/21				
22170.5									(A)939/23				
22455	(A)												
22455.5			(A)803/1			634/98			939/29				
22456	(A)					634/99	482/8						
22457	(A)					634/100			939/30				
22458	(A)					634/101			939/31				
22459	(A)					634/102			939/32				
22460										(A)1021/17			
22461	(A)					634/104							
22501	(A)				(R)634/106								
22501					(A)634/107			965/46					
22502	(A)			(R)592/4				(A)965/47 op 7/1/96	939/33				
22503	(A)			(R)592/5				(A)965/48 op 7/1/96	939/34				
22504								(A)965/49 op 7/1/96	939/35				
22508						(A)383/3		965/50	939/36	850/1 1025/18	77/1		
22508.5							(A)838/1	965/51	939/37				
22508.6										(A)402/2 eff 9/11/00			
22509						(A)383/5	838/2						
22515	(A)		507/2		634/112			965/53					375/4
22601	(A)					634/114							
22601.5					(A)634/115			965/56	939/40				
22602	(A)			592/9		634/116		965/57	939/41				
22604	(A)			592/11	634/117			965/58	939/42				
22709	(A)					634/133.5		965/80					
22710	(A)						482/8	965/81					
22711	(A)					634/134		965/82					
22712	(A)							965/83					
22712.5						(A)634/135		965/84					
22713	(A)					634/136	482/9	965/85	939/44	1025/20			375/7
22714			(A)20/2			634/137		965/86	939/45				
22717	(A)					634/140		1006/2	939/46				
22717.5										(A)402/3			
22718	(A)					634/141		965/89	939/47				
22724									(A)939/48				
22800	(A)	(Am)				634/145		965/91					
22801	(A)					634/146	838/3	1076/5	939/49				
22801.5										(A)402/4			
22802	(A)					634/147		965/92		1020/4	802/5		
22803	(A)	(Am)				634/148	838/4	1076/6	939/50				
22850						(A)680/2		965/101					
22851						(A)680/2		965/102					
22852						(A)680/2		965/103					
22853						(A)680/2		965/104					
22854						(A)680/2		965/105					
22855						(A)680/2		965/106					
22950	(A)					634/160	482/16	965/115		1032/1	159/60		
22951	(A)					634/161	482/17	965/116 967/2					
23000	(A)					634/165	482/21						
23001	(A)					634/166				1025/24			
23002	(A)						482/22						
23004	(A)					634/167			939/57				
23008	(A)		507/3			634/169	482/24			1025/25			





EXHIBIT D



July 24, 2003

Ms. Shirley Opie, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

*Re: Test Claim Number 02-TC-19, CalSTRS Service Credit, Submitted by the Santa Monica
Community College District*

Dear Ms. Opie:

This letter is in response to the above mentioned test claim, as filed by the Santa Monica Community College District. The California State Teachers' Retirement System has analyzed the merits of the test claim and concluded that the Code Sections cited do not constitute a state mandated local program or impose costs mandated by the state, as established by Government Code Sections 17514 and 17556.

The constitution requires that the State provide funding to local governments and school districts for the costs of any new mandated program or higher level of service enacted by the Legislature on or after January 1, 1975. The critical aspect of this constitutional provision is that the activity must be a new mandate on local government/school districts via a new program requirement or policy imposing a higher level of service. Government Code Section 17556 specifies exceptions to a state mandate reimbursement, one of which is a statute that is in response to a federal mandate (see item 1). Programs that are optional for the school district do not constitute new programs or higher levels of service (see item 2). In addition, because offering employees a retirement program is a common function of all employers, not only public employers, requirements associated with the administration of a retirement program do not constitute new programs or higher levels of service (see items 3 and 4).

California State Teachers' Retirement System, Legal Office
MS #3, P.O. Box 15275, Sacramento, CA 95851-0275
(916) 229-3677; www.calstrs.ca.gov

Securing the financial future and sustaining the trust of California's educators

1. The following statutes can be deemed exceptions to a state mandate reimbursement under Government Code Section 17556 because they were in response to federal mandates:
 - Chapter 893, Statutes of 1993 – Added Education Code Section 22455.5, requiring employers to make available criteria for membership to part-time teachers;
 - Chapter 680, Statutes of 1996 – Federal compliance with the Uniformed Services Employment and Reemployment Rights Act

2. The following statutes establish optional programs for school districts and therefore, do not constitute a local mandate:
 - Chapter 592, Statutes of 1995 – Establishes the Cash Balance Benefit Program as a mandated program; *however, the provision was only in effect for a period of less than two months and had not been implemented;*
 - Chapter 608, Statutes of 1996 – Amends the provisions of the Cash Balance Benefit Program, making it an *optional* program for school districts;
 - Chapter 20, Statutes of 1994 – Establishes an early retirement incentive program that was optional if the district found a cost savings in offering the program;

The State Supreme Court previously has found in *County of Los Angeles v. State of California*, 43 Cal. 3d 46, that the phrase “new program or higher level of service of an existing program” contained in Government Code Section only becomes meaningful when considering the context of the original program or public service. In the case of schools, that could be an additional classroom requirement imposed on students, or a requirement that schools provide space for polling places for the public on Election Day.

CalSTRS believes the statutes listed in the test claim do not impose a new program or higher level of service within an existing program upon the claimant pursuant to Section 17514 of the Government Code because the provision of compensation and benefits to employees, and the method for paying such compensation and benefits can not be considered a ‘program’ or ‘service.’ The act of an employer providing compensation and benefits to its employees is not a unique function of local government or school employers, because it is a function common to all employers, whether public or private.

3. The following statutes are administrative in nature, are considered part of the employer’s responsibilities in offering a retirement program, and do not constitute a new program or a policy of imposing a higher level of service:
 - Chapter 603, Statutes of 1994 – Requires employers to notify employees of their right to elect membership in the Defined Benefit Program;
 - Chapter 1048, Statutes of 1998 – Merges the Defined Benefit Program and the Cash Balance Benefit Program as two programs within the Teachers’ Retirement Plan;

- Chapter 383, Statutes of 1996 – Requires employers to notify employees of their election rights within 10 days of hire
 - Chapter 507, Statutes of 1994 – Allows part-time adult education substitute teachers to elect membership in the Defined Benefit Program and required districts reimburse employees for overpaid contributions;
 - Chapter 394, Statutes of 1995 – Exempts retired members who work as administrators from the post-retirement earnings limit;
 - Chapter 390, Statutes of 1995 - Establishes minimum standards for full-time employment;
 - Chapter 838, Statutes of 1997; Chapter 402, Statutes of 2000; Chapter 880, Statutes of 2000 – Allow CalSTRS members who becomes a state agency employee to remain a member of CalSTRS;
 - Chapter 1006, Statutes of 1998 – Extends the eligibility of members to receive credit for their unused sick leave when calculating service credit;
 - Chapter 1067, Statutes of 1998 – Authorized employees to purchase up to 5 years of nonqualified service and specified out-of-state service credit as “nonqualified”;
 - Chapter 967, Statutes of 1998 – Reamortized the Teachers’ Retirement Fund liability and provided 65% of Elder Full Funding;
 - Chapter 1020, Statutes of 2000 - Allows members to redeposit refunded employee contributions; permits members to purchase specified service credit; allows members to name a new spouse as beneficiary; expands eligible participation in the Cash Balance Benefit Program;
 - Chapter 1021, Statutes of 2000 – Provides that all compensation for creditable service is creditable to CalSTRS;
 - Chapter 1032, Statutes of 2000 – Requires CalSTRS to pay Part A Medicare Premiums for eligible members;
 - Chapter 77 , Statutes of 2001 – Allows CalPERS members who begin performing certificated service to remain in CalPERS;
 - Chapter 802, Statutes of 2001 – Eliminates one of the requirements of dependent children who are receiving a disability allowance; increases CalSTRS Home Loan Program limits; allows Defined Benefit members to purchase prior Cash Balance Benefit Program service.
4. The following statutes consist of code maintenance provisions, primarily technical and nonsubstantive in nature and do not mandate action on the part of the school district; if action was required on the part of the school district, it was a result of providing a retirement program to employees:
- Chapter 933, Statutes of 1994 – Technical housekeeping related to the 1993 recodification of the Teachers’ Retirement Law;
 - Chapter 634, Statutes of 1996 – Technical housekeeping;
 - Chapter 482, Statutes of 1997 – Technical housekeeping;

Shirley Opie
July 24, 2003
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- Chapter 939, Statutes of 1999 – Technical housekeeping;
- Chapter 803, Statutes of 2001 – Technical housekeeping;
- Chapter 375, Statutes of 2002 – Technical housekeeping;
- Chapter 159, Statutes of 2001 – Technical housekeeping by the Senate Judiciary Committee.

If you have any questions regarding this response, please contact the CalSTRS Legal Office.

Sincerely,



Christopher Waddell
General Counsel

c.c. Attached List

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California Department of Education (E-08)
Fiscal and Administrative Services Division
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Rancho Cucamonga, CA 91730

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
PO Box 987
Sun City, CA 92586



DEPARTMENT OF
FINANCE

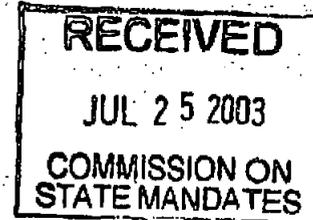
EXHIBIT E

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 24, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter dated June 19, 2003, the Department of Finance (Finance) has reviewed the test claim submitted by the Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under Chapter 893, Statutes of 1993 (AB 1796); Chapter 20, Statutes of 1994 (SB 858); Chapter 507, Statutes of 1994 (AB 2647); Chapter 603, Statutes of 1995 (AB 1122); Chapter 394, Statutes of 1995 (AB 948); Chapter 592, Statutes of 1995 (AB 1298); Chapter 383, Statutes of 1996 (AB 3221); Chapter 608, Statutes of 1996 (AB 2673); Chapter 634, Statutes of 1996 (SB 2041); Chapter 680, Statutes of 1996 (SB 1877); Chapter 1165, Statutes of 1996 (AB 3032); Chapter 482, Statutes of 1997 (SB 471); Chapter 838, Statutes of 1997 (SB 227); Chapter 965, Statutes of 1998 (AB 2765); Chapter 967, Statutes of 1998 (AB 2804); Chapter 1006, Statutes of 1998 (AB 1102); Chapter 1048, Statutes of 1998 (SB 2085); Chapter 1076, Statutes of 1998 (SB 2126); Chapter 939, Statutes of 1999 (SB 1074); Chapter 402, Statutes of 2000 (AB 649); Chapter 880, Statutes of 2000 (SB 1694); Chapter 1020, Statutes of 2000 (AB 820); Chapter 1021, Statutes of 2000 (AB 2700); Chapter 1025, Statutes of 2000 (AB 816); Chapter 1032, Statutes of 2000 (SB 1435); Chapter 77, Statutes of 2001 (SB 165); Chapter 159, Statutes of 2001 (SB 662); Chapter 802, Statutes of 2001 (SB 499); Chapter 803, Statutes of 2001 (SB 501); Chapter 375, Statutes of 2002 (AB 2982); and Education Code Sections 22000, et al are reimbursable State mandated costs (Claim No. 02-TC-19 "CalSTRS Service Credit").

Commencing with Page 89 of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable State mandates. Following each of the enumerated duties is Finance's response:

1. Adopting policies and procedures and periodically updating those policies and procedures to implement State Teachers' Retirement System (STRS) law.

These are general administrative functions and are not required in the test claim statutes. Therefore, they are not a reimbursable State mandate.

2. Properly crediting all creditable compensation when determining a STRS member's benefits, which would include all activities and costs associated with crediting STRS costs to employees.

Education Code (EC) Section 22119.5 stipulates that persons who receive "creditable compensation" as certificated employees of school districts, county offices of education, or community college districts (public school employers) shall be considered to have performed "creditable service," and shall therefore be eligible for STRS membership. Among those

Ms. Paula Higashi
July 24, 2003
Page 2

certificated employees eligible for STRS membership pursuant to EC Section 22119.5 are instructors, counselors, administrators, health professionals, librarians, and superintendents.

EC Section 22119.2 defines "creditable compensation" as salary and other remuneration payable in cash by public school employers to STRS members. Pursuant to Chapter 16 of Part 13 of the Education Code (commencing with Section 22950), public school employers must remit to STRS a monthly contribution that is a percentage of the creditable compensation they provide to each STRS member in their employ.

EC Section 22119.2 formerly stated that the salary or remuneration provided to STRS members for a variety of activities was not creditable compensation, and was therefore excluded when public school employers calculated the monthly amount they had to remit to STRS. Among those activities were the following:

- Service in excess of the full-time equivalent for a member's position.
- Pay received by a member for overtime, summer school service, or intersession instruction.
- Pay received for extracurricular activities such as coaching that are part of a member's contract.
- Bonus payments that are provided in equal amounts or percentages to all members in a classification.

Effective July 1, 2002, Chapter 1021, Statutes of 2000, amended EC Section 22119.2 so that salary or remuneration provided by public school employers to STRS members for the above-referenced activities would be considered creditable compensation. Consequently, effective July 1, 2002, public school employers that provide STRS members with salary or remuneration for any of the aforementioned activities have been required to increase the contributions they provide to STRS pursuant to Chapter 16 of Part 13 of the Education Code (commencing with Section 22950).

Claimant alleges the requirement that school districts, community college districts, and county offices of education provide increased monthly contributions to STRS effective July 1, 2002, is a result of the State mandating a new program or higher level of service of an existing program as defined in Article XIII B, Section 6 of the California Constitution. Claimant also alleges that the statutes referenced in the test claim create new State mandated duties unique to school districts and not applicable to all residents and entities in the State. Claimant therefore alleges the cost of providing the increased monthly contributions are State mandated, and reimbursable.

However, California courts have ruled that the California Constitution does not require that local agencies be reimbursed for legislatively imposed new costs associated with the provision of contributions to State-administered retirement systems, as this activity does not fall within the parameters of a "new program or higher level of service" as those terms are used in Article XIII B, Section 6 of the California Constitution.

In County of Los Angeles v. State of California, (1987) 43 Cal. 3d 46 (hereafter County of Los Angeles), the California Supreme Court established that, in order for costs to be considered reimbursable, local entities must incur those costs through (a) the provision to the public, of a new or higher level of service via a new or an existing program, or (b) the performance of unique requirements that do not apply generally to all residents or entities in the state.

In City of Anaheim v. State of California, (1987) 189 Cal. App. 3d 1478, (hereafter City of Anaheim), the plaintiff sought reimbursement for interest it lost on its Public Employees' Retirement System (PERS) account pursuant to the provisions of Chapter 1244, Statutes of

Ms. Paula Higashi
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1980. The Court found the provision of pension payments to retired employees by local governments is not a public program or service for purposes of Article XIII B, Section 6. The Court further found that requiring local governments to provide higher pension payments to retired employees does not meet the "higher level of service" test in Article XIII B, Section 6.

The Court stated: "Moreover, the goals of Article XIII B of the California Constitution 'were to protect residents from excessive taxation and government spending...[and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies...Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage costs—which all employers must bear neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.' (County of Los Angeles, supra, at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public (emphasis added)."

In City of Richmond v. Commission on State Mandates, (1998) 64 Cal.App.4th 1190, (hereafter City of Richmond), Richmond argued that legislation requiring city payment of death benefits under both PERS and workers' compensation to survivors of a police officer killed in the line of duty imposed a requirement unique to local government. The court concluded that the test claim legislation "merely eliminated the exemption [for local governments] and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement 'new' to local agencies, but that requirement was not 'unique.'" (City of Richmond, supra, at p. 1198). Similarly here, compensation of employees in general is not unique to government. While claimant may argue that compensation of school employees and the associated STRS employer contributions are unique to school employers, the focus must be on the hardly unique function of compensating employees in general. Therefore, increased monthly contributions to STRS are not reimbursable State mandated costs as defined by Article XIII B, Section 6 of the California Constitution.

In accordance with the rulings in County of Los Angeles, City of Anaheim, and City of Richmond, Finance asserts the provision by public school employers of monthly STRS' contributions on behalf of their employees is not a program that provides a service to the public or that is unique to local government.

Consequently, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions.

3. Member and employer duties such as making available criteria for membership, providing STRS with employee compensation information, and advising members in general, etc.

For the reasons stated in our response to Issue Two, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions.

4. Membership pertaining to the increased cost of making employer contributions for a member performing creditable service on a part-time basis, etc.

For the reasons stated in our response to Issue Two, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions.

Ms. Paula Higashi
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Page 4

5. Service credit pertaining to the increased cost of making employer contributions for a member on a compensated leave of absence, etc.

For the reasons stated in our response to Issue Two, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions.

6. Permissive and additional service credit pertaining to the increased cost of making employer contributions for a member in special teaching positions, etc.

For the reasons stated in our response to Issue Two, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions. Moreover, since EC Section 22801 (d) only specifies that district employers may pay the employer contributions for specified service, this constitutes a discretionary decision to pay, which is not a reimbursable cost.

7. Military service credit pertaining to the increased cost of making employer contributions for a member who performed voluntary service in the uniformed services.

For the reasons stated in our response to Issue Two, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions.

8. Employer and State contributions pertaining to STRS' members and their service.

For the reasons stated in our response to Issue Two, Finance asserts public school employers are ineligible for reimbursement of costs associated with the requirement that they increase their STRS contributions.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your June 19, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Bob Sands, Principal Program Budget Analyst, at (916) 445-3274, or Keith Gmeinder, State Mandates Claims Coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Thomas E. Dithridge
Assistant Program Budget Manager

Attachments

Attachment A

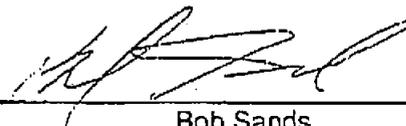
DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. 01-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7-24-03

at Sacramento, CA



Bob Sands

PROOF OF SERVICE

Test Claim Name: CalSTRS Service Credit
 Test Claim Number: 02-TC-19

I, Felicia Molle, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 6th Floor, Sacramento, CA 95814.

On July 24, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 6th Floor, for Interagency Mail Service, addressed as follows:

A-16
 Ms. Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 Facsimile No. 445-0278

B-08
 State Controller's Office
 Division of Accounting & Reporting
 Attention: William Ashby
 3301 C Street, Room 500
 Sacramento, CA 95816

B-29
 Legislative Analyst's Office
 Attention: Marianne O'Malley
 925 L Street, Suite 1000
 Sacramento, CA 95814

Santa Monica Community College District
 1900 Pico Boulevard
 Santa Monica, CA 90405-1628

Mr. Keith B. Petersen
 SixTen & Associates
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

Ms. Cheryl Miller
 Santa Monica Community College District
 1900 Pico Boulevard
 Santa Monica, CA 90405-1628

Ms. Beth Hunter
 Centration, Inc.
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 Rancho Cucamonga, CA 91730

E-08
 Mr. Gerald Shelton
 California Department of Education
 Fiscal and Administrative Services Division
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 Sacramento, CA 95814

Mr. Steve Shields
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 1536 36th Street
 Sacramento, CA 95816

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Dr. Carol Berg
Education Mandated Cost Network
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B-08
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Mr. Jim Zerio
State Teachers' Retirement System
Legislative Services Office
7667 Folsom Boulevard
Sacramento, CA 95851

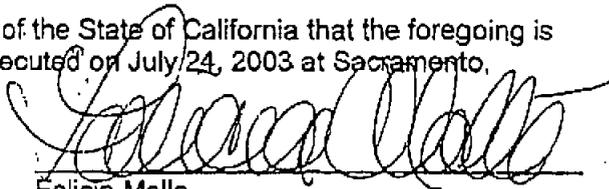
Ms. Annette Chinn
Cost Recovery Systems
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Folsom, CA 95630

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd., #307
Sacramento, CA 95842

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 24, 2003 at Sacramento, California.


Felicia Molle

SixTen and Associates

Mandate Reimbursement Services

EXHIBIT F

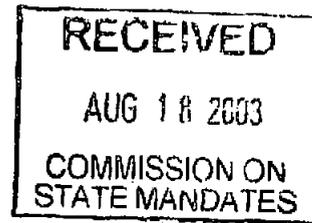
KEITH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (650) 514-0000
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

August 15, 2003

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-19
Santa Monica Community College District
CalSTRS Service Credit



Dear Ms. Higashi:

I have received the comments of the California State Teachers' Retirement System ("STRS") dated July 24, 2003 to which I now respond on behalf of the test claimant.

Although none of the objections generated by STRS are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

A. The Comments of STRS are Incompetent and Should be Excluded

Test claimant objects to the Comments of STRS, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The comments of STRS do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of

fact made in the response [such as, "offering employees a retirement program is a common function of all employers"] since STRS has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

Furthermore, these "hearsay" statements do not even come up to the level of hearsay or the type of evidence people rely upon in the conduct of serious affairs. The comments submitted by STRS, and any allegations of unsupported facts therein, should be excluded from the record.

B. STRS' "Points" Are Not Valid Arguments

STRS numbers four points in its comments, some of which are inadmissible, some of which are not relevant, and some of which do not refute the allegations of the test claim.

1. STRS argues that two statutes are in response to federal mandates without citation. Title 2, California Code of Regulations, Section 1183.02(c)(2) requires that written responses contain a copy of relevant portions of state constitutional provisions, federal statutes and executive orders that may impact the alleged mandate unless such authorities are also cited in the test claim. In addition, specific chapters, articles, sections or page numbers must be identified. Having failed to comply with these regulations, it is impossible for test claimant to respond.

2. STRS argues that three statutes establish optional programs.

- (a) Chapter 592, Statutes of 1995 is cited by STRS with an argument pertaining to the Cash Balance Benefit Program. This Chapter is cited in the test claim based upon a different section not related to the Cash Balance Benefit Program.
- (b) Chapter 608, Statutes of 1996 is cited by STRS with an argument pertaining to the Cash Balance Benefit Program. This Chapter is cited in the test claim based upon a different section not related to the Cash Balance Benefit Program.

