

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1007

**Introduced by Senator Hancock
(Coauthors: Senators DeSaulnier, Denham, Liu, and Strickland)**

February 10, 2010

An act to amend Sections 82023, 82024, 82036, 82036.5, 84101, 84200.5, 84215, and 85204 of, to add Section 84200.9 to, and to repeal and add Section 84225 of, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 1007, as amended, Hancock. Political Reform Act of 1974: retirement system boards.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and requires candidates for elective office, candidates for elective state office, and committees formed or existing primarily to support or oppose those candidates to file specified reports disclosing contributions and independent expenditures made in connection with the campaigns of those candidates.

Existing law further establishes the Board of Administration of the Public Employees' Retirement System to administer the Public Employees' Retirement System and the Teachers' Retirement Board to administer the State Teachers' Retirement System. Existing law specifies the composition of those boards and requires that designated positions on the boards be filled by election. With limited exception, as specified, candidates for election to those boards are not required to comply with the various reporting requirements imposed by the Political Reform Act of 1974.

This bill would revise the definitions of “elective office” and “elective state office” for purposes of the Political Reform Act of 1974 to include membership on the boards described above and would repeal the provision that exempts from the act candidates for election to those boards, thereby subjecting those candidates, and committees formed or existing primarily to support or oppose those candidates, to the reporting requirements of the act. The bill would further make conforming changes to provisions of the act relating to the reporting of late contributions, the reporting of late independent expenditures, the filing of committee organization statements, and the filing of campaign statements and preelection statements. In addition, the bill would give the Fair Political Practices Commission the authority to adopt regulations to tailor the act’s reporting and disclosure requirements for those candidates and committees consistent with the purposes and provisions of the act.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 82023 of the Government Code is
- 2 amended to read:
- 3 82023. “Elective office” means any state, regional, county,
- 4 municipal, district or judicial office that is filled at an election.
- 5 “Elective office” also includes membership on a county central
- 6 committee of a qualified political party, and membership through

1 election on the Board of Administration of the Public Employees'
2 Retirement System or the Teachers' Retirement Board.

3 SEC. 2. Section 82024 of the Government Code is amended
4 to read:

5 82024. "Elective state office" means the office of Governor,
6 Lieutenant Governor, Attorney General, Insurance Commissioner,
7 Controller, Secretary of State, Treasurer, Superintendent of Public
8 Instruction, Member of the Legislature, member elected to the
9 Board of Administration of the Public Employees' Retirement
10 System, member elected to the Teachers' Retirement Board, and
11 member of the State Board of Equalization.

12 SEC. 3. Section 82036 of the Government Code is amended
13 to read:

14 82036. "Late contribution" means any of the following:

15 (a) Any contribution, including a loan, that totals in the
16 aggregate one thousand dollars (\$1,000) or more and is made to
17 or received by a candidate, a controlled committee, or a committee
18 formed or existing primarily to support or oppose a candidate or
19 measure before the date of the election at which the candidate or
20 measure is to be voted on but after the closing date of the last
21 campaign statement required to be filed before the election. For
22 purposes of the Board of Administration of the Public Employees'
23 Retirement System and the Teachers' Retirement Board, "the date
24 of the election" is the deadline to return ballots.

25 (b) Any contribution, including a loan, that totals in the
26 aggregate one thousand dollars (\$1,000) or more and is made to
27 or received by a political party committee, as defined in Section
28 85205, before the date of any state election but after the closing
29 date of the last campaign statement required to be filed before the
30 election.

31 SEC. 4. Section 82036.5 of the Government Code is amended
32 to read:

33 82036.5. "Late independent expenditure" means any
34 independent expenditure that totals in the aggregate one thousand
35 dollars (\$1,000) or more and is made for or against any specific
36 candidate or measure involved in an election before the date of
37 the election but after the closing date of the last campaign statement
38 required to be filed prior to the election by a candidate or
39 committee participating in the election. For purposes of the Board
40 of Administration of the Public Employees' Retirement System

1 and the Teachers' Retirement Board, "the date of the election" is
2 the deadline to return ballots.