- (c) Chapter 20, Statutes of 1994, (added Education Code Section 22714¹) and requires ("shall be granted") an additional two years of service credit be granted upon a factual determination. The factual determination is not discretionary, it is merely a determination of facts, such as declining enrollment or a shortage of teachers qualified to teach in certain disciplines. The occurrence of these facts is not discretionary, but once determined, the additional credit "shall be granted". Therefore, it is not "optional" as argued.
3. Fifteen statutes are listed as being "administrative in nature, are considered part of the employer's responsibilities in offering a retirement program, and do not constitute a new program or a policy of imposing a higher level of service". Of course the administrative nature of the test claimant's responsibilities (i.e., duties) in offering (by mandate) a retirement program are not an objection to the test claim, but a reason for the test claim being filed. As to a "new program or "higher level of service, see part C, infra.
4. Seven statutes are listed with the argument that they consist of code maintenance provisions, primarily technical and nonsubstantive in nature and do mandate action on the part of the school district. Those types of allegations are necessary for a full statutory history. STRS goes on to argue that "if action was required on the part of the school district, it was a result of providing a retirement program to employees". This adds nothing to the response and provides additional reasons in support of the test claim.

C. The Test Claim Legislation Mandates a New Program

Wedge in between "point 2" and "point 3", STRS argues that the test claim legislation does "not impose a new program or higher level of service within an existing program upon the claimant pursuant to Section 17514 of the Government Code because the provision of compensation and benefits to employees, and the method for paying such compensation and benefits can not be considered a "program" or "service". The act of an employer providing compensation and benefits to its employees is not a unique function of local government or school employers, because it is a function common to all employers², whether public or private."

¹ See: Test Claim, commencing at page 62

² Test Claimant has already objected to this unverified and unauthenticated assertion of fact. Test Claimant hereby requests the Commission to take notice of the

The answer to the question of whether test claim legislation mandates a "program" subject to article XIII B, section 6 of the California Constitution is found in County of Los Angeles v. State of California (1987) 43 Cal.3d 46:

"Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning...What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (Opinion, at page 56)

Therefore, the answer to the question of whether duties imposed by test claim legislation are programs subject to reimbursement by article XIII B, section 6, is found in the determination of whether the test claim legislation mandates *either* the governmental function of providing a service to the public, *or* imposes unique requirements on local governments that do not apply generally to all residents and entities in the state. Only one of these findings is necessary to conclude that the test claim legislation is a "program" as used in article XIII B, section 6. Carmel Valley Fire Protection District v. State of California (1987) 190 Cal.App.3d 521, 537

The test claim legislation requires test claimant to make contributions to a mandated retirement plan for its employees. This is a unique requirement imposed on public schools and does not apply generally to all residents and entities in the state. Private employers are not required by law to provide their employees with an employer funded retirement program, nor does STRS laws apply to any entity other than public schools.

D. Conclusion

The test claim legislation alleges reimbursable costs for complying with changes in the law which requires school districts to provide a retirement program for employees. The test claim legislation alleges that certain employees, previously required to be excluded in the retirement program, now be included in the program. The test claim legislation alleges that certain employees' activities, previously excluded from the retirement

fact that all employers in the private sector are not required by law to provide a retirement system to its employees.

Ms. Paula Higashi, Executive Director
Commission on State Mandates
August 15, 2002

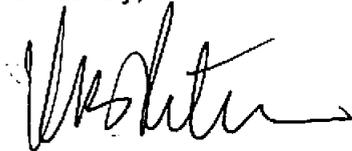
program, now be included in that program. Therefore, those portions of the mandated retirement program are "new programs".

Therefore, the comments of STRS should be disregarded and the Commission should find that the test claim legislation imposes a new program on school districts within the meaning of article XIII B, section 6, of the California Constitution.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: CalSTRS Service Credit
CLAIMANT: Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of August 15, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

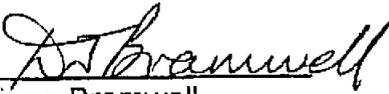
OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

(Describe)

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 8/15/03, at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 5/27/2003
Last Updated:
List Print Date: 06/18/2003
Claim Number: 02-TC-19
Issue: CalSTRS Service Credit

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative

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Fax: (858) 514-8645

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Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Claimant

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Mr. Gerald Shelton
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Ms. Susan Geanacou
Department of Finance (A-15)
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SixTen and Associates

Mandate Reimbursement Services

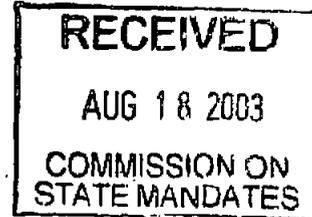
EXHIBIT G

KEITH B. PETERSEN, MPA, JD, President
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August 15, 2003

Paula Higashi, Executive Director
Commission on State Mandates
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980 Ninth Street, Suite 300
Sacramento, California 95814



Re: Test Claim 02-TC-19
Santa Monica Community College District
CalSTRS Service Credit

Dear Ms. Higashi:

I have received the Response of the Department of Finance ("DOF") dated July 24, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

A. The Response of the DOF is Incompetent and Should be Excluded

Test claimant objects to the Response of the DOF, in total, as being legally incompetent and move that it be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF Response does not comply with this essential requirement.

B. The Test Claim Legislation Mandates a New Program

DOF argues that the test claim legislation "does not fall within the parameters of a new program or higher level of service as those terms are used in Article XIII B, Section 6 of the California Constitution" citing as authority: County of Los Angeles v. State of California (1987) 43 Cal.3d 46; City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478; and City of Richmond v. Commission of State Mandates (1998) 64 Cal.App.4th 1190. As will be seen below, (1) the test claim legislation mandates a new program and (2) the cases cited by DOF are clearly distinguishable from the issues presented to the Commission in this instance.

1. The Test Claim Legislation Mandates a New Program

The answer to the question of whether test claim legislation mandates a "program" subject to article XIII B, section 6 of the California Constitution is found in County of Los Angeles v. State of California (1987) 43 Cal.3d 46:

"Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning...What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (Opinion, at page 56)

Therefore, the answer to the question of whether duties imposed by test claim legislation are programs subject to reimbursement by article XIII B, section 6, is found in the determination of whether the test claim legislation mandates either the governmental function of providing a service to the public, or imposes unique requirements on local governments that do not apply generally to all residents and entities in the state. Only one of these findings is necessary to conclude that the test claim legislation is a "program" as used in article XIII B, section 6. Carmel Valley Fire Protection District v. State of California (1987) 190 Cal.App.3d 521, 537

The test claim legislation requires test claimant to make contributions to a mandated retirement plan for its employees. This is a unique requirement imposed on public schools and does not apply generally to all residents and entities in the state. Private employers are not required by law to provide their employees with an employer funded

retirement program.

2. The Cases Cited by DOF are Clearly Distinguishable

In County of Los Angeles v. State of California, the court held:

"...that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated program or higher levels of service within the meaning of section 6."
(Opinion, at pages 57-58, emphasis added)

Since the issue before the court was the same "workers' compensation benefits that employees of private individuals or organization receive", the issues before the court did not involve "unique requirements on local governments that do not apply generally to all residents and entities in the state". The court therefore was required to hold that these benefits were not programs or higher levels of service.

In City of Anaheim v. State of California the court held that the "temporary increase in pension benefits to retired public employees does not constitute a "program" or "service" as those terms are used in section 6". (Opinion, at page 1483) After discussing County of Los Angeles (supra), the court responded to the argument that the test claim legislation dealt with pensions for public employees as follows:

"Such an argument, while appealing on the surface, must fail. As noted above, [the test claim legislation] mandated increased costs to a state agency, not a local government...PERS is not a program administered by local agencies." (Opinion at page 1484)

The test claim legislation in City of Anaheim required the Board of Administration of the Public Employees Retirement System to transfer all reserve funds in excess of 2 percent to a special account to be used for a temporary increase in benefits. The court noted that the test claim legislation "did not compel City to do anything" and any increase in

cost¹ was "only incidental to PERS' compliance" with the test claim legislation. (Opinion, at page 1482).

The test claim legislation now presented to the Commission does compel test claimant to "do something", i.e. it requires it to make contributions to CalSTRS in situations where none were required prior to that legislation. And, its cost is not merely incidental to the acts of third persons, but is a direct obligation to make those contributions.

In City of Richmond v. Commission on State Mandates, the court was dealing with a claim for reimbursement for workers' compensation death benefits. Again, the court denied the claim because the test claim legislation did not impose unique requirements on local governments that do not apply generally to all residents and entities in the state.

"...[The test claim legislation] simply puts local government employers on the same footing as all other nonexempt employers, requiring that they provide the workers' compensation death benefit....Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage—costs which all employers must bear—neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (Opinion, at page 1197, emphasis added)

Since the issue before the court was workers' compensation death benefits required of "all other nonexempt employers" providing the "same protections to [public] employees as do private employers" generating "costs which all employers must bear", the issues before the court did not involve "unique requirements on local governments that do not apply generally to all residents and entities in the state". The court therefore was required to hold that these benefits were not programs or higher levels of service.

C. Conclusion

The test claim legislation alleges reimbursable costs for complying with changes in the law which requires school districts to provide a retirement program for employees. The

¹ The City of Anaheim alleged that the transfer would cause a reduction in the interest credited to its account with PERS. The court found that PERS was under no legal obligation to credit City's account with excess interest earned on PERS funds. (Opinion, at page 1483)

private sector is not required to provide retirement programs for employees. The mandated retirement program is therefore a "program" which imposes unique requirements on school districts that do not apply generally to all residents and entities in the state.

The test claim legislation alleges that certain employees, previously required to be excluded in the retirement program, now be included in the program. The test claim legislation alleges that certain employees' activities, previously excluded from the retirement program, now be included in that program. Therefore, those portions of the mandated retirement program are a "new program".

DOF has failed to distinguish laws of general application from the test claim legislation which is unique to only school districts. Therefore, the comments of DOF should be disregarded and the Commission should find that the test claim legislation imposes a new program on school districts within the meaning of article XIII B, section 6, of the California Constitution.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

C: Christopher Waddell, General Counsel
California State Teachers' Retirement System, Legal Office
MS #3, P.O. Box 15275
Sacramento, CA 95851-0275

Commission on State Mandates

Original List Date: 5/27/2003

Mailing Information: Other

Last Updated:

Mailing List

List Print Date: 06/18/2003

Claim Number: 02-TC-19

Issue: CalSTRS Service Credit

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative

Tel: (858) 514-8605

Fax: (858) 514-8645

Ms. Cheryl Miller
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Claimant

Tel: (310) 434-4221

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Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
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California Department of Education (E-08)
Fiscal and Administrative Services Division
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Fax: (866) 481-5383

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
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Sun City, CA 92586

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Fax: (909) 672-9963

Mr. Steve Shields

Shields Consulting Group, Inc.
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Mr. Steve Smith

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Fax: (916) 669-0889

Dr. Carol Berg

Education Mandated Cost Network
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Ms. Harmeet Barkschat

Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

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Fax: (916) 727-1734

Mr. Michael Havey

State Controller's Office (B-08)
Division of Accounting & Reporting
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Sacramento, CA 95816

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Ms. Annette Chinn

Cost Recovery Systems
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Fax: (916) 939-7801

Mr. Jim Zerio

State Teacher's Retirement System
Legislative Services Office
7667 Folsom Boulevard
P.O. Box 15275
Sacramento, CA 95851

Tel:

Fax:

EXHIBIT H

REQUEST TO BE ADDED AS CO-CLAIMANT
TO SAN LUIS OBISPO AND LASSEN COUNTY OFFICE OF EDUCATION'S
TEST CLAIM

CALSTRS CREDITABLE COMPENSATION

I, Tracy Shackleton, hereby request that Grant Joint Union High School District be added as a co-claimant to San Luis Obispo and Lassen County Office of Education's Test Claim. The addition of Grant Joint Union High School District to this claim is necessary to ensure that school districts receive the proper level of support and advocacy for this test claim.

Dated: 6-16-2004



TRACY SHACKLETON
Senior Director of Business
and Finance

RECEIVED
AUG 13 2004
COMMISSION ON
STATE MANDATES

Grant Joint Union High School District
1333 Grand Avenue
Sacramento, California 95838

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM OF:

Lassen County Office of Education

and

San Luis Obispo County Office of Education

DECLARATION OF TRACY
SHACKLETON

CalSTRS Credible Compensation

I, Tracy Shackleton, make the following declaration and statement. As Senior Director of Business and Finance for Grant Joint Union High School District, I have knowledge of its policies and procedures related to the payment of creditable compensation for CalSTRS members. I am familiar with the provisions and requirements of Statutes of 2000, Chapter 1021, which require the claimant to engage in the following activities:

1. Properly crediting all creditable compensation when determining a CalSTRS member's benefits;
2. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
3. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
4. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

I am informed and believe that before the test claim legislation, there was no responsibility for the claimant to engage in the activities set forth above. It is estimated that the claimant will/has incurred significantly more than \$1,000.00 to implement these new activities

mandated by the state for which the claimant has not been reimbursed by any federal, state, or local agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

Executed on 8/3/2004, at Sacramento, California, by:



TRACY SHACKLETON
Senior Director of Business and
Finance

**AUTHORIZATION TO ACT AS REPRESENTATIVE
FOR GRANT JOINT UNION HIGH SCHOOL DISTRICT'S TEST CLAIM**

CALSTRS CREDITABLE COMPENSATION

I, Tracy Shackleton, hereby authorize David E. Scribner (or designee) of the Schools Mandate Group, JPA to act as the representative and sole contact of Grant Joint Union High School District in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

David E. Scribner, Esq.
SCHOOLS MANDATE GROUP
3113 Catalina Island Road
West Sacramento, California 95691
Telephone: (916) 373-1060
Facsimile: (916) 373-1070

Dated: 6-16-2004



TRACY SHACKLETON
Senior Director of Business
and Finance

Jun 15 2004 11:19AM

**AUTHORIZATION TO ADD CO-CLAIMANT
TO SAN LUIS OBISPO COUNTY OFFICE OF EDUCATION'S TEST CLAIM
CALSTRS CREDITABLE COMPENSATION**

I, Mary Jarvis, hereby authorize the addition of Grant Joint Union High School District to San Luis Obispo County Office of Education's Test Claim. The addition of Grant Joint Union High School District to this claim is necessary to ensure that school districts receive the proper level of support and advocacy for this test claim.

Dated: 6/15/04



MARY JARVIS
Assistant Superintendent
Business Services

Jun 15 2004 11:19AM

**AUTHORIZATION TO ACT AS REPRESENTATIVE
FOR SAN LUIS OBISPO COUNTY OFFICE OF EDUCATION'S TEST CLAIM.**

CALSTRS CREDITABLE COMPENSATION

I, Mary Jarvis, hereby authorize David E. Scribner (or designee) of the Schools Mandate Group, JPA to act as the representative and sole contact of San Luis Obispo County Office of Education in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

David E. Scribner, Esq.
SCHOOLS MANDATE GROUP
3113 Catalina Island Road
West Sacramento, California 95691
Telephone: (916) 373-1060
Facsimile: (916) 373-1070

Dated: 6/15/04

Mary Jarvis
MARY JARVIS
Assistant Superintendent
Business Services

06/14/2004 MON 22:29 FAX
Jun 15 2004 11:20AM

916-373-1070

003/003

P. 3

**AUTHORIZATION TO ADD CO-CLAIMANT
TO LASSEN COUNTY OFFICE OF EDUCATION'S TEST CLAIM**

CALSTRS CREDITABLE COMPENSATION

I, Gene Sies, hereby authorize the addition of Grant Joint Union High School District to Lassen County Office of Education's Test Claim. The addition of Grant Joint Union High School District to this claim is necessary to ensure that school districts receive the proper level of support and advocacy for this test claim.

Dated: 6-15-04



GENE SIES
Assistant Superintendent
Business Services

08/14/2004 MON 22:29 FAX
Jun 15 2004 11:20AM

002/003

916-373-1070

p. 2

**AUTHORIZATION TO ACT AS REPRESENTATIVE
FOR LASSEN COUNTY OFFICE OF EDUCATION'S TEST CLAIM**

CALSTRS CREDITABLE COMPENSATION

I, Gene Sies, hereby authorize David E. Scribner (or designee) of the Schools Mandate Group, JPA to act as the representative and sole contact of Lassen County Office of Education in this Test Claim. All correspondence and communications regarding this Test Claim should be forwarded to:

David E. Scribner, Esq.
SCHOOLS MANDATE GROUP
3113 Catalina Island Road
West Sacramento, California 95691
Telephone: (916) 373-1060
Facsimile: (916) 373-1070

Dated: 6-15-04



GENE SIES
Assistant Superintendent
Business Services

COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csmlinfo@esm.ca.gov

EXHIBIT I

January 9, 2007

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: **Draft Staff Analysis and Hearing Date**
CalSTRS Creditable Compensation/Service Credit
01-TC-02, 02-TC-19
Statutes 1993, Chapter 893, et. al
Lassen County Office of Education, Claimant
San Luis Obispo County Office of Education, Claimant

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Monday, **January 30, 2007**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, March 29, 2007** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about March 15, 2007. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Messrs. Scribner and Petersen
Page 2

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Commission Counsel Katherine Tokarski at (916) 445-9429 if you have questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosure: Draft Staff Analysis

MAILED: 1/10/02
DATE: 1/10/02
FILE: [initials]
CHRON: [initials]
WORKING BINDER: [initials]

ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 22000, 22002, 22119.2, 22119.5, 22146, 22455.5, 22458, 22460, 22461, 22501, 22502, 22503, 22504, 22509, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22718, 22724, 22800, 22801, 22803, 22851, 22852, 22950 and 22951

Statutes 1993, Chapter 893
Statutes 1994, Chapters 507, 603 and 933
Statutes 1995, Chapters 390, 394 and 592
Statutes 1996, Chapters 383, 608, 634, 680 and 1165
Statutes 1997, Chapters 482 and 838
Statutes 1998, Chapters 1006, 1048 and 1076
Statutes 1999, Chapter 939
Statutes 2000, Chapters 402, 880, 1020, 1021, 1025 and 1032
Statutes 2001, Chapters 77, 159, 802 and 803
Statutes 2002, Chapters 375

California State Teachers' Retirement System (CalSTRS)
Creditable Compensation/Service Credit
(01-TC-02, 02-TC-19)

Lassen County Office of Education, San Luis Obispo County Office of Education,
Grant Joint Union High School District, and
Santa Monica Community College District, Claimants

EXECUTIVE SUMMARY

Background

This consolidated test claim addresses modifications to the statutory scheme for the State Teachers' Retirement System (Ed. Code, § 22000 et seq.) Specifically, the claimants are seeking reimbursement for increased costs of employer contributions to defined benefit retirement programs for their employees. Particularly at issue is the way in which "compensation" is defined for purposes of calculating employer contributions. Statutes 2000, chapter 1021 amended the Education Code provisions on what constitutes "creditable service."

The affected state agencies dispute the claimants' argument that any increased monthly contributions to the State Teachers' Retirement System are reimbursable, and cite case law to support their position, including *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

While school districts will likely incur increased costs for retirement contributions as a result of the test claim statutes (particularly when combined with the amended definition of creditable

Test Claim 01-TC-02, 02-TC-19
Draft Staff Analysis

compensation), a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has consistently ruled, beginning with the *County of Los Angeles* decision in 1987, and reaffirming in 2004 in *San Diego Unified School Dist. v. Commission on State Mandates* (33 Cal.4th 859, at pages 876-877), that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

Staff finds that the test claim statutes create a situation, as in *City of Anaheim*, where the employer is faced with "a higher cost of compensation to its employees." As held by the court, "[t]his is not the same as a higher cost of providing services to the public." Therefore, staff finds that increased costs resulting from the test claim statutes, without more, do not impose a program, or a new program or higher-level of service in an existing program, subject to article XIII B, section 6.

However, a number of the test claim statutes do require that the school district employer engage in new reporting and notice activities. The state agencies argue that these should be rejected on the same rationale as the case law discussed above. Staff disagrees. Those cases did not include a situation where there were distinct administrative activities required by the test claim statutes, in addition to the higher contribution costs alleged. Therefore, staff finds that some of the test claim statutes impose a new program or higher level of service, and costs mandated by the state, by requiring new activities to be performed by school districts.

Conclusion

Staff concludes that Education Code sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852, subdivision (e), impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the new activities specified at pages 23-24 of the Conclusion, below.

Staff concludes that Education Code sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950 and 22951, as amended and pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

STAFF ANALYSIS

Claimants

Lassen County Office of Education (Lassen COE), San Luis Obispo County Office of Education (San Luis Obispo COE), Grant Joint Union High School District (Grant District), and Santa Monica Community College District (Santa Monica CCD), Claimants

Chronology

- 09/19/01 Co-claimants, Lassen COE and San Luis Obispo COE, file a test claim, *CalSTRS Creditable Compensation* (01-TC-02), with the Commission on State Mandates (Commission)
- 09/26/01 Co-claimants submit missing authorizations and signature pages for 01-TC-02
- 09/28/01 Commission staff issues completeness letter on 01-TC-02
- 10/26/01 Department of Finance (DOF) requests an extension of time for comments
- 10/29/01 Commission staff grants extension of time for comments to November 29, 2001
- 12/05/01 DOF files comments on the test claim 01-TC-02
- 05/12/03 Santa Monica CCD files test claim, *CalSTRS Service Credit* (02-TC-19), with the Commission which includes the one Education Code section and two statutes pled in 01-TC-02, along with numerous other related statutes
- 05/27/03 Commission staff issues completeness letter on 02-TC-19
- 07/24/03 CalSTRS files comments on test claim 02-TC-19
- 07/25/03 DOF files comments on the test claim 02-TC-19
- 08/18/03 Claimant, Santa Monica CCD, files individual responses to comments by CalSTRS and DOF
- 08/18/04 Grant joins the first test claim (01-TC-02) as a co-claimant
- 11/17/05 Commission's Executive Director consolidates the two test claims based on common issues, allegations and statutes
- 01/09/07 Commission staff issues the draft staff analysis on the consolidated test claim

Background

The California State Teachers' Retirement System, or CalSTRS, is a state agency operating a defined benefit retirement program for California public school teachers, and those holding other credentialed or certificated positions. According to the CalSTRS website, "CalSTRS' primary responsibility is to provide retirement related benefits and services to teachers in public schools from kindergarten through community college."¹ The State Teachers' Retirement System, Education Code section 22000 et seq., was significantly amended in 1944, recodified in 1969, and again in 1994. The system has been funded by a mandatory combination of state, employer and member contributions for many decades.