3 SEC. 5. Section 84101 of the Government Code is amended
4 to read:

5 84101. (a) A committee that is a committee by virtue of
6 subdivision (a) of Section 82013 shall file a statement of
7 organization. The committee shall file the original of the statement
8 of organization with the Secretary of State and shall also file a
9 copy of the statement of organization with the local filing officer,
10 if any, with whom the committee is required to file the originals
11 of its campaign reports pursuant to Section 84215. The original
12 and copy of the statement of organization shall be filed within 10
13 days after the committee has qualified as a committee. The
14 Secretary of State shall assign a number to each committee that
15 files a statement of organization and shall notify the committee of
16 the number. The Secretary of State shall send a copy of statements
17 filed pursuant to this section to the county elections official of each
18 county that he or she deems appropriate. A county elections official
19 who receives a copy of a statement of organization from the
20 Secretary of State pursuant to this section shall send a copy of the
21 statement to the clerk of each city in the county that he or she
22 deems appropriate.

23 (b) In addition to filing the statement of organization as required
24 by subdivision (a), if a committee qualifies as a committee under
25 subdivision (a) of Section 82013 before the date of an election in
26 connection with which the committee is required to file preelection
27 statements, but after the closing date of the last campaign statement
28 required to be filed before the election pursuant to Section 84200.7,
29 84200.8, or 84200.9, the committee shall file, by facsimile
30 transmission, guaranteed overnight delivery, or personal delivery
31 within 24 hours of qualifying as a committee, the information
32 required to be reported in the statement of organization. The
33 information required by this subdivision shall be filed with the
34 filing officer with whom the committee is required to file the
35 originals of its campaign reports pursuant to Section 84215.

36 (c) If an independent expenditure committee qualifies as a
37 committee pursuant to subdivision (a) of Section 82013 during the
38 time period described in Section 82036.5 and makes independent
39 expenditures of one thousand dollars (\$1,000) or more to support
40 or oppose a candidate or candidates for office, the committee shall

1 file, by facsimile transmission, online transmission, guaranteed
2 overnight delivery, or personal delivery within 24 hours of
3 qualifying as a committee, the information required to be reported
4 in the statement of organization. The information required by this
5 section shall be filed with the filing officer with whom the
6 committee is required to file the original of its campaign reports
7 pursuant to Section 84215, and shall be filed at all locations
8 required for the candidate or candidates supported or opposed by
9 the independent expenditures. The filings required by this section
10 are in addition to filings that may be required by Sections 84203.5
11 and 84204.

12 (d) For purposes of this section, in calculating whether one
13 thousand dollars (\$1,000) in contributions has been received,
14 payments for a filing fee or for a statement of qualifications to
15 appear in a sample ballot shall not be included if these payments
16 have been made from the candidate's personal funds.

17 SEC. 6. Section 84200.5 of the Government Code is amended
18 to read:

19 84200.5. In addition to the campaign statements required by
20 Section 84200, elected officers, candidates, and committees shall
21 file preelection statements as follows:

22 (a) During an even-numbered year, all candidates for elective
23 state office being voted upon in the statewide direct primary
24 election or the statewide general election, their controlled
25 committees, and committees primarily formed to support or oppose
26 an elected state officer or a state candidate being voted upon shall
27 file the applicable preelection statements specified in Section
28 84200.7 or 84200.8. All elected state officers who, during the
29 applicable reporting periods covered by Section 84200.7 or
30 84200.8, contribute to any committee required to report receipts,
31 expenditures, or contributions pursuant to this title, or make an
32 independent expenditure, shall file the applicable preelection
33 statements specified in Section 84200.7 or 84200.8. However, a
34 candidate for an office that is not being voted upon in the
35 November election, his or her controlled committee, and any
36 committee primarily formed to support or oppose that candidate
37 is not required to file statements in connection with the November
38 election pursuant to subdivision (b) of Section 84200.7 unless,
39 during the reporting periods covered by Section 84200.7, the
40 candidate, his or her controlled committee, or any committee

1 primarily formed to support or oppose that candidate contributes
2 to any committee required to report receipts, expenditures, or
3 contributions pursuant to this title or makes independent
4 expenditures.