¹ <<http://www.calstrs.com/About%20CalSTRS/ataglance.aspx>> as of Dec. 21, 2006.

In 2001, Lassen and San Luis Obispo COEs, later joined by the Grant District, filed the test claim *CalSTRS Creditable Compensation* (01-TC-02) on Statutes 1999, chapter 939 and Statutes 2000, chapter 1021, as they added and amended Education Code 22119.2. In 2003, Santa Monica CCD filed the test claim *CalSTRS Service Credit* (02-TC-19) on the same Education Code section and statutes, but also made test claim allegations regarding 28 additional Education Code sections.²

This consolidated test claim addresses modifications to the statutory scheme for the State Teachers' Retirement System [Ed. Code, § 22000 et seq.; references to the law will not be abbreviated. "CalSTRS" will refer to the state agency operating the retirement system.] Specifically, the claimants are seeking reimbursement for increased costs of employer contributions to defined benefit retirement programs for their employees. Particularly at issue is the way in which "compensation" is defined for purposes of calculating employer contributions. Statutes 2000, chapter 1021 amended the Education Code provisions on what constitutes "creditable service." The Senate Bill Analysis, dated September 19, 2000, describes the change to the law as follows:

Under existing law, "creditable service" excludes service performed in excess of the full-time equivalent and money paid for overtime and summer school service. Under this bill, all compensation will be creditable and all contributions for service in excess of one year of service credit shall be placed into the Defined Benefit Supplement Program. The member will be able to access the balance in the supplemental account upon retirement or separation.

Claimants' Positions

Test Claim Filing 01-TC-02

The test claim, *CalSTRS Creditable Compensation*, was filed on September 19, 2001,³ by co-claimants, Lassen COE and San Luis Obispo COE. (Grant District was added as a co-claimant by letters and declarations received on August 18, 2004.) The test claim filing is on Education Code section 22119.2, as it was amended by Statutes 1999, chapter 939, and Statutes 2000, chapter 1021. The claimants allege the following are reimbursable state-mandated activities:

- A. Properly crediting all creditable compensation when determining a CalSTRS member's benefits, which would include all activities and costs associated with crediting State Teachers' Retirement System costs to employees; (Ed. Code, § 22119.2)

² The two test claims share common issues, allegations, and statutes, therefore the claims were consolidated pursuant to California Code of Regulations, title 2, section 1183.06. However, because the 2002-03 test claim was not filed on behalf of the same claimants as the 2001-02 test claim, it is not an "amendment" pursuant to Government Code section 17557, subdivision (d). This could impact potential reimbursement periods where the test claim allegations vary.

³ Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2000.

- B. Modification of county office of education, school district, and school site policies and procedures as necessary to implement the test claim legislation;
- C. Training of county office of education, school district, and school site staff regarding the new requirements to effectuate the test claim legislation; and
- D. Any additional activities identified as reimbursable during the Parameters and Guidelines phase.

Test Claim Filing 02-TC-19

Claimant, Santa Monica CCD, filed the test claim, *CalSTRS Service Credit*, on May 12, 2003.⁴ The claim is for additions or amendments to 29 Education Code sections, including the code section and amendments claimed in *CalSTRS Creditable Compensation*. The vast majority of the claim seeks reimbursement for increased costs of employer contributions paid to CalSTRS due to various amendments to the State Teachers' Retirement System statutes. Specifically, Santa Monica CCD, beginning at page 90 of the test claim filing, alleges that:

The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities: ...

The allegations of activities include (pp. 90-107 of the test claim filing):

- adopting and updating policies and procedures (Ed. Code, § 22000 et seq.);
- contributing "a percentage of the total creditable compensation on which member contributions are based" (Ed. Code, § 22002, subd. (b));
- "make contributions for members ... subject to the Defined Benefit Program" (Ed. Code, § 22146);
- "make available criteria for membership, including optional membership ... to all persons employed to perform creditable service;" inform part-time employees and substitutes of the option to elect membership in the Defined Benefit Program, and keep records of written acknowledgment in the employer files (Ed. Code, § 22455.5, subd. (b));
- provide CalSTRS "with information regarding the compensation to be paid to employees subject to the Defined Benefit Program in that school year" (Ed. Code, § 22458);
- provide specific notices to employees who terminate with less than five years of service credit (Ed. Code, § 22460);
- provide advice to re-employed retired members of post-retirement earnings limitations, and maintain records and report to CalSTRS regarding those earnings on a monthly basis (Ed. Code, § 22461);

⁴ Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

- inform certain new employees of the right to make certain elections under the State Teachers' Retirement System and make available written material from the retirement systems (Ed. Code, § 22509); and
- additional costs of employer contributions pursuant to a variety of statutes regarding creditable compensation and service credit.

In separate rebuttal letters, each dated August 15, 2003, the claimant disputes the arguments and assertions provided by DOF and CalSTRS in their comments on the test claim filing.⁵

Claimant's substantive arguments, including an analysis distinguishing the case law cited by the state agencies, will be addressed in the Discussion section below.

Department of Finance Position

Response to Test Claim Filing 01-TC-02

In a letter dated December 4, 2001, DOF responded to the allegations in the *CalSTRS Creditable Compensation* test claim. Specifically, at page 2, DOF identifies the claimants' argument that:

the requirement that public school employers provide increased monthly contributions to CalSTRS effective July 1, 2002, will result in their being required to engage in a new activity as defined in Article XIII B, Section 6 of the California Constitution. Claimant therefore alleges the cost of providing the increased monthly contributions are State-mandated, and reimbursable.

DOF responds:

However, California courts have ruled that the California Constitution does not require that local agencies be reimbursed for legislatively imposed new costs associated with the provision of contributions to State-administered retirement systems, as this activity does not fall within the parameters of a "new program or higher level of service" as those terms are used in Article XIII B, Section 6 of the California Constitution.

⁵ In these rebuttals, the claimant argues that the state agency comments are "incompetent" and should be stricken from the record since they do not comply with section 1183.02, subdivision (d), of the Commission's regulations. That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that neither of the state agency responses "comply with this essential requirement." (Claimant's rebuttal letters, dated Aug. 15, 2003, p. 1.)

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109). Thus, factual allegations raised by a party regarding how a program is implemented are not relied upon by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The state agency responses contain comments on whether the Commission should approve this test claim and are, therefore, not stricken from the administrative record.

(The specific cases cited will be discussed in the analysis below.) DOF further asserts that this same legal rationale precludes the claimants from seeking reimbursement for modifications of policies and procedures, and for district personnel training costs, related to the statutory change in definition of "creditable compensation." Finally, they assert that the non-specific claim for "any additional activities" identified during parameters and guidelines is inappropriate, because "the purpose of the Parameters and Guidelines phase is to specify which activities the Commission identified as reimbursable in the Test Claim phase, to identify eligible claimants, to specify the date upon which the identified activities became reimbursable, and to provide guidance on preparing and submitting reimbursement claims."

Response to Test Claim Filing 02-TC-19

In a letter dated July 24, 2003, DOF responded to the *CalSTRS Service Credit* test claim filing. Generally, the letter makes the same legal arguments presented regarding the *CalSTRS Creditable Compensation* test claim, above: an increase in contributions to CalSTRS is not reimbursable under case law interpreting article XIII B, section 6. DOF also argues that other activities identified by the claimant, associated with the change in definition of creditable compensation or service credit, are non-reimbursable based on the same court decisions.

California State Teachers' Retirement System Position

CalSTRS filed comments on the *CalSTRS Service Credit* test claim on July 24, 2003.

CalSTRS believes the statutes listed in the test claim do not impose a new program or higher level of service within an existing program upon the claimant pursuant to Section 17514 of the Government Code because the provision of compensation and benefits to employees, and the method for paying such compensation and benefits can not be considered a "program" or "service." The act of an employer providing compensation and benefits to its employees is not a unique function of local government or school employers, because it is a function common to all employers, whether public or private.

In addition, the CalSTRS response identifies several other reasons for denying reimbursement for specific statutes claimed: some "statutes establish optional programs;" two claimed statutes were in response to federal mandates, and therefore an exception under Government Code section 17556 applies; a large number of "statutes are administrative in nature, [and] considered part of the employer's responsibilities in offering a retirement program;" and several are non-substantive, code maintenance provisions.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution⁶ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁷ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁸ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁹ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.¹⁰

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹¹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

⁶ Article XIII B, section 6, subdivision (a), provides:

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁷ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁸ *County of San Diego, supra*, 15 Cal.4th 68, 81.

⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

¹¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

legislation.¹² A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."¹³

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁴

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁶

Issue 1: Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?

In order for a test claim statute or executive order to be subject to article XIII B, section 6 of the California Constitution, it must first constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁷ The court has held that only one of these findings is necessary.¹⁸

Staff finds that to the extent that the test claim statutes require school districts to engage in activities relating to the State Teachers' Retirement System, they impose a program within the meaning of article XIII B, section 6 of the California Constitution because they impose unique requirements on school districts that do not apply generally to all residents and entities in the state.

However, much of the statutory scheme on the State Teachers' Retirement System was in place prior to 1975, so the analysis must continue to determine if each of the statutes and code sections alleged mandates a new program or higher level of service upon eligible claimants within the meaning of the California Constitution, article XIII B, section 6, or merely restates prior law. In

¹² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁶ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1817.

¹⁷ *County of Los Angeles*, *supra*, 43 Cal.3d at page 56.

¹⁸ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

addition, many of the Education Code sections pled in the test claims do not require any mandatory activities on the part of the school districts, and are also not subject to article XIII B, section 6.

Renumbering, restatements, and reenactments of prior law are not subject to article XIII B, section 6.

Statutes 1993, chapter 893:

At the outset, staff notes that the substance of many of the code sections pled were in effect well before the enactment of the test claim statutes, but were either renumbered or restated in a "newly enacted" code section. In particular, the State Teachers' Retirement System law was repealed and reenacted by Statutes 1993, chapter 893 (the first test claim statute alleged), and previously, the entire Education Code was renumbered and recodified by Statutes 1976, chapter 1010. Education Code section 3 provides: "[t]he provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments."

This is in accordance with the California Supreme Court decision, which held that "[w]here there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time." (*In re Martin's Estate* (1908) 153 Cal. 225, 229.) Staff finds that a renumbering, reenactment or restatement of prior law does not impose a reimbursable state-mandated program to the extent that the provisions and associated activities remain unchanged. Staff specifically makes a finding that Statutes 1993, chapter 893, the recodification of the State Teachers' Retirement System, is not subject to article XIII B, section 6.

Education Code Section 22458:

Education Code section 22458, as pled, requires specific reporting from school district employers to CalSTRS, "regarding the compensation to be paid to employees subject to the Defined Benefit Program 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."

However, this law was in effect prior to the statutes pled by claimant. Former Education Code section 22403.1, renumbered by Statutes 1993, chapter 893 as section 22458, read: "Each employing agency shall provide the system with copies of documents respecting the compensation to be paid to employees in that school year. The documents 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."

The 1996 and 1999 amendments made non-substantive changes, such as changing the term "employing agency" to "employer," the word "documents" to "information," and clarifying that the information sought is for those employees subject to CalSTRS, not *all* employees of the school district. Therefore staff finds that Education Code section 22458, as renumbered by Statutes 1993, chapter 893, and amended by Statutes 1996, chapter 634, and Statutes 1999, chapter 939, is not subject to article XIII B, section 6.

Education Code Section 22461:

Education Code section 22461 requires specific notices be provided to retired members who return to work for a school district as a direct employee, contracted employee, or independent contractor. Former Education Code section 23921, renumbered as section 22461 by Statutes 1993, chapter 893, provided, in pertinent part:

Upon retaining the services of a retirant as an employee under the provisions of Section 23918 or 23919; the school district, community college district, county superintendent of schools, California State University, or other employing agency shall do both of the following:

(a) Advise the retirant of the earnings limitation set forth in Sections 23918 and 23919.

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

Other than changing the word "retirant" to "retired member," and correcting the references to the Education Code to reflect current numbering, the current section is identical to prior law. Therefore, staff finds that Education Code section 22461, as renumbered by Statutes 1993, chapter 893, and amended by Statutes 1996, chapter 634, is not subject to article XIII B, section 6.

Many of the test claim statutes do not mandate local agencies to do anything and, thus, are not subject to article XIII B, section 6.

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.¹⁹ The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."²⁰ A statute or executive order mandates a reimbursable "higher level of service" when, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, it increases the actual level of governmental service to the public provided in the existing program.²¹

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then

¹⁹ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

²⁰ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

²¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

As described below, there are a number of Education Code sections alleged in the test claim filing that are helpful in understanding the State Teachers' Retirement System, but they do not require any mandatory activities of school districts.

Education Code Sections 22000, 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5:

Education Code section 22000 simply indicates the short title of the act and states that the part "may be cited as the State Teachers' Retirement Law;" it does not mandate school districts to do anything, and is therefore not subject to article XIII B, section 6 of the California Constitution.

Nine of the claimed code sections provide definitions or describe member eligibility requirements relevant to CalSTRS, but do not require any mandatory activities to be performed by school district employers, and thus are not programs subject to article XIII B, section 6: including Education Code sections 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5. The substance of these sections will be briefly summarized below; the full text of each is included in the exhibits to the test claim filings.

Education Code section 22119.2 provides a definition of "creditable compensation" as "means remuneration that is payable in cash by an employer to all persons in the same class of employees and is paid to an employee for performing creditable service," including salary. Prior law for the State Teachers' Retirement System defined "'compensation' and 'salary'" interchangeably under former Education Code section 22114, and the definition was similar, but not identical, to the current definition of "creditable compensation."²² Education Code section 22119.5 defines "creditable service," as any listed activity performed by an individual in a credentialed, certificated, or otherwise standardized position.

Education Code section 22146 defines "member" of the Defined Benefit Program, as one "who has performed creditable service... and has earned creditable compensation." Prior law provided definitions of "member" for the retirement system, including teachers and other credentialed employees, librarians, counselors, superintendents and deputies.

Education Code section 22501 describes membership eligibility in the State Teachers' Retirement System for full-time employees. Education Code sections 22502, 22503 and 22504 describe membership eligibility for various non-full-time employees: those at 50% or greater time-base; substitute employees who work 100 or more days in a school year for one district; and certain hourly and daily part-time employees.

Education Code section 22711 is a directive to CalSTRS to grant service credit for compensated leave time by an employee who is "an elected officer of an employee organization," if both the member and member's employer makes the appropriate contributions to the Teachers' Retirement Fund as if the member were performing creditable service. Education Code section

²² For example, the earlier definition of "compensation" and "salary" excluded payments for summer school employment, which is included under the current definition of "creditable compensation."

22712.5 is a directive to CalSTRS to grant service credit for certain "community service teachers" who are serving in otherwise nonqualifying positions.

In summary, staff finds that Education Code sections 22119.2, 22119.5, 22146, 22501, 22502, 22503, 22504, 22711, and 22712.5 define terms used in the code, are directives to CalSTRS, or otherwise do not require any mandatory activities to be performed by school district employers, and thus are not subject to article XIII B, section 6.

Education Code Sections 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, and 22852:

A number of the claimed code sections deal with "service credit," but these describe optional programs or otherwise do not require any mandatory activities of school districts, or were established by prior law.

Education Code section 22713 provides an option for school districts to establish regulations to allow a full-time employee to reduce their workload, but still receive full-time service credit. The section provides that districts "may establish regulations," and then if they do, those regulations must contain certain provisions, and the employer must follow other specific procedures to implement the optional "reduced workload program." Such requirements are factually similar to the case in *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743, where the California Supreme Court found that when school districts voluntarily establish school site councils, costs of activities required for school site councils are not reimbursable because "the proper focus under a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs themselves." Therefore, staff finds that Education Code section 22713 does not require any mandatory activities of school districts, and is not subject to article XIII B, section 6.

Education Code section 22714 provides that a governing board of a school district, county office of education, or community college district (all are 'school districts' under Gov. Code, § 17519) may encourage retirement by offering an additional two years of service credit. Staff finds that this is also an optional program and is not subject to article XIII B, section 6.²³

Education Code section 22717 provides for service credit for accumulated sick leave. The only part of the code section that requires action on the part of the school district employer is subdivision (c). Subdivision (c) requires that "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." Longstanding prior law (Ed. Code, § 22719, Stats. 1976, ch. 1010, and previously Ed. Code § 14004, added by Stats. 1974, ch. 89) provided that "the school district or other employing agency shall certify to the Teachers' Retirement Board the number of days of accumulated and unused leave of absence for illness or injury to which the employee is entitled on his final day of employment." Therefore, staff finds that Education Code section 22717 does

²³ Even if it is successfully argued that this is not an optional program, but one that must be undertaken if the district governing board determines it is in "the best interests of the district," the statute also requires that the school district must certify that the action "would result in a net savings to the district." Therefore a district cannot meet the requirement of showing that they have incurred increased costs mandated by the state.

not require any activities of school districts that were not required under prior law, and thus is not subject to article XIII B, section 6.

Education Code section 22717.5 provides for service credit "for each unused day of educational leave credit." However, the code section only applies to members who are retiring as state employees but elected to remain members of CalSTRS, rather than join the Public Employees' Retirement System (PERS), when they entered state service. Staff finds that the reference to "employer" in this section is to the state employer - there is no local agency requirement subject to article XIII B, section 6.

Education Code section 22800 addresses corroborating statements needed by a member of the retirement system to substantiate claims of permissive and additional service credit. Prior versions of the code section (Ed. Code, § 22701, Stats. 1976, ch. 1010, formerly Ed. Code § 13980.1, added by Stats. 1974, ch. 1153) have long provided that "[c]laims for creditable service shall be corroborated by a statement from the superintendent of schools or custodian of records of the employing agency or public school where the service was performed." Therefore, staff finds that Education Code section 22800 does not require any activities of school districts that were not required under prior law, and thus is not subject to article XIII B, section 6.

Education Code section 22801 and 22803 also address issues of additional service credit that may be elected by a member of CalSTRS. Under section 22801, the law provides the terms of payment of contributions by the member for such elected service credit, including interest. Subdivision (d) is the only portion of the law that addresses the school district employer, and states: "(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." Section 22803 lists ten possibilities for elective service credit, such as teaching performed in California public universities or colleges, or time spent on certain approved leaves or sabbaticals. There is no state-mandated requirement in these sections for the school district employer to engage in any administrative activities, or even to pay a share of costs, therefore staff finds that Education Code section 22801 and 22803 are not subject to article XIII B, section 6.

Education Code section 22851 provides for elective service credit for the period of time a member has an "eligible period of service in the uniformed services." This is subject to applicable federal law (38 U.S.C.A. § 4301 et seq., "Employment and Reemployment Rights of Members of the Uniformed Services"), and only applies if they return to work in the same school district that they were employed with prior to their military service. In order to qualify, the member must pay the contribution amount that they would have paid should they have been continuously employed by the district. Education Code section 22851 does not require any state-mandated administrative activities or share of costs by the school district employer; any activities or responsibilities described are for the member, CalSTRS, or are otherwise required by federal law. Therefore, staff finds that Education Code section 22851 is not subject to article XIII B, section 6.

Increased Costs for an Employers' Share of Retirement Contributions Are Not Reimbursable Under Mandates Law.

Education Code Sections 22002, 22950 and 22951:

Some of the code sections claimed discuss the employer's share of contribution towards the defined benefit program, and specify the percentages of compensation required. Claimants assert that any increased employer costs for retirement contributions, when compared to prior law, are reimbursable.

Education Code section 22002, subdivision (b) includes the Legislature's policy statement that "[e]mployers shall contribute a percentage of the total creditable compensation on which member contributions are based." This is derived from longstanding prior law, which has been amended to replace the term "salary" with "creditable compensation."²⁴ (Former Ed. Code, § 22002, Stats. 1976, ch.1010, and previously the 1959 Ed. Code, § 13804.)

Education Code section 22950 and 22951 establish the percentages of creditable compensation that the school district employer must pay. Education Code section 22950, subdivision (a) requires that "(a) Employers shall contribute monthly to the system 8 percent of the creditable compensation upon which members' contributions under this part are based." Former Education Code section 14100²⁵ provided that the school districts "shall contribute monthly the following percentages of the total salaries upon which members' contributions are based:"

- (a) For fiscal year ending June 30, 1973 3.2%
- (b) For fiscal year ending June 30, 1974 4%
- (c) For fiscal year ending June 30, 1975 4.8%
- (d) For fiscal year ending June 30, 1976 5.6%
- (e) For fiscal year ending June 30, 1977 6.4%
- (f) For fiscal year ending June 30, 1978 7.2%
- (g) For all fiscal years after June 30, 1978 8%

Article XIII B, section 6, subdivision (a)(3), provides that the Legislature need not fund "Legislative mandates enacted prior to January 1, 1975." The law requiring an eight percent employer contribution after June 30, 1978, was enacted in 1971, therefore this is not subject to article XIII B, section 6. The law now requires that the eight percent contribution is based on "creditable compensation," as defined by Education Code section 22119.2, instead of the old definition of "salaries," under former Education Code section 22114. The definitions are similar, but there are differences that could result in increased costs to the school district employer. For example, under the amended law, a school district is responsible for the employers' share of contribution for summer school salary earned by an employee. This was excluded under the old definition of

²⁴ See the text regarding Education Code section 22119.2, at page 12.