5 (b) During an even-numbered year, all candidates not specified
6 in subdivision (a) who are running for offices being voted upon
7 on the first Tuesday after the first Monday in June or November,
8 their controlled committees, and committees primarily formed to
9 support or oppose those candidates or a measure being voted upon
10 on the first Tuesday after the first Monday in June or November
11 of an even-numbered year shall file the preelection statements
12 specified in subdivision (a) of Section 84200.7 in the case of a
13 June election, or subdivision (b) of Section 84200.7 in the case of
14 a November election.

15 (c) All candidates for offices being voted upon on a date other
16 than the first Tuesday after the first Monday in June or November
17 of an even-numbered year, their controlled committees, and
18 committees primarily formed to support or oppose a candidate or
19 a measure being voted upon on a date other than the first Tuesday
20 after the first Monday in June or November of an even-numbered
21 year shall file the preelection statements specified in Section
22 84200.8.

23 (d) During an election period for the Board of Administration
24 of the Public Employees' Retirement System or the Teachers'
25 Retirement Board, all candidates for these boards, their controlled
26 committees, and committees primarily formed to support or oppose
27 the candidates shall file the preelection statements specified in
28 Section 84200.9.

29 (e) In an even-numbered year in which the statewide direct
30 primary election is held on the first Tuesday after the first Monday
31 in June, a state or county general purpose committee formed
32 pursuant to subdivision (a) of Section 82013, other than a political
33 party committee as defined in Section 85205, shall file the
34 preelection statements specified in Section 84200.7 if it makes
35 contributions or independent expenditures totaling five hundred
36 dollars (\$500) or more during the period covered by the preelection
37 statement. A state or county general purpose committee formed
38 pursuant to subdivision (b) or (c) of Section 82013 is not required
39 to file the statements specified in Section 84200.7.

1 (f) During an even-numbered year in which the statewide direct
2 primary election is held on a date other than the first Tuesday after
3 the first Monday in June, a state or county general purpose
4 committee formed pursuant to subdivision (a) of Section 82013,
5 other than a political party committee as defined in Section 85205,
6 shall file the preelection statements specified in Section 84200.8
7 if it makes contributions or independent expenditures totaling five
8 hundred dollars (\$500) or more during the period covered by the
9 preelection statement. A state or county general purpose committee
10 formed pursuant to subdivision (b) or (c) of Section 82013 is not
11 required to file the statements specified in Section 84200.8.

12 (g) During an election period for the Board of Administration
13 of the Public Employees' Retirement System or the Teachers'
14 Retirement Board, a state or county general purpose committee
15 formed pursuant to subdivision (a) of Section 82013 shall file the
16 preelection statements specified in Section 84200.9 if it makes
17 contributions or independent expenditures totaling five hundred
18 dollars (\$500) or more during the period covered by the preelection
19 statement. A state or county general purpose committee formed
20 pursuant to subdivision (b) or (c) of Section 82013 is not required
21 to file the statements specified in Section 84200.9.

22 (h) A political party committee as defined in Section 85205
23 shall file the applicable preelection statements specified in Section
24 84200.7 or 84200.8 in connection with a state election if the
25 committee receives contributions totaling one thousand dollars
26 (\$1,000) or more, or if it makes contributions or independent
27 expenditures totaling five hundred dollars (\$500) or more, during
28 the period covered by the preelection statement.

29 (i) City general purpose committees shall file statements as
30 follows:

31 (1) City general purpose committees in a city that has an election
32 on the first Tuesday after the first Monday in June or November
33 of an even-numbered year shall file the statements specified in
34 subdivision (a) or (b) of Section 84200.7 for the six-month period
35 in which the city election is held, if they make contributions or
36 independent expenditures totaling five hundred dollars (\$500) or
37 more during the period covered by the preelection statement.

38 (2) City general purpose committees in a city that has an election
39 on a date other than the first Tuesday after the first Monday in
40 June or November of an even-numbered year shall file the

1 preelection statements specified in Section 84200.8 if they make
2 contributions or independent expenditures totaling five hundred
3 dollars (\$500) or more during the period covered by the preelection
4 statement.