²⁵ The section was added by Statutes 1971, chapter 1305, and then renumbered as section 22950 by Statutes 1976, chapter 1010 (the 1976 reorganization of the Education Code).

"compensation" and "salary," but is included in the definition of "creditable compensation."

Education Code section 22951 provides that school district employers shall contribute an additional quarter percent (0.25%) over any other contribution required. This law was derived from former section 23400.1, which was first added to the Education Code by Statutes 1985, chapter 1597.²⁶ Like Education Code section 22950, above, the percentage is now based on the statutory definition of creditable compensation, where it used to be based on "salaries."

While school districts will likely incur increased costs for retirement contributions as a result of the test claim statutes (particularly when combined with the amended definition of creditable compensation), a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. The California Supreme Court has repeatedly ruled that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6.²⁷ The Court also found in *Lucia Mai, supra*, 44 Cal.3d 830, 835:

We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.

Comments filed by the state agencies, DOF and CalSTRS, both assert that case law interpreting article XIII B, section 6, including *County of Los Angeles, supra*, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, results in a finding that "the provision by public school employers of monthly [State Teachers' Retirement System] contributions on behalf of their employees is not a program that provides a service to the public or that is unique to local government."²⁸

Claimant, Santa Monica CCD, argues that the cases are distinguishable from the test claim at issue here. First, the CalSTRS statutes and teacher pensions are unique to local government, which, the claimant states, is distinct from the workers' compensation cases of *County of Los Angeles* and *City of Richmond*.

The claimant also argues that this claim is distinguishable from *City of Anaheim*, which dealt with higher local government employer costs for PERS. The claimant argues that in contrast to the *City of Anaheim* statute that resulted in higher costs to local agencies, but did not require action except on the part of the state agency, CalPERS, the instant test claim statutes require that the claimant "do something", i.e. it requires it to make contributions to CalSTRS in situations where none were required prior to that legislation.²⁹

²⁶ Statutes 1985, chapter 1597 was not included in the test claim allegations.

²⁷ *County of Los Angeles, supra*, 43 Cal.3d at page 54; see also, *Kern High School Dist., supra*, 30 Cal.4th 727, 735.

²⁸ DOF's December 4, 2001 comments on test claim 01-TC-02, page 3, and the July 24, 2003 comments on test claim 02-TC-19, page 3.

²⁹ Claimant, Santa Monica CCD's rebuttal to DOF, dated August 15, 2003, pages 3-4.

Staff notes that making contributions to CalSTRS is not new – an employer share of contributions to CalSTRS has been continuously required under current and previous versions of Education Code section 22950.³⁰ Even before the test claim statutes, the amount contributed by the school district employer would change regularly depending on the number of employees eligible, and their current compensation. In order for the claimant's argument distinguishing the *Anaheim* case to succeed, they must still prove that the statutes in fact mandate a new program or higher level of service in an existing program.

In *County of Los Angeles, supra*, 43 Cal.3d 46, the Court addressed the costs incurred as a result of legislation that required local agencies to provide the same increased level of workers' compensation benefits for their employees as private individuals or organizations were required to provide to their employees. The Supreme Court recognized that workers' compensation is not a new program and, thus, the court determined whether the legislation imposed a higher level of service on local agencies.³¹ The court defined a "higher level of service" as "state mandated increases in the services provided by local agencies in existing programs." (Emphasis added.)

Looking at the language of article XIII B, section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs."

The Supreme Court in *County of Los Angeles* continued:

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.³²

The court held that reimbursement for the increased costs of providing workers' compensation benefits to employees was not required.

Section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers... In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration

³⁰ The actual mechanisms for making those payments is governed by Education Code section 23000 et seq., also longstanding prior law, which was not included in the test claim pleadings.

³¹ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

³² *Id.* at pp. 56-57.

of the program. Workers' compensation is administered by the state ... Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6. (*Id.* at pp. 57-58, fn. omitted.)

Although "[t]he law increased the cost of employing public servants, ... it did not in any tangible manner increase the level of service provided by those employees to the public." (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 875.) In this sense, the present consolidated test claim is indistinguishable from the analysis presented by the Court in *County of Los Angeles*.

City of Richmond, *supra*, 64 Cal.App.4th 1190, similarly held that requiring local governments to provide death benefits to local safety officers, under both PERS and the workers' compensation system, did not constitute a higher level of service to the public. The court stated:

Increasing the cost of providing services cannot be equated with requiring an increased level of service under a section 6 analysis. A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.³³

The court also found that "[a]lthough a law is addressed only to local governments and imposes new costs on them, it may still not be a reimbursable state mandate."³⁴

In *City of Anaheim*, *supra*, 189 Cal.App.3d 1478, the court determined that an increase in PERS benefits to retired employees, which resulted in a higher contribution rate by local governments, does not constitute a higher level of service to the public. In this case the court found that:

While focusing on the exceptions to reimbursement, City conveniently presumes that [the test claim statute] mandated a higher level of service on local government, a prerequisite to reimbursement when an existing program is modified.

City's claim for reimbursement must fail for the following reasons: (1) [the test claim statute] did not compel City to do anything, (2) any increase in cost to City was only incidental to PERS' compliance with [the test claim statute]; and (3) pension payments to retired employees do not constitute a "program" or "service" as that term is used in section 6.³⁵

Here, Santa Monica CCD argues that "[t]he test claim legislation alleges that certain employees, previously required to be excluded in the retirement program, now be included in the program. The test claim legislation alleges that certain employees' activities, previously excluded from the retirement program, now be included in that program. Therefore, those portions of the mandated retirement program are a 'new program.'" (Aug. 15, 2002 rebuttal letters, pp. 4-5.) The court in

³³ *City of Richmond*, *supra*, 64 Cal.App. 1190, 1196.

³⁴ *Id.* at page 1197.

³⁵ *City of Anaheim*, *supra*, 189 Cal.App.3d at page 1482.

Anaheim found that an increase in pension benefits to employees was not a "program" or "service" within the meaning of article XIII B, section 6.³⁶

Also, like the claimant here, the claimant in *City of Anaheim*:

argues that since [the test claim statute] specifically dealt with pensions for *public* employees, it imposed unique requirements on local governments that did not apply to all state residents or entities. [Footnote omitted; emphasis in original.]

However, the court continued:

Such an argument, while appealing on the surface, must fail. As noted above, [the statute] mandated increased costs to a state agency, not a local government. Also, PERS is not a program administered by local agencies.

Moreover, the goals of article XIII B of the California Constitution "were to protect residents from excessive taxation and government spending... [and] preclud[e] a shift of financial responsibility for carrying out governmental functions from the state to local agencies.... Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs which all employers must bear-neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (*County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 61.) Similarly, City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public. [Emphasis added, footnote omitted.]

Therefore, the court concluded that the test claim statute did "not fall within the scope of section 6."³⁷

In *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 876-877, the Court held:

Viewed together, these cases (*County of Los Angeles, supra*, 43 Cal.3d 46, *City of Sacramento, supra*, 50 Cal.3d 51, and *City of Richmond, supra*, 64 Cal.App.4th 1190) illustrate the circumstance that simply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting "service to the public" under article XIII B, section 6, and Government Code section 17514. [Emphasis in original.]

The test claim statutes create a situation, as in *City of Anaheim*, where the employer may be faced with "a higher cost of compensation to its employees." As held by the court, "[t]his is not the same as a higher cost of providing services to the public." Therefore, staff finds that increased costs resulting from the test claim statutes, Education Code sections 22002, 22950, and 22951, without more, are not subject to article XIII B, section 6.

³⁶ *Ibid.*

³⁷ *Id.* at pages 1483-1484.

Issue 2: Do the remaining test claim statutes mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

Education Code Sections 22455.5, 22460, 22509, 22718, 22724 and 22852:

Finally, a number of the test claim statutes require that the school district employer engage in reporting and notice activities. The state agencies argue that these claims should be rejected on the same rationale as the case law discussed above. Staff disagrees. Those cases did not include facts where there were distinct administrative activities required by the test claim statutes, in addition to the higher contribution costs alleged.

Education Code section 22455.5, as added by Statutes 1994, chapter 603, and amended by Statutes 1996, chapter 634, and Statutes 1999, chapter 939 requires that employers provide information to new employees about the defined benefit plan. Staff finds that the following is a new activity required by Education Code section 22455.5, subdivision (b), resulting in a new program or higher level of service:

- 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 Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed.

Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS.

Education Code section 22460, repealed and reenacted by Statutes 2000, chapter 1021, requires specific notification to employees who terminate with less than five years of credited service. The law was derived from former Education Code section 23108, renumbered as section 22460 by Statutes 1993, chapter 893, which read as follows:

Employing school districts and other employing agencies 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 which will be earned, and actions which may be taken by the board if such contributions are not withdrawn. Employing school districts and other employing agents shall transmit such information to the member as part of the usual separation documents.

The information required for the notice is slightly different now, including references to the Defined Benefit Supplement account; therefore, staff finds that Education Code section 22460, as repealed and reenacted, mandates a new program or higher level of service for the following one-time activity:

- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision (a)(1) - (3), regarding the Defined Benefit Supplement account.

Education Code section 22509, as repealed and reenacted by Statutes 1996, chapter 383, and amended by Statutes 1997, chapter 838, requires that for new employees who may choose between membership in CalPERS or CalSTRS, the school district employer "shall inform the employee of the right to make an election and shall make available to the employee written information" provided by CalPERS and CalSTRS, to assist in the decision. Staff finds that this is a new notice requirement when compared to prior law, and Education Code section 22509, subdivision (a) mandates a new program or higher level of service for the following activity:

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election.

Education Code sections 22718 and 22724 address service credit authorized for "excess sick leave." Excess sick leave is sick leave granted by an employer at a rate greater than "one day per pay period of at least four weeks." If excess sick leave is granted by an employer and is not entirely used, it can increase a member's service credit; at the retirement of the member, the employer will be billed for the present value of the service credit. Reimbursement for the costs of the service credit billed to the employer is denied on the same rationale regarding Education Code sections 22002, 22950 and 22951, above: an employer's increased contribution costs to a pension plan is not a program, or a new program or higher level of service, pursuant to article XIII B, section 6.

However, Education Code section 22718, as amended by Statutes 1999, chapter 939, in addition to contribution costs, also requires for the first time that "the employer shall also certify the number of unused excess sick leave days." Education Code section 22724, as added by Statutes 1999, chapter 939, describes the method of calculation for the certification of excess sick leave. Staff finds that this certification requirement results in a new report to the state when compared to prior law, and therefore Education Code sections 22718, subdivision (a)(1)(A), and section 22724, mandate a new program or higher level of service for the following activities:

- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a).
- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes.

Education Code section 22852 provides for employer contributions for elective service credit for members of the armed services who are reemployed with a school district following a period of military service. Reimbursement for the costs of the service credit billed to the employer is denied on the same rationale regarding Education Code sections 22002, 22950 and 22951, above: an employer's increased contribution costs to a pension plan is not a program, or a new program or higher level of service, pursuant to article XIII B, section 6. However, Education Code section 22852, as added and amended by the test claim statutes, requires a reporting activity that was not required under prior law. Thus, staff finds Education Code section 22852, subdivision (e) mandates a new program or higher level of service for the following activity:

- The employer shall provide information regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment.

Issue 3: Do the test claim statutes impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute or executive order that mandates a new program or higher level of service. Co-claimants, Lassen COE and San Luis Obispo COE, estimated mandated costs in excess of \$200, which was the statutory threshold for filing a test claim in 2001. Claimants, Grant and Santa Monica CCD, each alleged mandated costs in excess of \$1000, as did a declarant, San Diego County Office of Education.

All of the claimants also stated that none of the Government Code section 17556 exceptions apply. For the activities listed in the conclusion below, staff agrees and finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

Staff concludes that Education Code sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852, subdivision (e), impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- 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 Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed. Written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS. (Ed. Code, § 22455.5, subd. (b).)³⁸
- Amend the notice that employers transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents, to include the specific information specified in Education Code section 22460, subdivision

³⁸ As added and amended by Statutes 1994, chapter 603, Statutes 1996, chapter 634, and Statutes 1999, chapter 939.

All of the approved statutes and activities were pled in the test claim *CalSTRS Service Credit* (02-TC-19), filed on May 12, 2003, by Santa Monica CCD. Government Code section 17757 provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Therefore, potential reimbursement goes back no earlier than July 1, 2001.

(a)(1) – (3), regarding the Defined Benefit Supplement account. (Ed. Code, § 22460; one-time activity.)³⁹

- Within 10 working days of the date of hire of an employee who has the right to make an election pursuant to Education Code section 22508 or 22508.5, the employer shall inform the employee of the right to make an election and shall make available to the employee written information provided by each retirement system concerning the benefits provided under that retirement system to assist the employee in making an election. (Ed. Code, § 22509; subd. (a).)⁴⁰
- The employer shall certify the number of unused excess sick leave days to the CalSTRS for retiring members, using the method of calculation described in Education Code section 22724, subdivision (a). (Ed. Code, § 22718, subd. (a)(1)(A).)⁴¹
- Upon request from the CalSTRS board, the employer shall submit sick leave records of past years for audit purposes. (Ed. Code, § 22724.)⁴²
- The employer shall provide information regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A. § 4301 et seq.), on a form prescribed by CalSTRS, within 30 days of the date of reemployment. (Ed. Code, § 22852, subd. (e).)⁴³

Staff concludes that Education Code sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950 and 22951, as amended and pled, along with any other test claim statutes and allegations not specifically approved above, do not impose a program, or a new program or higher level of service, subject to article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

³⁹ As repealed, reenacted and amended, by Statutes 2000, chapter 1021.

⁴⁰ As repealed, reenacted and amended, by Statutes 1996, chapter 383, and Statutes 1997, chapter 838.

⁴¹ As amended by Statutes 1999, chapter 939.

⁴² As added by Statutes 1999, chapter 939.

⁴³ As added and amended by Statutes 1996, chapter 680, and Statutes 1998, chapter 965.

Commission on State Mandates

Original List Date: 9/28/2001
Last Updated: 11/27/2006
List Print Date: 01/09/2007
Claim Number: 01-TC-02
Issue: CalSTRS Creditable Compensation

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

02-TC-19 CalSTRS Service Credit

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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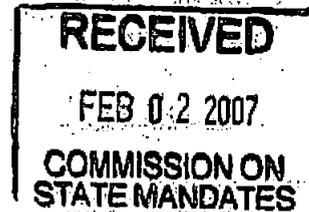
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January 30, 2007



Ms. Paula Higashi
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Re: *CalSTRS Response to Draft Staff Analysis of Test Claims 01-TC-02, 02-TC-19
CalSTRS Creditable Compensation/Service Credit*

Dear Ms. Higashi:

On January 16, 2007, CalSTRS received the "*Draft Staff Analysis of Test Claims 01-TC-02, 02-TC-19, regarding CalSTRS Creditable Compensation/Service Credit.*" In this analysis you requested written responses from any party or interested person by January 30, 2007 (Attachment-1). In response to this request, the California State Teachers' Retirement System ("CalSTRS") is providing the following written response.

CALSTRS RESPONSE TO ISSUE #1

CalSTRS concurs with the findings in the *Draft Staff Analysis* set forth in Issue #1 (Pages 9-19) and agrees with the *Draft Staff Analysis* that Education Code Sections 22000, 22002, 22119.2, 22119.5, 22146, 22458, 22461, 22501, 22502, 22503, 22504, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22800, 22801, 22803, 22851, 22950, and 22951, as amended and pled, in the Test Claims referenced above do not impose a program, or new program or higher level of service subject to article XIII B, section 6 of the California Constitution or impose costs mandated by the state as established by Government Code Sections 17514 and 17556.

It does appear that there is a typographical error on Page 13 of the *Draft Staff Analysis* in that Education Code section 22852 is referenced but is later cited as Education Code section 22851 on Page 14, which the *Draft Staff Analysis* concludes does not impose a program, or new program or higher level of service subject to article XIII B, section 6 of the California Constitution or impose costs mandated by the state as established by Government Code

Sections 17514 and 17556. This apparent error is important to note because the *Draft Staff Analysis* later concludes that Education Code section 22852 does impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution. CalSTRS requests that this issue be clarified in the upcoming *Final Staff Analysis*.

CALSTRS RESPONSE TO ISSUE #2 and ISSUE #3

1. The Notice and Reporting Requirements set forth in Education Code sections 22455.5, 22460, 22509, 22718, 22724, and 22852 do not constitute a new program or higher level of service.

CalSTRS incorporates by reference its original response dated July 24, 2003, and again maintains that none of the statutes in question mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and do not constitute a state mandated local program or impose costs mandated by the state, as established by Government Code Sections 17514 and 17556.

Specifically, CalSTRS does not agree with the *Draft Staff Analysis* in regards to Education Code Sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852(e). CalSTRS does not agree that these Education Code Sections impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and does not agree that these Education Code Sections impose costs mandated by the state pursuant to Government Code section 17514.

In the *Draft Staff Analysis*, it concludes that the provisions of Education Code Sections 22455.5, subdivision (b), 22460, 22509, subdivision (a), 22718, subdivision (a)(1)(A), 22724, and 22852(e) contain new notice or reporting requirements that impose new programs or higher levels of service for school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

As the *Draft Staff Analysis* references (Page 2), "the California Supreme Court has consistently ruled, beginning with County of Los Angeles v. State of California (1987) 43 Cal.3d 46, at pages 56-57, (hereafter County of Los Angeles) and reaffirmed in 2004 in San Diego Unified School Dist. v. Commission on State Mandates, (2004) 33 Cal.4th 859, at pages 876-877, (hereafter San Diego) that the evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution."

Instead, the courts in County of Los Angeles and San Diego focused on the terms "new program" or "higher level of service" as those terms are contained in article XIII B, section 6 in analyzing whether additional costs would be a reimbursable state mandate. Specifically, the courts in these cases found that in order to be considered a "new program" or "higher level of service" the implementation of a state policy imposes on a local government, or requires a local government to implement unique requirements that do not apply generally to all residents and entities in the state.

In the County of Los Angeles, the court was asked to determine whether increased workers' compensation costs, salaries, or unemployment insurance were reimbursable state mandates. The court stated: "Moreover the "goals" of Article XIII B of the California Constitution were to protect residents from excessive taxation and government spending . . . and preclude a shift of financial responsibility for carrying out governmental functions from the state to local agencies . . . Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage costs - which all employers must bear neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services." (County of Los Angeles at page 61.) "Similarly, the City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public."

The issue of higher pension payments was analyzed in City of Anaheim v. State of California (1987) 189 Cal. App. 3d 1478 (hereafter City of Anaheim), and the court concluded that requiring local governments to provide higher pension payments to retired employees does not meet the "higher level of service" test in Article XIII B, section 6 because providing local employees with compensation and pension benefits and the means for paying therefore were not a program or service within the meaning of Article XIII B, section 6 (City of Anaheim at 1482-1484.)

CalSTRS maintains that consistent with the findings in County of Los Angeles, San Diego, and City of Anaheim the notice and reporting requirements set forth in Education Code sections 22455.5, 22460, 22509, 22718, 22724, and 22852, are not separate and distinct from the underlying retirement program being offered by the local employers but, instead are part of and included in the retirement program being offered or in the case of Education Code section 22852 are required by or consistent with federal law. The fact that the employer may have to submit a form provided by CalSTRS or provide an employee with a form provided by CalSTRS as part of the administration of the retirement program does not create a "new program" or "higher level of service", especially in light of the fact that the forms or notice materials are provided by CalSTRS to the employer. Therefore, and consistent with the case law referenced above, these notice and reporting requirements do not represent a higher level of service or a new program because they apply generally to the existing retirement program already being offered to the local employees.

2. Any costs associated with the Notice and Reporting Requirements set forth in Education Code sections 22455.5, 22460, 22509, 22718, 22724, and 22852 are not reimbursable because the costs are modest, incidental, and de minimis and are shared by CalSTRS.

In San Diego, the court specifically examined whether the hearing costs incurred by a district as a result of actions related to discretionary expulsions constituted a "new program" or "higher level of service" and whether the costs associated with these hearings were reimbursable because they were associated with a "new program" or "higher level of service." The court found that because the discretionary expulsion process was above and beyond the federally mandated requirements, and was therefore a discretionary action taken by the district, the "hearing costs related to discretionary expulsions did not constitute a "new program" or "higher level of service" and did not trigger the right to reimbursement." In addition to this finding the court found that in any event, because the costs of procedures associated with the discretionary hearing process were de minimis or incidental they would not be reimbursable under an Article XIII B, section 6 analyses. (San Diego at 890.)

In determining whether the costs associated with the discretionary hearing procedures were de minimis, the court in San Diego relied on the ruling in Department of Finance v. Commission on State Mandates; Kern High School District (2003) 30 Cal.4th 727, (hereafter Kern High School District). In Kern High School District, the district sought reimbursement for the costs associated with notice and agenda materials for advisory committee and council meetings required by statute as part of the school improvement program (Education Code Sections 52010 et. seq.). The court in Kern High School District (at 735); relying on previous case law, took the same or similar approach as the court in San Diego and found that "the additional expense incurred by a local agency or school district arising as an incidental impact of a law which applied generally . . . is not the type of expense the voters had in mind when they adopted Article XIII B, section 6." Lucia Mar Unified School District v. Honig (1988) 44 Cal.3d 830, 835; County of Fresno v. State of California (1991) 53 Cal.3d 482; City of Sacramento v. State of California (1990) 50 Cal.3d 51.

Any costs incurred from the Notice and Reporting Requirements set forth in Education Code sections 22455.5, 22460, 22509, 22718, 22724, and 22852, are modest, incidental, or de minimis and are not reimbursable consistent with San Diego and Kern High School District. In addition, because CalSTRS provides the necessary forms and notice materials required to satisfy the notice and reporting requirements, any costs to the employer are shared by CalSTRS and would not solely be reimbursable to the local agency or school district.

Education Code section 22455.5

In summary, Education Code section 22455.5; subdivision (b) requires employers to 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 Defined Benefit Program, and shall inform part-time and substitute employees within 30 days of the date of hire, that they may elect membership in the plan's Defined Benefit Program at any time while employed, and that written acknowledgment by the employee shall be maintained in employer files on a form provided by CalSTRS.

Federal law requires employers to offer Social Security Benefits or a qualified alternative retirement plan. The provisions of Education Code section 22455.2 do not place any additional requirement that would not be placed on an employer in general. It simply requires the employer to make available the necessary retirement information relating to the CalSTRS Defined Benefit Program. The costs to the local agency or school district are incidental or de minimis as CalSTRS provides member handbooks, brochures, and materials that are available to employers and provides employers with the necessary Permissive Membership form that must be maintained by the employer. (Attachment 2)

Requiring the District to maintain the Permissive Membership form provided by CalSTRS does not create any "new program" or "higher level of service" beyond the current statutory record retention requirements that are applied generally and are set forth in the individual Collective Bargaining Agreements negotiated by the employer or the law including, but not limited to Government Code section 12946, and Labor Code section 1174, which require personnel records to be kept for a minimum of 2 years after termination of employment.

Education Code section 22460

In summary, Education Code section 22460 requires employers to transmit to a member who terminates employment with less than five years of credited service, as part of the usual separation documents to include information regarding the Defined Benefit Supplement Account.

Again, CalSTRS maintains that this requirement does not create a new program or higher level of service beyond what local agency or school district employers are generally required to do, and that any costs associated with this requirement are incidental or de minimis. At the separation of employment, an employer typically provides a separating employee with information regarding pension or health benefits so it is unclear how this creates a higher level of service simply because the Defined Benefit Supplement Account is a relatively new benefit provided by CalSTRS.

CalSTRS generates and distributes materials to employers on the Refund Process and the Defined Benefit Supplement Program. (Attachment 3) Employers can obtain these materials free of charge from CalSTRS which can then be provided to employee at the time of separation. To satisfy the notice requirement set forth in Education Code section 22460, an employer simply needs to obtain the information from CalSTRS and provide it to the

employee at the time of separation. Clearly, this does not rise to a "higher level of service" requiring reimbursement for purely incidental expenses.

Education Code section 22509

In summary, Education Code section 22509 requires an employer within 10 days of employment to inform an employee of the right to make an election and shall make available to employees written information regarding the benefits provided under that retirement system and to assist the employee in making an election.

CalSTRS once again maintains that this requirement does not exceed any requirement that a local employer is not already generally required to do in terms of employee benefits, healthcare, workers' compensation, etc. Once again, CalSTRS provides the employer with the necessary forms and information that can be obtained from CalSTRS free of charge. (Attachment 4), so in the event that any costs are incurred by the local agency or school district these costs would be purely incidental or de minimis.

Education Code section 22718 and Education Code section 22724

In summary, Education Code sections 22718, and 22724, require employers to maintain records regarding sick leave for audit purposes, and to certify the number of unused excess sick leave days to CalSTRS for retiring members, using the method of calculation describe in Education Code section 22724.

CalSTRS provides employers with the necessary forms and information to process the sick leave calculation set forth in Education Code section 22718 so any costs to the local agency or school district would be incidental or de minimis. (Attachment 5) It is CalSTRS' position that requiring an employer to account for unused sick leave for retirement purposes is no different than requiring an employer to account for unused sick leave upon separation or termination, or for purposes of calculating or determining unemployment benefits or workers' compensation benefits. Therefore, the requirements set forth in Education Code section 22718 once again do not rise to a higher level of service or new program.

The record retention requirement set forth in this section does not create a "new program" or "higher level of service" for the local agency or district. As noted above, Government Code section 12946, and Labor Code section 1174, generally require personnel records to be kept for a minimum of 2 years after termination of employment, which would include sick leave records. Irrespective of these sections, the individual Collective Bargaining Agreements executed between the local agency or school district may specify a longer retention period for personnel records which would include sick leave records. The fact that the term "for audit purposes" is referenced in this section does not create a "new program" especially in light of the fact that a business or employer is required to retain certain tax records and personnel

records for certain time periods established by law, including but not limited to, Collective Bargaining Agreements, Government Code section 12946 and Labor Code section 1174.

Education Code section 22852

In summary, Education Code section 22852 requires an employer to provide information regarding the reemployment of a member who is subject to federal law regarding the reemployment of military service personnel (38 U.S.C.A section 4301 et seq.), on a form prescribed by CalSTRS within 30 days of the date of reemployment.

CalSTRS maintains that this provision is consistent with Federal Law and the Uniformed Services Employment and Reemployment Rights Act of 1994, and could be considered a federal mandate. Any costs incurred by the local agency or school district would be incidental or de minimis because CalSTRS provides the employer with the necessary form (Attachment 6) and submitting this form to CalSTRS would not be above and beyond what is already required as part of the Uniformed Services Employment and Reemployment Rights Act of 1994.

Irrespective of the fact that this provision conforms to Federal Law, any costs incurred by the local agency or school district would once again be de minimis or incidental because upon reemployment, the local agency or district would have to address the normal and usual employment issues associated with reemployment such as payroll, benefits, and sick leave, and providing the required CalSTRS form does not go beyond what is required of an employer in general.

CONCLUSION

For the reasons stated above and consistent with the case law referenced above, CalSTRS maintains that the requirements set forth in Education Code Sections 22455.5, 22460, 22509, 22718, 22724, and 22852, do not create "new program" or "higher levels of service" as those terms have been applied and interpreted. In addition, any costs associated with these sections can only be considered de minimis or incidental as has been outlined above and therefore not subject to reimbursement.

If the Commission were to find that notice or reporting requirements could create a "new program" or "higher level of service" beyond the normal costs of providing retirement benefits, compensation, unemployment insurance, and workers' compensation benefits, this would appear to be inconsistent with the case law referenced above and the intent of Article XIII B, section 6, in that the Commission would be allowing reimbursement for incidental or de minimis costs related to a program as opposed to the costs of the program itself.

1/30/2007

Page 8

CalSTRS requests that you reject the *Draft Staff Analysis* pertaining to Education Code Sections 22455.5, 22460, 22509, 22718, 22724, and 22852, and do not approve Test Claims 01-TC-02, 02-TC-19.

DECLARATION

I am currently employed by the State of California, California State Teachers' Retirement System, am familiar with the duties of Finance, and am authorized to make this declaration on behalf of the California State Teachers' Retirement System.

I declare under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Date: 1-30-07
At Sacramento, CA


Shannon M. Chambers
Staff Counsel,
California State Teachers' Retirement System

ATTACHMENT 1

XXXXXXXXXXXX

*Fyi - copy to Ken
Arnold Schwarzenegger, Governor
She wants to discuss
w/ you
JHC*



COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3582
FAX: (916) 445-0278
E-mail: csmlinfo@cem.ca.gov

January 9, 2007

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: **Draft Staff Analysis and Hearing Date**
CalSTRS Creditable Compensation/Service Credit
01-TC-02, 02-TC-19
Statutes 1993, Chapter 893, et. al
Lassen County Office of Education, Claimant
San Luis Obispo County Office of Education, Claimant

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Monday, January 30, 2007. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, March 29, 2007** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about March 15, 2007. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

ATTACHMENT 2



PERMISSIVE MEMBERSHIP
 ES 350 (REV6/04)

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM
 P.O. BOX 15275 SACRAMENTO CA 95851-0275
 TOLL FREE 1-800-228-5453
 OR (916) 229-3870
 TDD HEARING IMPAIRED (916) 229-3541

**PERMISSIVE ELECTION AND ACKNOWLEDGMENT OF RECEIPT OF
 CALSTRS DEFINED BENEFIT PLAN MEMBERSHIP INFORMATION**

Please Type or Print Legibly in Black Ink

EMPLOYEE CERTIFICATION

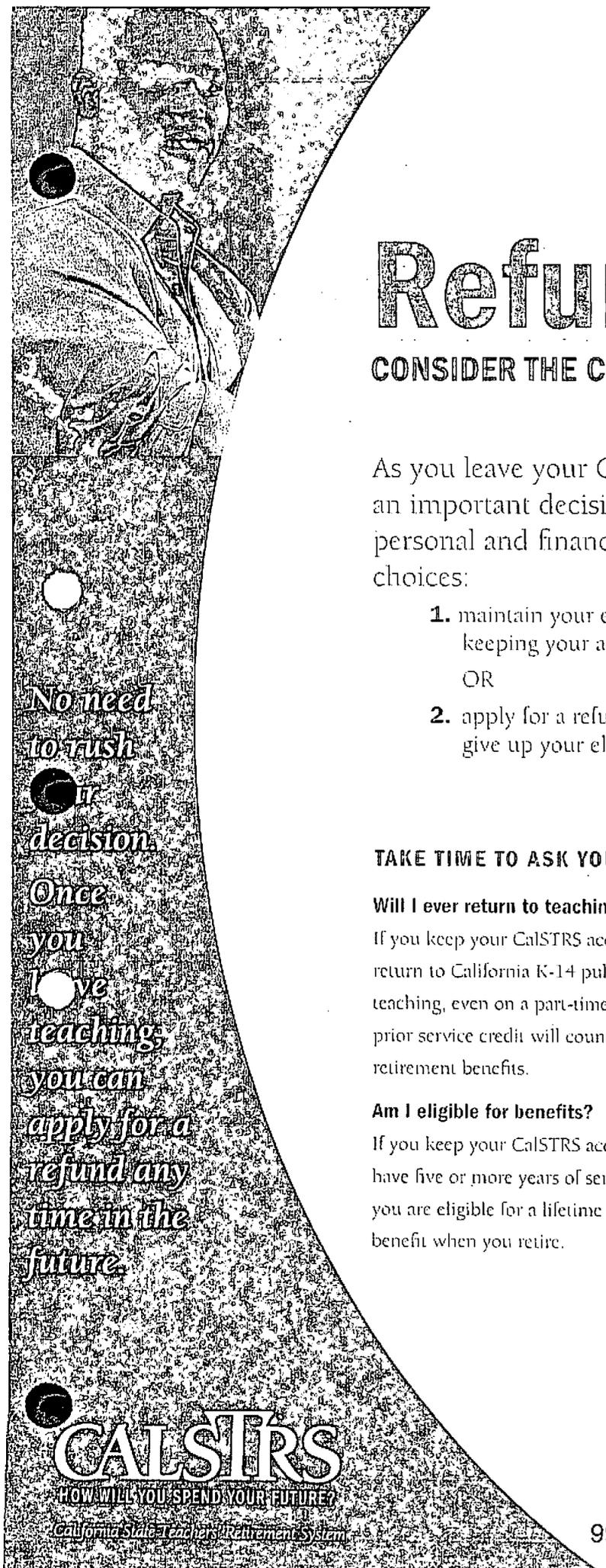
Name:			Social Security Number:
(Last)	(First)	(Initial)	
Position Title:			
<p>Education Code Section 22515 permits an employee who performs creditable service (as defined in Section 22119.5), and who is excluded from mandatory membership pursuant to Section 22601.5, 22602 or 22604, to elect membership in the California State Teachers' Retirement System Defined Benefit Program at any time while employed to perform creditable service. The election must be in writing and filed at CalSTRS prior to submission of contributions to the program. The employee's membership date can be no earlier than the first day of the pay period during which the election form is signed.</p> <p><i>I certify I have received information from my employer concerning the CalSTRS Defined Benefit Program (DB Program) and understand the criteria for membership in the plan.</i></p> <p><i>I certify that I am eligible to elect membership in the California State Teachers' Retirement System Defined Benefit Program as provided in Section 22515 of the California Education Code, and make the following election. I fully understand this election is irrevocable for all future employment to perform creditable service and may be canceled only by terminating all such employment and receiving a refund of my accumulated retirement contributions from the California State Teachers' Retirement System.</i></p>			
I elect membership <input type="checkbox"/>		I decline membership at this time <input type="checkbox"/>	
Signature:			Date:

TO BE COMPLETED BY EMPLOYER

I certify that the above-named employee has been provided with the membership criteria for the CalSTRS Defined Benefit Program as required pursuant to Education Code Section 22455.5; in a timely manner or within 30 days of their hire, if part-time or a substitute employee and, if applicable, the employee has been informed of his or her right to elect into membership in the CalSTRS DB Program.

Official's Signature:		Title:					
County (or Other Employing Agency):		District:					
Employee#	Sex		Birth date	Membership Date	Assignment		
	Male	Female	(Mo/Dny/Year)	(Mo/Day/Year)	FT	PT	Sub

ATTACHMENT 3



Refund

CONSIDER THE CONSEQUENCES

As you leave your California public school position, you face an important decision. What you decide now can affect your personal and financial plans for the future. You have two choices:

1. maintain your eligibility for future retirement benefits by keeping your account with CalSTRS
- OR
2. apply for a refund of your own contributions and interest and give up your eligibility for future benefits

No need
to rush
on
your
decision.

Once
you
love
teaching,
you can
apply for a
refund any
time in the
future.

TAKE TIME TO ASK YOURSELF...

Will I ever return to teaching?

If you keep your CalSTRS account and return to California K-14 public school teaching, even on a part-time basis, your prior service credit will count toward retirement benefits.

Am I eligible for benefits?

If you keep your CalSTRS account and you have five or more years of service credit, you are eligible for a lifetime monthly benefit when you retire.

Will I retire from another public retirement system?

If you keep your CalSTRS account and you become eligible to retire from certain other California public retirement systems*, you can get a CalSTRS retirement benefit even if you have less than five years of service credit.

What CalSTRS retirement benefit would I get?

If you keep your CalSTRS account, even a few years of service credit can provide you a valuable addition to your total retirement income. See example on reverse.

CALSTRS

HOW WILL YOU SPEND YOUR FUTURE?

California State Teachers' Retirement System

CONSIDER THE CONSEQUENCES...

IF YOU KEEP YOUR CalSTRS ACCOUNT

- Beginning at age 55, with five or more years of service credit, you can receive a monthly CalSTRS retirement benefit. You can choose to spread out your benefit over your lifetime as well as the lifetime of another person or persons. Also, if you die after retirement, your beneficiary is eligible for a lump-sum death benefit.
- Even if you do not return to teaching and do not retire from CalSTRS, your account will continue to accrue compounded interest, which your beneficiary(ies) will receive upon your death.

IF YOU TAKE A REFUND

- You forfeit all rights to CalSTRS benefits.
- If you take a refund before age 59½ and do not roll it over to a qualified plan, your funds may be subject to a 10 percent federal and a 2.5 percent state excise tax, in addition to regular income tax.
- You must also take a refund of your Defined Benefit Supplement account, losing the interest it would accrue until you retired. You cannot redeposit your DBS account funds.
- If you return to teaching and want to buy back some or all the refunded service credit, it can be expensive due to the interest.
- If you return to teaching you will have Disability and Survivor Benefit Coverage B, even if you had Coverage A before the refund.

RETIREMENT EXAMPLE

Joanne taught for six years fresh out of college but now she's leaving for employment in the private sector. She plans to retire eventually at age 63.

6 years of earned service credit

0.024 percentage based on age at retirement

\$3,333 highest average monthly teaching salary for three consecutive years

\$480 highest or unmodified lifetime monthly benefit

Estimate your CalSTRS retirement benefit online at the CalSTRS Web site (www.calstrs.com)

*The other California public retirement systems are those for legislators, public employees covered by CalPERS, San Francisco city and county employees, University of California employees and those systems established under the County Employees' Retirement Law of 1937. (Contact CalSTRS for the provisions of this type of retirement.)

The summarized information pertains to the Teachers' Retirement Law and is meant as a guide. If any conflicts arise between this information and the law, the law takes precedence.

CALSTRS
HOW WILL YOU SPEND YOUR FUTURE?

Contact Us

WEB SITE

www.calstrs.com

Use Contact Us to e-mail

WRITE

CalSTRS

P.O. Box 15275

Sacramento, CA 95851-0275

CALL

800-228-5453

916-229-3541 for TTY

VISIT

Member Services

7919 Folsom Boulevard

Sacramento, CA 95826

FAX

916-229-3879



CALSTRS
HOW WILL YOU SPEND YOUR FUTURE?

Tax Considerations for Rollovers

INCOME TAX WITHHOLDING INFORMATION WHEN RECEIVING:

- Refunds • Defined Benefit Supplement Payments • Partial Lump-Sum Payments
- Survivor Benefits • Cash Balance Benefits

2005-2006

Purpose

This notice explains how you can continue to defer federal income tax liability on your contributions in the California State Teachers' Retirement Plan (the "plan") and contains important information you will need before you decide how to receive your Plan benefits.

This notice is provided to you by the California State Teachers' Retirement System (CalSTRS) (your "plan administrator") because all or part of the payment that you will soon receive from the Plan may be eligible for rollover to a traditional IRA or an eligible employer plan. A rollover is a payment by you or a plan administrator of all or part of your benefit to another plan or IRA that allows you to continue to postpone taxation of that benefit until it is paid to you. Your payment cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account (formerly known as an education IRA).

An "eligible employer plan" means a plan qualified under Section 401(a) of the Internal Revenue Code, including a Section 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; a Section 403(a) annuity plan; a Section 403(b) tax-sheltered annuity; and an eligible Section 457(b) plan maintained by a governmental employer (governmental Section 457 plan).

An eligible employer plan is not legally required to accept a rollover. Before you decide to roll over your payment to another employer plan, you should find out whether the plan accepts rollovers and, if so, the types of distributions it accepts as a rollover. You should also find out about any documents that are required to be completed before the receiving plan will accept a rollover. Even if a plan accepts rollovers, it might not accept rollovers of certain types of distributions, such as after-tax amounts. If this is the case, and your distribution includes after-tax amounts, you may wish instead to roll over your distribution to a traditional IRA or split your rollover amount between the employer plan in which you will participate and a traditional IRA. If an employer plan accepts your rollover, the plan may restrict subsequent distributions of the rollover amount or may require your spouse's consent for any subsequent distribution. A subsequent distribution from the plan that accepts your rollover also may be subject to different tax treatment than distributions from CalSTRS. Check with the administrator of the plan that is to receive your rollover prior to requesting a rollover.

If you have additional questions after reading this notice, you may contact us at 1-800-228-5453.

CalSTRS strongly suggests that you consult the Internal Revenue Service and the California Franchise Tax Board or a professional tax advisor before you take a payment of your benefits from your Plan.

If there is a conflict between this publication and the law, the law takes precedence.

See back cover for more information.

Summary

There are two ways you may be able to receive a plan payment that is eligible for rollover:

1. Certain payments can be made directly to a traditional IRA that you establish or to an eligible employer plan that will accept it and hold it for your benefit ("DIRECT ROLLOVER"); or
2. The payment can be PAID TO YOU.

If you choose a DIRECT ROLLOVER:

- Your payment will not be taxed in the year it is rolled over and no income tax will be withheld.
- You choose whether your payment will be made directly to your traditional IRA or to an eligible employer plan that will accept your rollover. Your payment cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account because these are not traditional IRAs.
- The taxable portion of your payment will be taxed later when you receive it from the traditional IRA or the eligible employer plan. Depending on the type of plan, the later distribution may be subject to different tax treatment than it would be if you received a taxable distribution from CalSTRS.

If you choose to have a plan payment that is eligible for rollover PAID TO YOU:

- You will not receive all of the taxable amount of the payment, because the plan administrator is required to withhold 20% of that amount and forward it to the IRS as income tax withholding to be credited against your federal tax liability. CalSTRS also will withhold 6% of the taxable amount and forward it to the California Franchise Tax Board to be credited against your California tax liability unless you request not to have state withholding. Combined, 26% would be withheld. While California tax withholding is optional, federal withholding is mandatory.
- The taxable amount of your payment will be taxed in the year it is paid unless you roll it over. Under limited circumstances, you may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59½, you may have to pay an additional 10% federal and an additional 2.5% California tax for early distribution. Combined, the additional tax would be 12.5%.

The early distribution tax does not apply to distributions from a qualified retirement plan (like CalSTRS) if you separate from service in or after the year you reach age 55 even if you take a distribution before reaching age 59½. However, if you separate from service with your employer prior to age 55, the early distribution tax would apply if you take a distribution prior to age 59½.

- You can roll over all or part of the payment to your traditional IRA or to an eligible employer plan that will accept your rollover within 60 days after you receive the payment. You will not have a tax liability on the amount rolled over until you receive it from the traditional IRA or the eligible employer plan.
- If you want to roll over 100% of the payment to a traditional IRA or an eligible employer plan, you must find other money to replace the 20% (or 26%, whichever is applicable) of the taxable portion that was withheld. If you roll over only the 80% (or 74%) that you received, you will be taxed on the amount that was withheld and was not rolled over.

30-DAY NOTICE PERIOD

Generally, neither a direct rollover nor a payment to you can be made from the plan until at least 30 days after you receive this notice. Thus, after receiving this notice, you have at least 30 days to consider whether or not to have your distribution directly rolled over. If you do not wish to wait until this 30-day notice period ends before your election is processed, you may waive the notice period by requesting a direct rollover. Your distribution will then be processed in accordance with your election as soon as practical after it is received by CalSTRS.

More Information

I. PAYMENTS THAT CAN AND CANNOT BE ROLLED OVER

Some payments from CalSTRS are "eligible rollover distributions." This means that they can be rolled over to a traditional IRA or to an eligible employer plan that accepts rollovers. Payments from a plan cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account.