5 SEC. 7. Section 84200.9 is added to the Government Code, to
6 read:

7 84200.9. Preelection statements for an election period for the
8 Board of Administration of the Public Employees' Retirement
9 System or the Teachers' Retirement Board shall be filed as follows:

10 (a) For the period ending five days before the beginning of the
11 ballot period, as determined by the relevant board, a statement
12 shall be filed no later than two days before the beginning of the
13 ballot period.

14 (b) For the period ending five days before the deadline to return
15 ballots, as determined by the relevant board, a statement shall be
16 filed no later than two days before the deadline to return ballots.

17 (c) In the case of a runoff election, for the period ending five
18 days before the deadline to return runoff ballots, as determined by
19 the relevant board, a statement shall be filed no later than two days
20 before the deadline to return runoff ballots.

21 (d) All candidates being voted upon, their controlled committees,
22 and committees primarily formed to support or oppose a candidate
23 being voted upon in that election shall file the statements specified
24 in subdivisions (b) and (c) by guaranteed overnight delivery service
25 or by personal delivery.

26 SEC. 8. Section 84215 of the Government Code is amended
27 to read:

28 84215. All candidates and elected officers and their controlled
29 committees, except as provided in subdivisions (e) and (f), shall
30 file one copy of the campaign statements required by Section 84200
31 with the elections official of the county in which the candidate or
32 elected official is domiciled, as defined in subdivision (b) of
33 Section 349 of the Elections Code. In addition, campaign
34 statements shall be filed at the following places:

35 (a) Statewide elected officers and candidates for these offices
36 other than the Board of Equalization, Supreme Court justices, their
37 controlled committees, committees formed or existing primarily
38 to support or oppose these candidates, elected officers, Supreme
39 Court justices, or statewide measures, or the qualification of state

1 ballot measures, and all state general purpose committees and filers
2 not specified in subdivisions (b) to (f), inclusive:

3 (1) The original and one copy with the Secretary of State.

4 (2) One copy with the Registrar-Recorder of Los Angeles
5 County.

6 (3) One copy with the Registrar of Voters of the City and County
7 of San Francisco.

8 (b) Members of the Legislature or Board of Equalization, court
9 of appeal justices, superior court judges, candidates for those
10 offices, their controlled committees, and committees formed or
11 existing primarily to support or oppose these candidates or
12 officeholders:

13 (1) The original and one copy with the Secretary of State.

14 (2) One copy with the elections official of the county with the
15 largest number of registered voters in the districts affected.

16 (c) Elected officers in jurisdictions other than legislative
17 districts, Board of Equalization districts, or appellate court districts
18 that contain parts of two or more counties, candidates for these
19 offices, their controlled committees, and committees formed or
20 existing primarily to support or oppose candidates or local
21 measures to be voted upon in one of these jurisdictions shall file
22 the original and one copy with the elections official of the county
23 with the largest number of registered voters in the jurisdiction.

24 (d) County elected officers, candidates for these offices, their
25 controlled committees, committees formed or existing primarily
26 to support or oppose candidates or local measures to be voted upon
27 in any number of jurisdictions within one county, other than those
28 specified in subdivision (e), and county general purpose committees
29 shall file the original and one copy with the elections official of
30 the county.

31 (e) City elected officers, candidates for city office, their
32 controlled committees, committees formed or existing primarily
33 to support or oppose candidates or local measures to be voted upon
34 in one city, and city general purpose committees shall file the
35 original and one copy with the clerk of the city. These elected
36 officers, candidates, and committees need not file with the elections
37 official of the county in which they are domiciled.

38 (f) Elected members of the Board of Administration of the Public
39 Employees' Retirement System, elected members of the Teachers'
40 Retirement Board, candidates for these offices, their controlled

1 committees, and committees formed or existing primarily to
2 support or oppose these candidates or elected members shall file
3 the original and one copy with the Secretary of State, and a copy
4 shall be retained filed at the relevant board's office in Sacramento.
5 These elected officers, candidates, and committees need not file
6 with the elections official of the county in which they are
7 domiciled.

8 (g) Notwithstanding any other provision of this section, a
9 committee, candidate, or elected officer is not required to file more
10 than the original and one copy, or one copy, of a campaign
11 statement with any one county elections official or city clerk or
12 with the Secretary of State.