After-Tax Contributions

If you made after-tax contributions to CalSTRS, these contributions may be rolled into either a traditional IRA or to certain employer plans that accept rollovers of after-tax contributions. The following rules apply:

- a. **Rollover into a Traditional IRA.** You can roll over your after-tax contributions to a traditional IRA either directly or indirectly. CalSTRS will tell you how much of your payment is the taxable portion and how much is the after-tax portion. If you roll over after-tax contributions to a traditional IRA, it is your responsibility to keep track of, and report to the Internal Revenue Service on the applicable forms, the amount of these after-tax contributions. This will enable the nontaxable amount of any future distributions from the traditional IRA to be determined. Once you roll over your after-tax contributions to a traditional IRA, those amounts CANNOT later be rolled over to an employer plan.
- b. **Rollover into an Employer Plan.** You can roll over after-tax contributions from an employer plan that is qualified under Internal Revenue Code Section 401(a) or a Section 403(a) annuity plan to another such plan using a direct rollover if the other plan provides separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions. You can also roll over after-tax contributions from a Section 403(b) tax-sheltered annuity to another Section 403(b) tax-sheltered annuity using a direct rollover if the other tax-sheltered annuity provides separate accounting for amounts rolled over, including separate accounting for the after-tax employee contributions and earnings on those contributions. You CANNOT roll over after-tax contributions to a governmental Section 457 plan. If you want to roll over your after-tax contributions to an employer plan that accepts these rollovers, you cannot have the after-tax contributions paid to you first. You

must instruct CalSTRS to make a direct rollover on your behalf. Also, you cannot first roll over after-tax contributions to a traditional IRA and then roll over that amount into an employer plan.

The following types of payments cannot be rolled over:

Payments Spread over Long Periods

You cannot roll over a payment if it is part of a series of equal (or almost equal) payments ("periodic payments") that are made at least once a year and that will last for:

- your lifetime (or a period measured by your life expectancy), or
- your lifetime and your beneficiary's lifetime (or a period measured by your joint life expectancies), or
- a period of 10 years or more.

Required Minimum Distribution

Beginning when you reach age 70½ or retire, whichever is later, a certain portion of your payment cannot be rolled over because it is a "required minimum distribution" that must be paid to you pursuant to federal law.

CalSTRS will tell you if your payment includes amounts that cannot be rolled over.

II. DIRECT ROLLOVER

A DIRECT ROLLOVER is the direct payment of the amount of your plan benefits to a traditional IRA or an eligible employer plan that will accept it. You can choose a DIRECT ROLLOVER of all or any portion of your payment that is an eligible rollover distribution, as described in Part I above. You are not taxed on any taxable portion of your payment for which you choose a DIRECT ROLLOVER until you later take it out of the traditional IRA or eligible employer plan. In addition, no income tax withholding is required for any taxable portion of your plan benefits for which you choose a DIRECT ROLLOVER. A plan is not required to let you choose a DIRECT ROLLOVER if your distributions for the year are less than \$200.

Direct Rollover to a Traditional IRA

You can open a traditional IRA to receive the direct rollover. If you choose to have your payment made directly to a traditional IRA, contact an IRA sponsor (usually a financial institution) to find out how to have your

payment made in a direct rollover to a traditional IRA at that institution. If you are unsure of how to invest your money, you can temporarily establish a traditional IRA to receive the payment. However, in choosing a traditional IRA, you may wish to make sure that the traditional IRA you choose will allow you to move all or a part of your payment to another traditional IRA at a later date, without penalties or other limitations. See IRS Publication 590, Individual Retirement Arrangements, for more information on traditional IRAs (including limits on how often you can roll over between IRAs).

Direct Rollover to a Plan

If you are employed by a new employer that has an eligible employer plan, and you want a direct rollover to that plan, ask the administrator of that plan whether it will accept your rollover. An eligible employer plan is not legally required to accept a rollover. If the employer plan accepts your rollover, the plan may impose restrictions on the circumstances under which you may later receive a distribution of the rollover amount or may require spousal consent before any subsequent distribution. Check with the administrator of that plan before making your decision. Even if your new employer's plan does not accept a rollover, you can choose a DIRECT ROLLOVER to a traditional IRA.

Direct Rollover of a Series of Payments

If you receive a payment that can be rolled over to a traditional IRA or an eligible employer plan that will accept it, and it is paid in a series of payments for less than 10 years, your choice to make or not make a DIRECT ROLLOVER for a payment will apply to all later payments in the series until you change your election. You are free to change your election for any later payment in the series.

Change in Tax Treatment Resulting from a Direct Rollover

The tax treatment of any payment from the eligible employer plan or traditional IRA receiving your DIRECT ROLLOVER might be different than if you received your benefit in a taxable distribution directly from CalSTRS. For example, if you were born before January 1, 1936, you might be entitled to ten-year averaging or capital gain treatment, as explained below. However, if you have your benefit rolled over to a Section 403(b) tax-sheltered annuity, a governmental Section 457 plan, or a traditional IRA in a DIRECT ROLLOVER, your benefit will no longer be eligible for that special treatment. See

the sections below entitled "Additional 10% Tax on Early Distributions" and "Special Tax Treatment if You Were Born before January 1, 1936."

III. PAYMENT PAID TO YOU

If your payment can be rolled over (see Part I above) and the payment is made to you in cash, it is subject to 20% federal income tax withholding on the taxable portion. California state income tax of 6% will also be withheld unless you tell CalSTRS not to withhold state tax. The payment is taxed in the year you receive it unless, within 60 days, you roll it over to a traditional IRA or an eligible employer plan that accepts rollovers. If you do not roll over the payment, special tax rules may apply.

INCOME TAX WITHHOLDING:

Mandatory Withholding

If any portion of your payment can be rolled over under Part I above and you do not elect to make a DIRECT ROLLOVER, CalSTRS is required by law to withhold 20% of the taxable amount of the payment. The withheld amount is sent to the IRS to be applied to your federal income tax liability. For example, if you can roll over a taxable payment of \$10,000, CalSTRS must withhold \$2,000 as federal income tax. In addition, CalSTRS will withhold 6% of the taxable amount and forward it to the California Franchise Tax Board to be credited against your California income tax liability unless you request that state withholding not be applied. However, when you prepare your income tax returns for the year, unless you make a rollover within 60 days (see "Sixty-Day Rollover Option" below), you must report the full \$10,000 as a taxable payment from CalSTRS. You must report \$2,000 as federal tax withheld and \$600 as state tax withheld, and the amounts withheld will be credited against any income tax you owe for the year. While federal withholding is required, you may elect not to have California tax withheld. No income tax will be withheld if your payments from CalSTRS for the year are less than \$200.

Voluntary Withholding

If any portion of your payment is taxable but cannot be rolled over as described in Part I above, the mandatory withholding rules stated above do not apply. In this case, you may elect not to have withholding apply to that portion. If you do nothing, both federal and state

income tax withholding will be taken out of this portion of your payment. To elect out of state withholding if your distribution will be made from the Defined Benefit (DB) Program, ask CalSTRS for the *Income Tax Withholding Preference Certificate*. To elect out-of-state withholding if your distribution will be made from the Cash Balance (CB) Benefit Program, ask for form CB 584.

Sixty-Day Rollover Option

If you receive a payment that could have been rolled over, you can still decide to roll over all or part of it to a traditional IRA or to an eligible employer plan that accepts rollovers. If you decide to roll over the payment, you must contribute the amount of the payment you received to a traditional IRA or eligible employer plan within 60 days after you received the payment. The portion of your payment that is rolled over will not be taxed until you take it out of the traditional IRA or the eligible employer plan.

You can roll over up to 100% of your eligible rollover distribution, including an amount equal to the taxable portion that was withheld. If you choose to roll over 100%, you must find other money within the 60-day period to contribute to the traditional IRA or the eligible employer plan, to replace the amount that was withheld. If you roll over only the amount of the taxable portion that you received, you will be taxed on the amount that was withheld.

Example: Assume the taxable portion of your payment that can be rolled over is \$10,000, and you choose to have it paid to you. After 20% is withheld for federal tax and 6% is withheld for California tax, you will receive \$7,400. The amount withheld (\$2,600) will be sent to the IRS and the California Franchise Tax Board as income tax withholding. Within 60 days after receiving the \$7,400, you may roll over the entire \$10,000 to a traditional IRA or an eligible employer plan. To do this, you would roll over the \$7,400 you received from CalSTRS, and you would add \$2,600 from other sources (your savings, a loan, etc.). In this case, the entire \$10,000 is not taxed until you take it out of the traditional IRA or the eligible employer plan. If you roll over the entire \$10,000, when you file your income tax return you may get a refund of part or all of the \$2,600 withheld.

If, on the other hand, you roll over only \$7,400, the \$2,600 you did not roll over will be taxed in the year it was withheld. When you file your income tax return, you may still get a refund of part of the \$2,600 withheld. However, any refund is likely to be larger if you roll over the entire \$10,000.

Additional Tax on Early Distributions

An early distribution is subject to an additional federal tax of 10% as well as an additional California tax of 2.5% of the taxable portion of the distribution if the distribution is eligible for rollover and is not rolled over. An "early distribution" is a payment made before you reach age 59½. However, payments from a qualified plan (such as CalSTRS) that are made after you separate from service with your employer if the separation from service occurs during or after the year in which you reach age 55 are not subject to an early distribution tax.

Other exceptions to the early distribution tax include the following types of payments:

- payments that are made because you retire due to disability
- payments that are made as equal (or almost equal) payments over your life or life expectancy (or, the lives of you and your beneficiary or the life expectancies of you and your beneficiary)
- dividends paid with respect to stock by an employee stock ownership plan (ESOP) as described in Section 404(k) of the Internal Revenue Code
- amounts that are paid directly to the government to satisfy a federal tax levy
- amounts that are paid to an alternate payee under a qualified domestic relations order
- payments that do not exceed the amount of your deductible medical expenses.

Refer to IRS Publication 575 and IRS Form 5329 for more information on the additional 10% federal tax.

The additional tax on early distributions will not apply to distributions from a governmental Section 457 plan, except to the extent the distribution is attributable to an amount you rolled over to that plan (adjusted for investment returns) from another type of eligible employer plan or IRA. Any amount rolled over from a governmental Section 457 plan to another type of eligible employer plan or to a traditional IRA will become subject to the additional 12.5% combined tax if it is distributed to you before you reach age 59½, unless one of the exceptions above applies.

Special Tax Treatment if You Were Born before January 1, 1936

If you receive a payment from a plan qualified under Section 401(a) or a Section 403(a) annuity plan that can be rolled over and you do not roll it over to a traditional IRA or an

eligible employer plan, the payment will be taxed in the year you receive it. However, if the payment qualifies as a "lump-sum distribution," it may be eligible for special tax treatment. A lump-sum distribution is a payment, within one year, of your entire balance under the plan (and certain other similar plans of the employer) that is payable to you after you have reached age 59½ or because you have separated from service with your employer (or, in the case of a self-employed individual, after you have reached age 59½ or have become disabled). For a payment to be treated as a lump-sum distribution, you must have been a participant in the plan for at least five years before the year in which you received the distribution. The special tax treatment for lump-sum distributions that may be available to you is described below.

Ten-Year Averaging

If you receive a lump-sum distribution and you were born before January 1, 1936, you can make a one-time election to figure the tax on the payment by using "10-year averaging" (using 1986 tax rates). Ten-year averaging often reduces the tax you owe.

Capital Gain Treatment

If you receive a lump-sum distribution and you were born before January 1, 1936, and you were a participant in the plan before 1974, you may elect to have the part of your payment that is attributable to your pre-1974 participation in the plan taxed as long-term capital gain at a rate of 20%.

There are other limits on the special tax treatment of lump-sum distributions. For example, you can generally elect this special tax treatment only once in your lifetime, and the election applies to all lump-sum distributions that you receive in that same year. You may not elect this special tax treatment if you rolled amounts into CalSTRS from a Section 403(b) tax-sheltered annuity contract, a governmental Section 457 plan, or from an IRA not originally attributable to a qualified employer plan. If you have previously rolled over a distribution from CalSTRS, you cannot use this special averaging treatment for later payments from CalSTRS. If you roll over your payment to a traditional IRA, governmental Section 457 plan, or Section 403(b) tax-sheltered annuity, you will not be able to use special tax treatment for later payments from that IRA, plan, or annuity. Also, if you roll over only a portion of your payment to a traditional IRA, governmental

Section 457 plan, or Section 403(b) tax-sheltered annuity, this special tax treatment is not available for the rest of the payment. See IRS Form 4972 for additional information on lump sum distributions and how you elect the special tax treatment.

IV. SURVIVING SPOUSES, ALTERNATE PAYEES, AND OTHER BENEFICIARIES

In general, the rules summarized above that apply to payments to employees also apply to payments to surviving spouses of employees and to spouses or former spouses who are "alternate payees." You are an alternate payee if your interest in the plan results from a "qualified domestic relations order," which is an order issued by a court, usually in connection with a divorce or legal separation.

If you are a surviving spouse or an alternate payee, you may choose to have a payment that can be rolled over, as described in Part I above, paid in a DIRECT ROLLOVER to a traditional IRA or to an eligible employer plan or paid to you. If you have the payment paid to you, you can keep it or roll it over yourself to a traditional IRA or to an eligible employer plan. Thus, you have the same choices as the employee.

If you are a beneficiary other than a surviving spouse or an alternate payee, you cannot choose a direct rollover, and you cannot roll over the payment yourself.

If you are a surviving spouse, an alternate payee, or another beneficiary, your payment is generally not subject to the additional 12.5% combined federal and California tax that applies to early distributions, even if you are younger than age 59½.

If you are a surviving spouse, an alternate payee, or another beneficiary, you may be able to use the special tax treatment for lump-sum distributions as described in Part III above. If you receive a payment because of the employee's death, you may be able to treat the payment as a lump-sum distribution if the employee met the appropriate age requirements, whether or not the employee had 5 years of participation in the plan.

HOW TO OBTAIN ADDITIONAL INFORMATION

This notice only summarizes the federal tax rules that might apply to your payment and provides limited information on California state tax rules. The rules described herein are complex and contain many conditions and exceptions that are not included in this brochure. CalSTRS strongly suggests that you consult the Internal Revenue Service and the California Franchise Tax Board or a professional tax advisor before you take a payment of your benefits from your plan. Also, you can find more specific information on the tax treatment of payments from qualified employer plans in IRS Publication 575, Pension and Annuity Income; and IRS Publication 590, Individual Retirement Arrangements. These publications are available from your local IRS office, on the IRS's Internet Web site at www.irs.gov, or by calling 1-800-TAX-FORMS.



California State Teachers' Retirement System
P.O. Box 15275
Sacramento, CA 95851-0275
800-228-5453/TTY 916-229-3541
www.calstrs.com

♻️ Printed on recycled paper (MS-1357 REV 8/05)

ATTACHMENT 4



HOW WILL YOU SPEND YOUR FUTURE?

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM
P.O. BOX 15275 SACRAMENTO CA 95851-0275
TOLL FREE 1-800-228-5453
OR (916) 229-3870
TDD HEARING IMPAIRED (916) 229-3541

RETIREMENT SYSTEM ELECTION

ES 372 (06/04)

PLEASE READ THE ATTACHED INSTRUCTIONS BEFORE COMPLETING THIS FORM PLEASE TYPE OR PRINT LEGIBLY IN DARK INK. CalSTRS USE ONLY

TO BE COMPLETED BY EMPLOYEE

Name: (Last) (First) (Initial) Social Security Number:

BIRTHDATE (Mo/Day/Yr) EFFECTIVE DATE (Mo/Day/Yr) POSITION TITLE
o Credentialed
o Classified
o State Service

Employment in the California public school system is generally subject to coverage by either the California State Teachers' Retirement System (CalSTRS) or the California Public Employees' Retirement System (CalPERS). Employment in a position to perform "creditable service," as defined in Education Code Section 22119.5, is usually credited in CalSTRS, while classified (non-certificated) employment is usually credited in CalPERS.
A member of CalSTRS who becomes employed by the same or a different school district, a community college district, a county superintendent of schools or limited state employment to perform service that qualifies for membership in CalPERS will have that service credited with CalPERS unless he/she files a written election (within 60 days of the effective date of employment in the new position) to have the service credited with CalSTRS.
A member of CalPERS who is employed by a school employer, Board of Governors of Community College Districts or State Department of Education or has at least five years of CalPERS credited service and who subsequently becomes employed to perform service that qualifies for membership in CalSTRS, will have that service credited with CalSTRS unless he/she files a written election (within 60 days of the effective date of employment in the new position) to have the service credited with CalPERS.

You are a member of CalSTRS who has accepted employment in a position that qualifies for membership in CalPERS but you may elect to continue retirement system coverage under CalSTRS. Please enter an "X" in the box below if you wish to continue coverage under CalSTRS.
[] CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

OR

You are a member of CalPERS who has accepted employment in a position that qualifies for membership in CalSTRS but you may elect to continue coverage under CalPERS. Please enter an "X" in the box below if you wish to continue coverage under CalPERS.
[] CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

I fully understand that this election is irrevocable for all of my subsequent classified school service, limited state service and CalSTRS creditable service.

EMPLOYEE SIGNATURE DATE
EMPLOYER CERTIFICATION
CO/DIST/STATE DEPT NAME CO/DIST CODE OR STATE DEPT
SCHOOL/STATE OFFICIAL'S NAME TITLE
SIGNATURE OF SCHOOL/STATE OFFICIAL DATE
COUNTY OFFICIAL'S NAME TITLE
SIGNATURE OF COUNTY OFFICIAL DATE

CALSTRS

HOW WILL YOU SPEND YOUR FUTURE?

RETIREMENT SYSTEM ELECTION

Read the attached instructions and information for retirement system coverage before completing the Retirement System Election. Keep a copy of the instructions and information sheet for your records. Please use a black ink pen or typewriter when completing the application.

TELEPHONE NUMBERS:

TOLL FREE 1-800-228-5453
OR (916) 229-3870
TDD Hearing Impaired
(916) 229-3541

MAILING ADDRESS:

CalSTRS
MAIL STATION #16
P.O. BOX 15275
SACRAMENTO, CA 95851-0275

(ES 372 06/04)

INSTRUCTIONS AND INFORMATION FOR RETIREMENT SYSTEM ELECTION

The following instructions are to assist you and your employer in completing the Retirement System Election (Form # ES 372). The first section of the form must be completed by you with assistance from your employer. Please complete all entries above the Employer Certification section.

EMPLOYEE INSTRUCTIONS

- I. Press firmly and print clearly with **DARK INK**, or type all information requested. Do not use light colors of ink, pencil, felt pen, or erasable ink.
- II. If you should make a mistake on the Retirement System Election form, line through the error and initial.
- III. Enter your full name, Social Security Number, birth date, effective date of the change in employment status and position type.
- IV. **EFFECTIVE DATE** is the first date that service was or will be performed in the new position.
- V. **RETIREMENT SYSTEM COVERAGE** If you are a member of CalSTRS and have accepted employment in a position subject to membership in CalPERS, enter an "X" in the box preceding "CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM" only if you wish to have all subsequent public school service and limited state employment covered by CalSTRS. If you are a member of CalPERS and have accepted employment in a position subject to membership in CalSTRS, enter an "X" in the box preceding CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM" only if you wish to have all subsequent CalSTRS creditable service covered by CalPERS.
- VI. **EMPLOYEE SIGNATURE** sign and date the Retirement System Election form.
- VII. **SUBMIT** the Retirement System Election form to your employer. Retain a copy for your records.

For further information, you may contact our office at (916) 229-3870, toll Free 1-800-228-5453, TDD for the Hearing Impaired (916) 229-3541 or by writing us at the above address.

Should you find it necessary to contact us, your correspondence should include your Social Security number, full name, address, and daytime telephone number.

EMPLOYER INSTRUCTIONS

Please complete the EMPLOYER CERTIFICATION only after the employee has completed the required employee information.

CO/DIST CODE/STATE DEPARTMENT – Enter the appropriate county and district codes. Example: Kern County, Edison Elementary would be 15-012, CA Department of Education 59-174.

EMPLOYER CERTIFICATION – Print official's name and title, sign and date the Retirement System Election form.

SUBMIT the completed Retirement System Election form to the County Office of Education or if you represent a state department send it directly to CalSTRS and send a copy to CalPERS.

COUNTY OFFICE OF EDUCATION

Review, sign and date the Retirement System Election.

Mail the original Retirement System Election to the retirement system elected by the employee, and a copy to the retirement system that would normally cover the service. Provide copies for the employer, employee and employee's file.

INFORMATION

A member of the CalSTRS Defined Benefit Plan who becomes employed by a school district, a community college district, a county superintendent of schools or limited state departments to perform service that is subject to coverage by the California Public Employees' Retirement System (CalPERS) may elect to receive credit under the CalSTRS Defined Benefit Program for such service by submitting a Retirement System Election form to CalSTRS, within 60 days of the effective date of employment in the position requiring membership in the other system. If the CalSTRS member does not elect to continue as a member of CalSTRS, all service subject to coverage by CalPERS will be reported to that retirement system.

A member of CalPERS who was employed by a school employer, Board of Governors of California Community Colleges, or State Department of Education or has at least five years of CalPERS credited service and who accepts employment to perform creditable service subject to coverage by the CalSTRS Defined Benefit Program, may elect to receive credit under CalPERS for such service by submitting a Retirement System Election form to CalPERS, within 60 days of the effective date of employment in the position to perform CalSTRS creditable service. If the CalPERS member does not elect to continue as a member of CalPERS, all CalSTRS creditable service will be reported to CalSTRS.

The effective date of membership is the first day of the pay period in which qualifying service is performed. The election is irrevocable and all subsequent qualifying service will be reported to the elected retirement system.



Join CalSTRS? Join CalPERS?

DECIDE WHICH RETIREMENT SYSTEM IS BEST FOR YOU



ASK your employer for the publication
CalSTRS Member Handbook

CALL 800-228-5453
and request Teletalk message #152

GO ONLINE for any legislative changes under
consideration: www.calstrs.com

ASK your employer for the publication
CalPERS School Members

CALL Customer Service
888-CalPERS (225-7377)

GO ONLINE for any legislative changes under
consideration: www.calpers.ca.gov

*This guide is based on the Teachers' Retirement Law and the
Public Employees' Retirement Law as of January 1, 2006. If you
find a conflict between this information and the law, the law takes
precedence.*

Retirement Planning

If you are changing from employment covered by either CalSTRS or CalPERS to employment covered by the other system, you can choose to be covered by either system or both. You have 60 days to decide. Study this brochure, compare and then decide which system works best for you. The California State Teachers' Retirement System? Or the California Public Employees' Retirement System? Or both? This brochure can help you decide. Both retirement systems are defined benefit plans, but with differences this brochure will outline and explain. So please read the information and compare the two systems before making a decision.

Remember, you have only 60 days from your hire date to make sure you keep your current retirement system.

Keep Your Current Retirement System

To retain your current retirement system, you need to complete a *Retirement System Election* form, provided by your employer.

Change to New Retirement System

Do nothing and you will automatically become a member of the retirement system covering your new position.

If you become a member of the new retirement system, you have another decision to make regarding your old retirement system.

1 You can retain your account with the old retirement system, which would give you dual membership in both systems. You could then retire from both at the same time for a "concurrent" retirement. For information on the rights and benefits of dual membership, see pages 8 and 9.

2 You could take a refund of your account in the old system. CalSTRS and CalPERS have different refund restrictions, which are described on page 8. Remember, if you take a refund, you forfeit all rights to benefits from that system.

You have 60 days
from your hire
date to retain
your current
retirement system



Answering Your Questions

1. How is my retirement allowance calculated?

CalSTRS & CalPERS — Both systems base the retirement allowance on your years of service in the retirement program, your retirement age (using a mathematical age factor) and your final compensation at retirement. The formula is: years of service X age factor X final compensation = Unmodified Retirement Allowance.

The Difference — No difference in the formula.

2. When can I retire?

CalSTRS — At age 55 with five years of service credit or as early as age 50 with 30 or more years of service credit.

CalPERS — At age 50 with five years of service.

The Difference — CalSTRS members who have less than 30 years of service cannot retire until age 55; CalPERS members may retire at age 50.

3. How will my final compensation be determined?

CalSTRS — Based on highest average annual compensation earnable for 12 consecutive months if 25+ years' service credit or, if less than 25 years' service credit, 36 consecutive months. Districts have the option of basing final compensation for their teacher members on the highest 12 consecutive months, under specified conditions.

CalPERS — Based on highest average monthly pay rate for last consecutive 12 months.

The Difference — Final compensation for most CalSTRS members is generally based on the highest average annual compensation earnable for 12 consecutive months' earnings or 36 consecutive months if less than 25 years of service credit; final compensation for CalPERS members is based on the pay rate for 12 consecutive months.

4. What annual adjustments are made to my benefit?

CalSTRS — Each year's retirement allowance is increased by 2 percent of the initial retirement allowance. The Legislature has periodically authorized ad hoc annual benefit adjustments (formerly COLAs).

4. continued

Quarterly supplemental payments are made when the allowance falls below 80 percent of purchasing power.

CalPERS — The initial allowance is increased up to 2 percent per year, compounded annually, beginning the second calendar year of retirement, unless the rate of inflation is lower. The Legislature has periodically authorized ad hoc COLAs. Monthly supplemental payments are made when the allowance falls below 75 percent of purchasing power.

The Difference — CalSTRS annual benefit adjustment is not compounded; CalPERS COLA is compounded annually to reflect inflation and does not have a fixed rate. CalSTRS purchasing power protection is 80 percent and paid quarterly; CalPERS is 75 percent and paid monthly.

5. Can I work in education after I retire?

CalSTRS — A certificated employee retiring under CalSTRS generally cannot accept a classified position. The exception is a teacher's aide in certain circumstances. If you retire under CalSTRS and perform CalSTRS-covered employment, earning above \$27,940 affects your allowance. You are exempt from this earning limit until January 1, 2008, if you perform no CalSTRS-covered service for at least one year after retirement or if you provide remedial education or other specified classroom instruction.

CalPERS — If a certificated employee stays in CalPERS, then retires and accepts a classified or certificated position in a school district, generally the retirement allowance will be terminated if the employment exceeds 960 hours in a fiscal year.

The Difference — Both plans' retirement allowances can be affected by post-retirement work. For CalSTRS retirees, this means work in a certificated position; a CalPERS retiree's work affects both classified and certificated positions. Generally, a retired CalSTRS member cannot work in a classified position.

6. Does my system accumulate funds for me in a supplemental account?

CalSTRS — From January 1, 2001 to December 31, 2010, 25 percent of member contributions goes to a supplemental account. Funds are available when retiring or six months after termination of employment.

The Difference — CalSTRS members have a supplemental account; CalPERS members do not.

7. What is my retirement contribution, including Social Security and Medicare?

CalSTRS — You pay 8 percent of your salary, plus 1.45 percent for Medicare if you were hired on or after April 1, 1986, or if you opted to be covered by Medicare if offered by your employer. CalSTRS members do not participate in Social Security.

CalPERS — You pay 7 percent of your salary, plus 6.2 percent for Social Security and 1.45 percent for Medicare.

The Difference — CalSTRS members pay a total of up to 9.45 percent of their salary, but earn no credits for Social Security benefits. Most CalPERS members pay 14.65 percent of their salary and earn credits for Social Security benefits.

8. What is my employer's contribution?

CalSTRS — Your employer contributes 8.25 percent of salary plus 1.45 percent for Medicare if you were hired after April 1, 1986, or opted to be covered by Medicare if offered by your employer.

CalPERS — The rate of your employer's contribution varies from year to year. The fiscal year 2005–06 contribution rate is 9.116 percent, plus 1.45 percent for Medicare coverage and 6.2 percent for Social Security, if covered.

The Difference — The CalSTRS employer contribution is always a fixed percentage. CalPERS employer contributions are adjusted when necessary.

9. Do I earn an extra monthly benefit for a long career?

CalSTRS — With 30 or more years of service credit earned by December 31, 2010, your allowance will be increased by a longevity bonus:

Bonus Amount	Service Credit at Retirement
\$200/month	30 years
\$300/month	31 years
\$400/month	32+ years

The Difference— CalPERS does not offer a longevity bonus.

10. What are the age factors?

The age factors of the two retirement programs differ. CalSTRS adds a career factor of 0.2 percent to the age factor if you have 30 or more years of service credit, up to a total of 2.4 percent; CalPERS does not offer a career factor.

CalSTRS (without career factor) [†]			
Age	Percent*	Age	Percent*
50	1.10†	57	1.64
51	1.16†	58	1.76
52	1.22†	59	1.88
53	1.28†	60	2.00
54	1.34†	61	2.133
55	1.40	62	2.267
56	1.52	63+	2.400

CalPERS			
Age	Percent	Age	Percent
50	1.10	57	2.126
51	1.28	58	2.188
52	1.46	59	2.250
53	1.64	60	2.314
54	1.82	61	2.376
55	2.00	62	2.428
56	2.064	63+	2.500

* Career factor — add 0.2 percent to the age factor for 30 or more years of service credit, up to a total of 2.4 percent

† Must have 30 or more years of service credit to retire

11. What additional service credit can I buy?

CalSTRS — You can buy service credit for:

- Redeposit of withdrawn funds
- Military service
- Job Corps service
- Teaching in a California university or state college
- Maternity, paternity, family or medical leave
- Service prior to membership in part-time or substitute work
- Fulbright or sabbatical leave
- Out-of-state teaching covered by a public pension plan
- Workers' Compensation
- Full-time paid Red Cross service
- Certificated teaching in a child care center, school for the blind or deaf, or in an Indian school
- Prior service covered under the Cash Balance Benefit Program
- Up to five years of nonqualified service credit, i.e., not related to prior employment, called "air time" (requires five years of CalSTRS service)

CalPERS — You can buy service credit for:

- Redeposit of withdrawn funds
- Military service
- Peace Corps, AmericaCorps or AmericaCorps VISTA service
- Educational or sabbatical leave
- California university, college, public agency or state employment
- Temporary job-related disability or illness
- Maternity or paternity leave
- Service prior to membership while serving a qualification period or while employed on a temporary, seasonal or less than half-time basis
- CETA service after July 1, 1979
- Employment as an elected or appointed official
- Leave to work in a local, state or foreign governmental agency or non-profit organization
- Lay-off periods from public agency employment

11. continued

- Service for time spent working for an employer before they began contracting with CalPERS.
- As of January 1, 2004, up to five years of nonqualified service credit not related to prior employment, called "air time" (requires five years of CalPERS service)

Please refer to the CalPERS Web site at www.calpers.ca.gov for additional information.

The Difference— In each system, you can buy service credit for some activities not covered by the other system.

12. Can I repurchase a previous refund?

CalSTRS — If you terminate CalSTRS membership, receive a refund of contributions and interest, and later return to membership, you can repurchase all, or some, of the service credit represented by the refund. The cost will include interest your refund amount would have earned.

If you refunded more than once, multiple refund costs are combined to arrive at a weighted average total cost.

CalPERS — If you terminate CalPERS membership, receive a refund of contributions and interest, and later return to membership, you can repurchase all, or some, of the service credit represented by the refund. The cost will include interest your refund amount would have earned.

If you refunded more than once, you may repurchase the service credit represented by the refund in reverse chronological order.

The Difference — If you terminate membership and later return, both systems allow you to repurchase all, or some, of the refunds you received. CalSTRS combines multiple refunds; CalPERS allows you to repurchase multiple refunds in reverse chronological order.

13. Do I participate in Social Security?

CalSTRS — No, and any Social Security benefits you earned in other employment may be reduced.

CalPERS — Yes, if you were hired after 1959. There are very few exceptions.

The Difference— CalSTRS members neither contribute to nor earn Social Security benefits. Also, CalSTRS-covered service may reduce previously earned Social Security benefits. Please refer to the Social Security Administration Web site, www.ssa.gov/gpo-wep, for additional information.

14. Will I have health care coverage in retirement?

CalSTRS & CalPERS — Is your district covered by the Public Employees' Medical and Hospital Care Act? Is there a contract between your bargaining unit and the district? If yes, you are eligible for health benefits if enrolled upon separation and if you retire within 120 days of your separation date. If you get health care from other sources, coverage depends on the bargaining agreement with the employee organization. Ask your personnel office about your health care coverage in retirement.

The Difference — Your coverage depends on the employee group's bargaining agreement with the district.

15. What disability benefits am I entitled to if I am unable to work?

CalSTRS — New CalSTRS members will be covered under Coverage B.

If you have five years of service credit (or one year if injured by a violent act on the job), your disability benefit is generally half your final compensation, plus 10 percent more for each eligible child, for a benefit total of up to 90 percent.

- *If you have Coverage A* — At age 60 your disability benefit ends. You will receive an ongoing benefit equal to the lesser of your disability benefit or a service retirement benefit.

To retain your current retirement system, you need to complete a Retirement System Election form provided by your employer.

- If you have Coverage B – You will receive a disability benefit as long as your disability continues.

CalPERS — If you are under age 60, have between five and 10 years of service credit, or 18.5 years or more of service credit, your disability formula is 1.8 percent X years of service X final compensation. If you have between 10 and 18.5 years of service, the Disability Retirement Benefit may be improved up to 33 $\frac{1}{3}$ percent. At age 55, a service retirement allowance is payable. You also may be eligible for disability benefits under Social Security.

The Difference — Disability benefits paid by CalSTRS are generally higher than those paid by CalPERS, but CalPERS members may be eligible for disability benefits under Social Security. In addition, CalSTRS benefits increase if there are dependent children; CalPERS does not provide coverage to dependent children.

16. What benefits do my survivors receive if I die before I am eligible to retire?

CalSTRS —

- If you have Coverage A and have at least one year of service credit, your designated beneficiary is entitled to a lump-sum payment, currently \$6,163. For a surviving spouse or registered domestic partner with dependent children, the monthly family allowance equals 40 percent of your final compensation plus 10 percent of final compensation for each dependent child under age 22 for a benefit total of up to 90 percent. The surviving spouse or partner with no eligible dependent children receives either a lump sum of the contributions and interest or a monthly

allowance based on what your service credit and final compensation would have been at age 60. If a family allowance is not payable, a lump sum of your contributions and interest is paid to your beneficiary.

- If you have Coverage B and have at least one year of service credit, your designated beneficiary is entitled to a lump-sum death benefit amount, currently \$24,652. If a monthly survivor benefit allowance is not payable, a lump-sum refund of your contributions and interest is paid to your designated beneficiary. If there is a surviving spouse or partner, he or she can choose between the lump-sum refund of your contributions and interest, or a monthly survivor benefit allowance equal to 50 percent of the allowance you would have received if you retired at age 60, but based on actual service credit and final compensation. If a spouse or partner elects the lump-sum refund, no allowances are payable to dependent children. If there are dependent children and the surviving spouse or partner receives a monthly allowance, an additional allowance, equal to 10 percent of final compensation, is paid for each child under age 21, up to a maximum of 50 percent for five or more children.

CalPERS — Your survivors receive the Basic Death Benefit equivalent to a return of your contributions and interest, plus a month of salary for each year of service up to a maximum of six months' salary. Members not covered by Social Security may be eligible for an additional monthly allowance of up to \$1,800 payable to an eligible surviving spouse or registered domestic partner who has care of unmarried children under age 22, to unmarried children under age 22, to an eligible surviving spouse or partner over age 60 or to dependent parents. To be eligible for this benefit, member must have been paying a fee (generally \$2 per month). Members covered by Social Security may be eligible for survivor benefits.

The Difference — Under CalSTRS, a surviving spouse or registered domestic partner may choose a lump-sum payment or a monthly allowance, with additional provisions for dependent children. CalPERS pays a monthly allowance to a surviving spouse, partner or children only if special qualifications are met. Social Security may provide survivor benefits to survivors of CalPERS members covered by Social Security.

17. What benefits do my survivors receive if I am eligible to retire, but die BEFORE I retire?

CalSTRS — If you did not elect a retirement option, your survivors receive the same coverage as given in #16. If you did elect a pre-retirement option, your option beneficiary(ies) receives an allowance based on the option chosen. There are seven joint and survivor options.

CalPERS — Your survivors receive the Basic Death Benefit equivalent to a return of your contributions and interest, plus up to a maximum of six months' pay. Or, a spouse/registered domestic partner to whom you have been married to or in a partnership with for at least one year prior to your death or before the occurrence of the injury or the onset of the illness that resulted in your death, or your unmarried children under 18, can receive a monthly benefit equal to one-half of what your highest service retirement allowance would have been had you retired on the date of death. The survivor can receive only one, not both, of these benefits. Members not covered by Social Security may be eligible for an additional monthly allowance of up to \$1,800 payable to an eligible surviving spouse or registered domestic partner who has care of unmarried children under age 22, to unmarried children under age 22, to an eligible surviving spouse or registered domestic partner over age 60 or to dependent parents. To be eligible for this benefit, the member must have been paying a fee (generally \$2 per month). If you are a state employee rather than a school employee, check with CalPERS because these benefits may vary.

The Difference — CalSTRS allows you to make a pre-retirement election of an option and name any person to receive an ongoing monthly allowance. Under CalPERS, you cannot make a pre-retirement election of an option. In the absence of a pre-retirement election of an option, both systems provide survivor benefits to specific family members. The amounts paid to survivors may be higher or lower than the other system, depending on family circumstances.

18. What benefits do my survivors receive if I die AFTER I retire?

CalSTRS — Your beneficiary's lump-sum death benefit amount is currently \$6,163. Also, if you elected a modified allowance, under an option, the option beneficiary's(ies) allowance is based on the option you chose. If you did not elect to receive a modified allowance, your beneficiary is refunded the unspent contributions and interest that remain in your account. There are seven joint and survivor options.

CalPERS — Your beneficiary's lump-sum death benefit is generally \$2,000.* If you elected the option specifically providing a return of unused contributions, your beneficiary will be refunded any remaining contributions and interest. In addition, an eligible family member receives a survivor's continuance allowance, equal to 25 percent of your unmodified retirement allowance (if service is coordinated with Social Security), or 50 percent of the unmodified allowance (if service is not coordinated with Social Security). If you elected a modified allowance, the beneficiary allowance paid is based on the option you elected.

* School employers can contract for a \$2,000, \$3,000, \$4,000 or \$5,000 lump-sum benefit.

The Difference — CalSTRS has a higher lump-sum death benefit than CalPERS. CalPERS pays an additional "survivor continuance" allowance, regardless of whether you elected a modified or unmodified allowance. Both systems generally have the same options available for beneficiary allowances.



Dual Membership

You may decide to have your new employment covered by the other retirement system. You then have the additional decision of whether to retain your account in the old retirement system or take a refund. By taking a refund, you lose all benefits under that retirement system. This action can have serious implications for your retirement lifestyle later and should be carefully considered. To assist you in making this decision, below is an overview of the rights and benefits of a person who is a member of both CalSTRS and CalPERS.

Rights and Benefits under CalSTRS	Rights and Benefits under CalPERS
<p>Concurrent Retirement</p> <p>You may retire from a concurrent retirement system and at a later date from CalSTRS and still receive concurrent benefits as long as there is no credited service performed in either system between the two retirement dates.</p>	<p>You may retire from a concurrent retirement system and at a later date from CalPERS and still receive concurrent benefits.</p>
<p>Changing Retirement Systems</p> <p>You may leave service and contributions on deposit and become a member of CalPERS, UCRS, LRS, SFCCRS or 1937 Act County Retirement System.</p>	<p>You may leave service and contributions on deposit and become a member of CalSTRS, UCRS, LRS, JRSI, JRSII or 1937 Act County or local public retirement systems.</p>
<p>Redeposit Rights</p> <p>If you were a member of CalSTRS and refunded, you are eligible to redeposit all or a portion of withdrawn contributions and interest if you are a member of CalPERS, UCRS, LRS, SFCCRS or 1937 Act County Retirement System.</p> <p>A former CalSTRS member does not have to be employed by a CalSTRS employer while paying for the redeposit. Once payment on the redeposit is complete, the person is reestablished to active member status.</p>	<p>If you were a member of CalPERS and refunded, you have a right to redeposit previously withdrawn contributions in CalPERS to reestablish service credit and membership if you are now a member of a reciprocal or non-reciprocal system.</p> <p>A former CalPERS member does not have to be employed by a CalPERS employer while paying for the redeposit.</p>
<p>Refund Restriction</p> <p>You are eligible to withdraw your CalSTRS contributions and interest upon termination of CalSTRS-covered employment. You must contact the other retirement system to determine the impact of a refund on status with that system.</p>	<p>Your contributions and interest may be withdrawn prior to entering employment with CalSTRS or upon separation from employment covered by a non-reciprocal system (the system must notify CalPERS you have refunded or retired).</p> <p>Your CalPERS' contributions and interest may not be withdrawn while you are a member of CalSTRS.</p>

	Rights and Benefits under CalSTRS	Rights and Benefits under CalPERS
Minimum Age Requirement for Retirement	<p>Age 50 – with at least 30 years of CalSTRS service credit.</p> <p>Age 55 – with at least five years of CalSTRS service credit.</p>	<p>Age 50 – with at least five years of CalPERS service credit.</p>
Minimum Service Requirement for Retirement	<p>If you are eligible to receive a benefit from another retirement system, you may retire for service after attaining age 55 regardless of the number of years earned in CalSTRS, provided retirement is concurrent with retirement from at least one of the other systems.</p> <p><i>Note: the retiree must meet the retirement eligibility requirements for at least one system in order to retire concurrently.</i></p> <p>Only CalSTRS service credit is used in the calculation of your CalSTRS benefit.</p>	<p>You may retire without meeting minimum service credit requirement when membership is established with CalSTRS.</p> <p>Only CalPERS service credit is used in the calculation of your CalPERS benefit.</p>
Final Compensation	<p>CalSTRS will use the highest compensation earnable under either system to calculate final compensation if you retire concurrently. However, CalSTRS must use CalSTRS earnable compensation if service is performed in both systems at the same time.</p>	<p>CalPERS will use the highest compensation earnable under either system to calculate final compensation if you retire concurrently.</p>
Disability Retirement	<p>You must be vested in CalSTRS to receive a disability retirement.</p> <p>CalSTRS uses compensation earned in the other system if it is greater.</p>	<p>At the time of disability, you must be actively employed under CalPERS membership and meet minimum vesting requirements for a CalPERS disability retirement. If you are entitled to a disability retirement or allowance* from CalSTRS, you must retire for service retirement with CalPERS on the same date for the provisions of final compensation to apply.</p> <p><i>* If you are receiving a disability allowance from CalSTRS, you can retire for service with CalPERS either at the time you start receiving the disability allowance (if minimum retirement age) or at age 60 when the disability allowance under CalSTRS is changed to a service retirement.</i></p>

This publication is produced by the California State Teachers' Retirement System
in cooperation with the California Public Employees' Retirement System

CALSTRS

HOW WILL YOU SPEND YOUR FUTURE?

California State Teachers' Retirement System
P.O. Box 15275
Sacramento, CA 95851-0275
800-228-5453/TTY 916-229-3541
www.calstrs.com

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ATTACHMENT 5

Express Benefit Report

SR 0554E (Rev. 7/06)

CALSTRS

California State Teachers' Retirement System
P.O. Box 15275, M.S. 65
Sacramento, CA 95851-0275
(800) 228-5453; TTY (916) 229-3541
www.CalSTRS.com

This form allows you to request your accumulated unused sick leave balance information from your employer. Credit for unused sick leave is included in your final retirement benefit calculation. The earlier CalSTRS receives this information, the earlier you start to receive the full benefit to which you are entitled. If there is a delay in your employer sending the information to CalSTRS, you will still receive all the benefit due you through a retroactive payment. Getting the unused sick leave balance before you retire alerts you to discrepancies in sick leave information provided to CalSTRS by employers.

Please note: This form is not an application for any benefit. It is submitted with a *Retirement Application*. However, do not delay sending your application if your employer fails to return this form by the date you specify. If you have worked for more than one employer, send a copy of this form to each of them.