13 (h) If a committee is required to file campaign statements
14 required by Section 84200 or 84200.5 in places designated in
15 subdivisions ~~(d)~~ and ~~(e)~~ (a) to (e), inclusive, it shall continue to
16 file these statements in those places, in addition to any other places
17 required by this title, until the end of the calendar year.

18 SEC. 9. Section 84225 of the Government Code is repealed.

19 SEC. 10. Section 84225 is added to the Government Code, to
20 read:

21 84225. The provisions of this title apply to candidates for
22 election to the Board of Administration of the Public Employees'
23 Retirement System or the Teachers' Retirement Board, and to
24 committees formed or existing primarily to support or oppose those
25 candidates. The Commission may adopt regulations to tailor the
26 reporting and disclosure requirements for these candidates and
27 committees consistent with the purposes and provisions of this
28 title.

29 SEC. 11. Section 85204 of the Government Code is amended
30 to read:

31 85204. "Election cycle," for purposes of Sections 85309 and
32 85500, means the period of time commencing 90 days prior to an
33 election and ending on the date of the election. For purposes of
34 the Board of Administration of the Public Employees' Retirement
35 System and the Teachers' Retirement Board, "the date of the
36 election" is the deadline to return ballots.

37 SEC. 12. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

6 SEC. 13. The Legislature finds and declares that this bill
7 furthers the purposes of the Political Reform Act of 1974 within
8 the meaning of subdivision (a) of Section 81012 of the Government
9 Code.

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AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1271

Introduced by Senator Romero

February 19, 2010

~~An act to add Section 7508.2 to the Government Code, relating to public retirement plans.~~ *An act to add Section 87314 to the Government Code, relating to the Political Reform Act of 1974.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1271, as amended, Romero. ~~Public retirement plans: conflicts of interest.~~ *Political Reform Act of 1974: conflict of interest codes.*

The Political Reform Act of 1974 requires each state and local government agency to adopt and promulgate a conflict of interest code that establishes conflict of interest standards for designated employees of that agency and requires those employees to file statements of economic interest disclosing specified personal financial information. The act further requires specified public officials, including officials who manage public investments, to also file statements of economic interest, but does not require those officials to be specifically enumerated in the agency's conflict of interest code.

This bill would require a public retirement board, commission, or agency to attach to its conflict of interest code an appendix that lists each position for which an individual occupying that position is required to file a statement of economic interests as a public official who manages public investments, as defined. The bill would further require the board, commission, or agency to post the appendix on its Internet Web site.

This bill would impose a state-mandated local program by creating additional responsibilities for local governmental agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

The Political Reform Act requires state and local government agencies to adopt and promulgate a Conflict of Interest Code. Regulations found in the California Code of Regulations constitute the California Public Employees' Retirement System's Conflict of Interest Code.

This bill would codify those regulations and make them applicable to all public retirement boards.

Vote: majority $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 87314 is added to the Government Code,
- 2 to read:
- 3 87314. (a) A public retirement board, commission, or agency
- 4 shall attach to its Conflict of Interest Code an appendix entitled
- 5 "Agency Positions that Manage Public Investments for Purposes
- 6 of Section 87200 of the Government Code." The appendix shall
- 7 list each position with the board, commission, or agency for which
- 8 an individual occupying the position is required to file a Statement
- 9 of Economic Interests as a public official who manages public
- 10 investments within the meaning of Section 87200. The board,
- 11 commission, or agency shall post the appendix on its Internet Web
- 12 site in a manner that makes it easily identifiable and accessible
- 13 by persons who view that Web site.
- 14 (b) (1) For purposes of this section, "public official who
- 15 manages public investments" includes a salaried or unsalaried
- 16 member of a committee, board, commission, or other entity that

1 exists as, or within, a governmental agency and that possesses
2 decisionmaking authority.

3 (2) A committee, board, commission, or other entity possesses
4 decisionmaking authority for purposes of this section if any of the
5 following apply:

6 (A) The entity may make a final governmental decision.