Section A Member Information (To be completed by member)

NAME (LAST, FIRST, INITIAL)		SOCIAL SECURITY NUMBER
ADDRESS (STREET)	(APT #)	DATE OF BIRTH (MM/DD/YYYY)
CITY	STATE	ZIP CODE
		TELEPHONE NUMBER(S)
POSITION TITLE	RETIREMENT DATE	DATE TO BE RETURNED BY EMPLOYER

Section B Employer Information (To be completed by employer and returned by the date given above)

Please note: To report subsequent corrections, complete the *Employment Termination* or *Sick Leave Data Correction* form.

Report unused and excess sick leave as of the employee's anticipated last day of paid employment. The member will submit this report with the *Retirement Application*. To facilitate the timely processing of benefits, please return this form to the employee by the date specified above. If the application is to be submitted prior to the last day of paid service, any sick leave used subsequent to submission of this form will require the district to send a correction on an *Employment Termination* or *Sick Leave Data Correction* form to ensure an accurate final benefit amount.

COUNTY/DISTRICT	EMPLOYER CONTACT NAME	EMPLOYER TELEPHONE NUMBER
-----------------	-----------------------	---------------------------

EMPLOYMENT TERMINATION DATE	LAST DAY OF PAID EMPLOYMENT
-----------------------------	-----------------------------

One-year final compensation

I certify pursuant to the district bargaining agreement that the present value payment for one-year final compensation will be made to CalSTRS within 30 days of receipt of billing for the above captioned member, who has less than 25 years of service credit.

Final compensation salary reduction

I certify that because of a reduction in school funds, the above member's salary was reduced during the following school year(s) ____/____. This member is eligible to use any three non-consecutive years for final compensation.

Employer: Please provide the required information on the reverse side.



SR0554E

EXPRESS BENEFIT REPORT • PAGE 1 OF 2

Section B Employer Information continued

TO BE COMPLETED BY EMPLOYER AND RETURNED BY THE DATE GIVEN ON IN SECTION A

Unused Sick Leave Report / Unused Excess Sick Leave Billing

Enter days only; do not enter hours. If the employee has no accumulated unused sick leave days, enter zero. If excess sick leave days were accumulated and unused, complete the present value calculation given below. Send the present value amount to CalSTRS within 30 days following the retirement date.

<i>Accumulated Unused Regular Sick Leave Days</i>	<i>Unused Excess Sick Leave Days</i>	+	=	<i>Total Sick Leave</i>	<i>Contract Base Service Days</i>
<input style="width: 100px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>			<input style="width: 100px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>

If the employee has excess unused sick leave, complete the Present Value Calculation below.

<i>Unused Excess Sick Leave Days</i>	<i>Contract Base Service Days</i>	÷	X	<i>Prior Year Earnable</i>	X	<i>Present Value Factor</i>	=	<i>Present Value</i>
<input style="width: 100px; height: 20px;" type="text"/>	<input style="width: 100px; height: 20px;" type="text"/>			<input style="width: 100px; height: 20px;" type="text"/>		<input style="width: 100px; height: 20px;" type="text"/>		<input style="width: 100px; height: 20px;" type="text"/>

Section C Employer Certification (To be signed by the Superintendent or authorized deputy)

I certify that the above information is true and correct to the best of my knowledge and is in accordance with the California Education Code.

 PRINT NAME OF SUPERINTENDENT OR AUTHORIZED DEPUTY

Signature

 SIGNATURE (SUPERINTENDENT OR AUTHORIZED DEPUTY)

 OFFICIAL TITLE

 DATE (MM/DD/YYYY)

Express Benefit Report—Instructions

Attach this form to your *Retirement Application*. However, do not delay sending your application if your employer fails to return this *Express Benefit Report* by the date you specify. Sending it after your application is submitted will not delay your *initial* benefit. Your *corrected benefit* amount will be set later, once the report is received and processed. You will receive a payment for the accumulated difference, if any.

Contact your employer if there are discrepancies in sick leave balances and last day of paid employment from your records.

If you have worked for more than one employer, send a copy of this form to each of them.

SECTION A—MEMBER INFORMATION (TO BE COMPLETED BY MEMBER)

Complete the member information and send the form to your employer.

Retirement Date: The date you specified on the *Retirement Application*.

Return By: Enter the date you want your employer to return this form to you. Allow enough time to mail your *Retirement Application* so that CalSTRS receives it before the end of the month in which you intend to retire.

Do not delay sending your retirement application to CalSTRS if your employer fails to return this *Express Benefit Report* to you by the date you specify.

After completing Section A, give the form, along with these instructions, to your employer to complete Section B.

SECTION B—EMPLOYER INFORMATION (TO BE COMPLETED BY EMPLOYER)

Please note the **Return By** date specified by member in Section A.

Complete the employer information only after the employee has completed the member information in Section A.

Employer Code: Enter the appropriate county and district codes. Example: Kern County, Edison would be 15-012.

Employer Contact Name/Phone Number: Enter the name and phone number of the person CalSTRS should contact if there are questions regarding information on this form.

Employment Termination Date: Enter the last day the employee was on duty or on a paid leave. This date should be the same as, or later than, the last day of paid employment. This date must be earlier than the retirement date.

Last Day of Paid Employment: Enter the last day the employee was paid for working. If on a leave of absence, enter the actual last day for which pay was received, including differential pay. This date must be earlier than the retirement date.

One-Year Final Compensation: Check the box only if the highest annual compensation earned by the member during any period of 12 consecutive months will be used because the district has a collective bargaining agreement that authorizes one-year final compensation and the employee meets the eligibility requirements. Refer to the most recent Employer Directive regarding one-year final compensation for more information.

Final Compensation Salary Reduction: Check the box if the member has received a salary reduction due to a reduction in school funds and is eligible to use any three non-consecutive years for his or her final compensation.

Sick Leave Days:

Accumulated Unused Regular Sick Leave Days: Enter the number of accumulated unused sick leave days the member will have as of the last day of paid employment.

Unused Excess Sick Leave Days: Enter the number of accumulated unused excess sick leave days the member will have as of the last day of paid employment. Excess sick leave is sick leave granted by the employer after June 30, 1986, that exceeds one day of sick leave per pay period of at least four weeks. Complete the present value calculation.

The Accumulated Unused Regular Sick Leave Days plus the Unused Excess Sick Leave Days should equal the total number of sick leave days.

Present Value Calculation: Complete this section only if the member has Unused Excess Sick Leave Days.

Contract Base Service Days (final year):

To determine Base Service Days, subtract the number of school and legal holidays from the Full-Time Equivalent, if they are included in the FTE. In no event shall the base service days be less than 175.

FTE is the number of days that a person would be required to work in that position for the school year if employed full-time. FTE may include school and legal holidays.

Prior Year Earnable: Enter the compensation earned for the year prior to the last school year in which the member earned creditable service.

Present Value Factor: This information is provided annually in an Employer Directive on rate changes.

Present Value: Complete Present Value Calculation of unused excess sick leave days as follows:

Present Value Calculation = Unused Excess Sick Leave Days divided by Base Days multiplied by Prior Year Earnable, then multiplied by Present Value Factor.

SECTION C

Employer Certification: Sign, indicate official title, date and return the form to the member by the return date indicated in Section A.

CALSTRS

HOW WILL YOU SPEND YOUR FUTURE?

EMPLOYMENT TERMINATION OR SICK LEAVE DATA CORRECTION

SR 0559 (Rev. 11/99)

PLEASE READ INSTRUCTIONS ON THE REVERSE SIDE BEFORE COMPLETING THIS FORM				
Member's Name (last, first, initial)		Member's Social Security Number		
County/District	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	Member's Birthdate (mm/dd/yy)		
Employer Contact Name		Employer Contact Phone Number		
Enter the employment termination or sick leave data as it was previously reported to CalSTRS in the left column, and the correct date(s) or number of days in the right column.				
PREVIOUS DATA SUBMITTED VIA: <input type="checkbox"/> SR 0554E <input type="checkbox"/> SR 0554		PREVIOUS DATA	CORRECTED DATA	
Employment Termination Date:		/ /	/ /	
Last Day of Compensation:		/ /	/ /	
Last Day of Work:		/ /	/ /	
Accumulated Unused Sick Leave Days:	Regular			
	Excess			
	Total			
Base Service Days of Contract for Final Year:				
IF EXCESS SICK LEAVE IS CORRECTED, THE PRESENT VALUE MUST BE RECALCULATED BELOW				
Unused Excess Sick Leave	Base Service Days	Prior Year	Present Value Factor	Present Value
<input type="text"/>	÷	<input type="text"/>	X	<input type="text"/>
		X	<input type="text"/>	=
				<input type="text"/>
Subtract Previous Present Value				—
				<input type="text"/>
TOTAL AMOUNT DUE OR REFUND				=
<ul style="list-style-type: none"> If Present Value is greater than the amount previously paid, pay the additional amount to CalSTRS. If Present Value is less than the amount previously paid, CalSTRS will issue a refund. 				\$ <input type="text"/>
<input type="checkbox"/> One-year Final Compensation I certify pursuant to the district bargaining agreement present value payment for one year final compensation will be made to CalSTRS within 30 days of receipt of billing for the above captioned member.				
<input type="checkbox"/> Repeal Certification Having previously certified pursuant to the district bargaining agreement for one year final compensation, I now hereby <i>repeal certification</i> for the above captioned member.				
<input type="checkbox"/> Final Compensation Salary Reduction I certify that because of a reduction in school funds, the above member's salary was reduced for the ___ / ___ school year(s). This member is eligible to use any three non-consecutive years for final compensation.				
Employer Certification: County or District Superintendent of Schools or Authorized Deputy, sign, indicate official title, and date. I understand that Education Code Section 22717(c) specifies that the employer must certify unused sick leave that the member was entitled to on the final day of employment within 30 days of the date of retirement. CalSTRS may assess a penalty on delinquent reports. I certify that the above information is true and correct to the best of my knowledge and is in accordance with the California Education Code.				
Signature (Superintendent or Authorized Deputy)		Official Title	Date (mm/dd/yy)	
<input type="text"/>		<input type="text"/>	<input type="text"/>	

INSTRUCTIONS FOR EMPLOYMENT TERMINATION AND DATA CORRECTION

Please print using a black ink pen or use a typewriter. Do not erase; erasures are unacceptable and will void this form. If you make a mistake, obtain a new form or line through the error. Make your correction and initial the correction. Complete all dates using numeric designations.

EMPLOYMENT TERMINATION DATE:

Enter the last day the employee was on duty or on a paid leave. This date should be the same as, or later than, the last day of compensation. This date should be earlier than the retirement date.

LAST DAY OF COMPENSATION: Enter the last day the employee was paid for working. If on a leave of absence, enter the actual last day for which pay was received, including differential pay. This date must be earlier than the retirement date.

LAST DAY OF WORK: If on a leave of absence, enter the actual last day on duty.

ACCUMULATED UNUSED SICK LEAVE DAYS: Enter the number of accumulated unused excess sick leave days the member will have as of the last day of paid service.

Note: It is illegal for a school district to pay a retiring certificated school employee for accumulated sick leave. (California Attorney General Opinion CV 74/201).

UNUSED EXCESS SICK LEAVE DAYS: Enter the number of accumulated unused excess sick days the member will have as of the last day of paid service. Excess sick leave is sick leave granted by the employer after June 30, 1986, which exceeds one day of sick leave per pay period of at least four weeks. Complete the present value calculation.

CONTRACT BASE SERVICE DAYS (final year): To determine Base Service Days, subtract the number of school and legal holidays from the Full-Time Equivalent (FTE), if they are included in the FTE. In no event shall the base service days be less than 175. Base service days for Administrators will include vacation days.

Full-Time Equivalent (FTE) is the number of days that a person would be required to work in that position for the school year if employed full-time. Full-Time Equivalent may include school and legal holidays.

PRESENT VALUE: Determine Present Value calculation of unused excess sick leave days as follows:

- a) Enter "Unused Excess Sick Leave Days" granted by the employer after June 30, 1986.
- b) Enter "Base Service Days" (not less than 175 days).
- c) Enter "Prior Year Earnable", which is the annual full-time earnable salary for the most recent school year in which service credit was earned preceding the last school year in which service credit was earned prior to termination of employment.
- d) Enter the "Present Value Factor." Refer to latest Employer Directive on Rate Changes to determine the current Present Value factor.
- e) The "Present Value" on the effective date shall be calculated according to the following formula:

Present Value Calculation = "Unused Excess Sick Leave Days" divided by "Base Service Days" multiplied by "Prior Year Earnable" multiplied by "Present Value Factor".

ONE YEAR FINAL COMPENSATION: Check the box if the member's highest annual compensation earned by the member during any period of 12 consecutive months will be used. The District must have collective bargaining agreement on file at CalSTRS and the employee must meet eligibility requirements. For more information, refer to the most recent Employer Directive re: One Year Final Compensation.

FINAL COMPENSATION SALARY REDUCTION: Check the box if the member has received a salary reduction due to a reduction in school funds and is eligible to use any 3 non-consecutive years for final compensation.

EMPLOYER CERTIFICATION: Signature of County or District Superintendent of Schools or authorized Deputy.

ATTACHMENT 6

MR 664 01/2006

DEFINED BENEFIT PLAN REEMPLOYMENT NOTIFICATION

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

This form is required by the State Teachers' Retirement System to be completed for each member of the Defined Benefit Plan who has returned to employment after an eligible period of service in the uniformed services (Chapter 43, Section 4301, Title 38 of U.S. Code).

Please complete the entire form.

NAME: (Last, First, MI)		SOCIAL SECURITY NO:				
ELIGIBLE UNIFORMED SERVICE DATES:		From (mo/day/yr):	/	/		
		To (mo/day/yr):	/	/		
COUNTY NAME:		COUNTY CODE:				
DISTRICT NAME:		DISTRICT CODE:				
EMPLOYER CONTACT PERSON:		TELEPHONE NUMBER: ()				
<input type="checkbox"/> Member has elected not to purchase the Service Credit. <input type="checkbox"/> Member has elected to purchase the Service Credit.						
SERVICE CREDIT WORKSHEET/ASSIGNMENT DATA						
ASSIGNMENT DATA - This data is necessary to ensure proper service credit and calculation of contributions due. To calculate service credit on each line: $Earnings + Full-time Annual Compensation Earnable = Service Credit$						
SERVICE PERIODS		FULL-TIME ANNUAL COMPENSATION EARNABLE	CREDITABLE EARNINGS	EMPLOYER Contributions	EMPLOYEE Contributions	SERVICE CREDIT
Beginning (mo/day/yr)	Ending (mo/day/yr)					
Total Employer/Employee contributions due (Submit Employer's portion within 60 days of reemployment)				\$	\$	
Employee's contribution payments will be: <input type="checkbox"/> FULL PAYMENT (Enclosed) <input type="checkbox"/> PAYROLL DEDUCTION						
For Payroll Deduction:		_____ x _____ = _____		Tax Deferred?		
		No. of Payments	Amount of Payment	Total Payment	<input type="checkbox"/> Yes <input type="checkbox"/> No	
I hereby certify that this member is eligible to receive the additional service credit under the provisions of Education Code Sections 22850, et. seq.						
AUTHORIZED SIGNATURE		NAME & TITLE (Print)			DATE / /	
CALSTRS USE ONLY	SIGNATURE			APPROVAL DATE / /		

**INSTRUCTIONS AND INFORMATION FOR
UNIFORMED SERVICE REEMPLOYMENT NOTIFICATION FORM (MR 664)
DEFINED BENEFIT PLAN MEMBERS ONLY**

This form is required by the California State Teachers' Retirement System to be completed for each member of the Defined Benefit Plan who has returned to employment after an eligible period of service in the uniformed services (Chapter 43, Section 4301 of the U.S. Code.) The following instructions are to assist you in completing this form. Please complete this form entirely and submit it to the CalSTRS Cash Receipts Unit within 30-days of the member's reemployment. If the employee has elected to purchase service credit and pay the full amount at the time of signing the form, please remit this amount with the form. The employer portion of contributions is due within 60-days of the election, and may be included with this form.

* **EMPLOYER INSTRUCTIONS** *

- I. Print clearly with **DARK INK** or type all information requested. Do not use light colors of ink, pencil, felt pen, or erasable ink.
- II. Enter full name and Social Security number of participant.
- III. **ELIGIBLE UNIFORMED** From: Last date employee worked for you before military service began.
SERVICE DATES - To: First date the employee returned to work from military service.
- IV. **COUNTY NAME/CODE** - Enter the appropriate County Name and Code (i.e. Alameda County -01.)
- V. **DISTRICT NAME/CODE** - Enter the appropriate District Name and Code (i.e. Oakland USD - 030.)
- VI. **EMPLOYER CONTACT PERSON/TELEPHONE**: Print person to contact regarding this form and telephone no.
- VII. **PARTICIPANT'S ELECTION**: Indicate if the participant elects to purchase service credit.

* **SERVICE CREDIT WORKSHEET/ASSIGNMENT DATA** *

This data is necessary to ensure proper service credit calculation and must be completed entirely even if the employee elects not to purchase service credit. To calculate service credit, you must include the service periods for the time period of uniformed service leave within each fiscal year, the full-time annual compensation earnable the member would have earned if employed during the time period(s), the creditable earnings the member would have earned at the full-time annual earnable, the employer and employee contributions due, and the service credit the member would have earned for the creditable earnings within the service period(s). Complete the worksheet in fiscal year ascending date order, earliest date to the latest date.

- I. **SERVICE PERIODS** - Beginning and ending dates of time of uniformed service leave, separated by fiscal year(s).
- II. **FULL-TIME ANNUAL EARNABLE** - The full-time annual contract amount or full-time equivalent (FTE) amount for the creditable earnings being documented within the identified service period(s).
- III. **CREDITABLE EARNINGS** - The creditable earnings the member would have earned if employed at the full-time annual earnable or FTE documented, within the identified service period(s).
- IV. **EMPLOYER CONTRIBUTIONS** - The employer's contribution amount due on the earnings. Current rate is 8.25%.
- V. **EMPLOYEE CONTRIBUTIONS** - The employee's contribution amount due on the earnings. Current rate is 8%.
- VI. **SERVICE CREDIT** - The amount of service credit earned on each earnable line documented on the worksheet.
- VII. **TOTAL EMPLOYER/EMPLOYEE CONTRIBUTIONS DUE** - Enter the total amount of Employer contributions due. If the employee elects to purchase service credit, enter the total amount of employer contributions due for all the lines documented on the worksheet. Make check payable to California State Teachers' Retirement System.
- VIII. **EMPLOYEE'S CONTRIBUTION PAYMENTS** - Mark appropriate box if employee is paying in full "Full Payment," (enclose payment with form,) or by Payroll Deduction. If by Payroll Deduction, fill in the number of payments, amount of each payment, and the total of all payments, and check either Yes or No whether the payments are Tax Deferred.
- IX. **AUTHORIZED SIGNATURE** - Signature of the person verifying eligibility of member to receive benefit as described under the provisions of Education Code Section 22850. et. Seq. and Ad. Dir. 97- _____. Print school official's name, official title, and date.
- X. **CALSTRS SIGNATURE/APPROVAL DATE** - Once this completed form is received by CalSTRS, and the calculations approved, an authorized signature and date will be entered on the form, and a copy of the form returned to the Employer.

MAIL the completed Reemployment Notification form MR 664, to California State Teachers' Retirement System within 30 days of reemployment to:

California State Teachers' Retirement System
P O BOX 15275 - MAIL STATION 12
Sacramento, CA 95851-0275
Attn: Cash Receipts

Test Claim Name: CalSTRS Service Credit
Test Claim Number: 02-TC-19

DECLARATION OF SERVICE

Porscha K. Brink, I declare that I am employed in the County of Sacramento, State of California, that I am over the age of 18 years and am not a party to the within action, that my business address is 7667 Folsom Blvd., Sacramento, California 95826, that on January 30, 2007, I served the attached Written Response in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California, in the normal pickup location at 7667 Folsom Blvd., Sacramento, California 95826

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San Diego Unified School District
Office of Resource Development
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San Diego, CA 92103-8363

(A-15)

Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed at Sacramento, California.

DATED: 1/30/07

SIGNED: Porscha K. Brink
PORSCHA K. BRINK

Test Claim Name: CalSTRS Service Credit
Test Claim Number: 02-TC-19

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DEPARTMENT OF
FINANCE

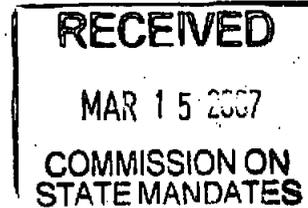
EXHIBIT K

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET □ SACRAMENTO CA □ 95814-3706 □ WWW.DOF.CA.GOV

March 13, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter of January 9, 2007, the Department of Finance has reviewed the draft staff analysis of Test Claim number 01-TC-02/02-TC-19 (CalSTRS Creditable Compensation/Service Credit), submitted by the Lassen County Office of Education and San Luis Obispo County Office of Education (claimants) asking the Commission to determine whether specified costs incurred under Chapter 893, Statutes of 1993 are reimbursable state mandated costs.

We concur with the staff analysis for this claim, which finds that the higher cost of compensation for district employees does not impose a program or a new program or higher level of service in an existing program and, therefore, does not impose a reimbursable state-mandated program under the California Constitution.

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As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 9, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Sara Swan, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

JEANNIE OROPEZA
Program Budget Manager

Attachment

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Test Claim Name: CalSTRS Creditable Compensation
Test Claim Number: 01-TC-02/02-TC-19

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980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

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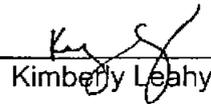
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 13, 2007, at Sacramento, California.

3/13/07
 at Sacramento


 Kimberly Leahy

Test Claim Name: CalSTRS Service Credit
Test Claim Number: 02-TC-19

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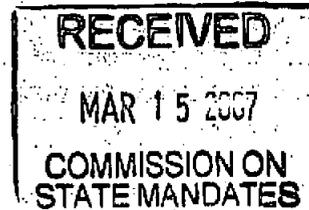
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PORSCHA K. BRINK



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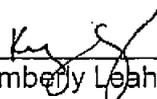
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