7 (B) The entity may compel a governmental decision or prevent
8 a governmental decision, either by virtue of possessing exclusive
9 power to initiate the decision or by having veto authority that may
10 not be overridden.

11 (C) The entity makes substantive recommendations that are,
12 and over an extended period of time have been, regularly approved,
13 without significant amendment or modification, by another public
14 official or governmental agency.

15 (3) A committee, board, commission, or other entity does not
16 possess decisionmaking authority for purposes of this section if it
17 is formed for the sole purpose of researching a subject and
18 preparing a report or recommendation for submission to another
19 governmental entity that has final decisionmaking authority.

20 SEC. 2. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.

25 SEC. 3. The Legislature finds and declares that this bill furthers
26 the purposes of the Political Reform Act of 1974 within the meaning
27 of subdivision (a) of Section 81012 of the Government Code.

28 SECTION 1. Section 7508.2 is added to the Government Code,
29 to read:

30 7508.2. (a) The purpose of this Conflict of Interest Code is to
31 facilitate the disclosure of the economic interests of public officials
32 serving any public retirement system that may be materially
33 affected by the actions of the retirement boards in which they
34 participate.

35 (b) Designated employees, consultants, board members, and
36 candidates shall file statements of economic interests with the
37 retirement board's filing officer. With respect to certain employees
38 and officials such as board members who are determined to manage
39 public investments, within the meaning of Section 87200, the
40 retirement system shall make and retain a copy and forward the

1 ~~original of these statements to the Fair Political Practices~~
2 ~~Commission. Public officials who manage investments are listed~~
3 ~~for clarity in the appendix of Section 560 of Title 2 of the~~
4 ~~California Code of Regulations. Unlike the designated employees,~~
5 ~~these officials' reporting obligations are not limited by reference~~
6 ~~to a reporting category.~~

7 (e) ~~This provision incorporates by reference Sections 560 and~~
8 ~~18730 of Title 2 of the California Code of Regulations, and any~~
9 ~~amendments to it duly adopted by the Fair Political Practices~~
10 ~~Commission. Those regulations along with the attached appendix~~
11 ~~in which officials and employees are designated and disclosure~~
12 ~~categories are set forth, constitute the Conflict of Interest Code for~~
13 ~~all public retirement boards.~~

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1425

Introduced by Senators Simitian and Correa
(Principal coauthor: Assembly Member Hernandez)
(Coauthor: Senator DeSaulnier)

February 19, 2010

An act to amend Sections 22112.5, 22119.2, 22461, 22905, 24214.5, 26505, and 26806 of the Education Code, and to amend Sections 20221, 20630, 20636, 20636.1, and 21220 of, and to add ~~Section 7500.5 to~~ Sections 7500.5 and 21220.3 to, the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Simitian. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law (*STRL*) and the retirement laws for county employees and city employees also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would provide, ~~effective July 1, 2011~~, that any change in salary, compensation, or remuneration principally for the purpose of enhancing a member's benefits would not be included in the calculation of a member's final compensation for purposes of determining that member's defined benefit. The bill would *generally* require the board of each state and local public retirement system to establish, by

regulation, accountability provisions that would include an ongoing audit process to ensure that a change in a member's salary, compensation, or remuneration is not made principally for the purpose of enhancing a member's retirement benefits. This bill would *revise the definition of "creditable compensation" and would limit the calculation of a member's final compensation to an amount not to exceed the average increase in compensation received within the final compensation period and the 2 preceding years by employees in the same or a related group as that member.* This bill would also require a board of each state and local public retirement system to establish, by regulation, a requirement that a retired person may not perform services for any employer covered by a state or local retirement system until that person has been separated from service for a period of at least ~~6 months~~ *180 days.* *This bill would provide for the implementation of these required changes under the laws that govern PERS and STRL.*

This bill includes Legislative findings expressing the public purpose that would be served by the enactment of this bill ~~and expresses the Legislature's intent to enact legislation that would ensure that these provisions are implemented by all state and local public retirement systems.~~

This bill would, except as otherwise specified, provide that its provisions would become operative on July 1, 2011. This bill would further provide that it would only become operative if AB 1987 is also enacted and takes effect on or before January 1, 2011.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares that:
2 (1) State and local public retirement boards have been authorized
3 under the law to administer retirement systems that provide
4 adequate, secure retirement benefits ~~for beneficiaries to participants~~
5 who dedicate their life's work to public service, *and their*
6 *beneficiaries.*
7 (2) Employees partner with their public agency employers to
8 fund this benefit.
9 (3) Any manipulation of those benefits creates harm for the
10 employees, beneficiaries, employers, and taxpayers and should
11 not be permitted.

- 1 (b) The Legislature further finds and declares ~~that the~~ *that*:
2 (1) *The efficacy of the retirement systems is threatened by the*
3 *behavior of those who seek to unfairly and unjustifiably enhance*
4 *or “spike” their pensions.*
5 (c)
6 (2) *Neither the Legislature nor the courts ever anticipated a*
7 *circumstance where the application of the retirement law would*
8 *result in a method that permits inequitable application of*
9 *compensation rules in order to enhance an individual’s retirement*
10 *allowance.*
11 (d)
12 (3) *It is the responsibility of the Legislature to provide guidance*
13 *to every retirement system so ~~they~~ that each system can determine*
14 *the proper elements that go into calculating a member’s retirement*
15 *benefit as recognized by the laws governing ~~the~~ each retirement*
16 *system.*
17 (e)
18 (4) *Retirement systems must employ sound ~~principals~~ principles*
19 *that provide consistent treatment of compensation throughout a*
20 *member’s career and consistent treatment of compensation*
21 *earnable among ~~a class~~ all classes of employees.*
22 (f)
23 (5) *In order to provide consistent treatment across the retirement*
24 *systems, the reporting ~~system~~ between ~~the~~ procedures used by*
25 *each retirement system and ~~each its~~ participating ~~employer~~*
26 *employers must be sufficiently precise so as to enable the*
27 *retirement system to distinguish between items of remuneration*
28 *that are and are not properly included in a member’s final*
29 *compensation.*
30 (c) *The Legislature further finds and declares that consistent*
31 *administration of state and local public retirement systems is a*
32 *matter of statewide concern.*
33 (d) *The Legislature further finds and declares that the*
34 *procedures contained in this act provide the appropriate method*
35 *for resolving the inequitable application of compensation rules;*
36 *and therefore, provide for the consistent administration of state*
37 *and local retirement systems that is in the public’s best interest.*
38 SEC. 2. ~~Section 7500.5 is added to the Government Code, to~~
39 ~~read:~~

1 ~~7500.5. (a) In order to safeguard the integrity and soundness~~
2 ~~of all public retirement systems, assure prompt delivery of benefits~~
3 ~~and related services to the participants and their beneficiaries, and~~
4 ~~minimize employer expenses, all state and local public retirement~~
5 ~~systems shall, at a minimum, administer their systems in~~
6 ~~compliance with the provisions of this section. Nothing in this~~
7 ~~section shall be construed to limit the Legislature's authority to~~
8 ~~adopt more restrictive provisions applicable to a state or local~~
9 ~~public retirement system.~~

10 ~~(b) The board of each state and local public retirement system~~
11 ~~shall establish, by regulation, accountability provisions applicable~~
12 ~~to participating employers. Those accountability provisions shall~~
13 ~~include an ongoing audit process to validate compliance with the~~
14 ~~provisions of this section and penalty provisions for noncompliance~~
15 ~~with the provisions of this section, including, but not limited to,~~
16 ~~untimely or inaccurate submissions of any information the board~~
17 ~~may require in the administration of the system.~~

18 ~~(c) Any payrate, salary, special compensation, or other~~
19 ~~remuneration determined by the board of a state or local public~~
20 ~~retirement system to have been paid for the principal purpose of~~
21 ~~enhancing a member's benefits under that system shall not be~~
22 ~~included in any calculation of compensation earnable. Any~~
23 ~~presumption by the board that salary or other remuneration was~~
24 ~~paid for the principal purpose of enhancing a member's benefit~~
25 ~~under the system may be rebutted by the member or by the~~
26 ~~employer on behalf of the member. Upon receipt of sufficient~~
27 ~~evidence to the contrary, a presumption by the board that salary~~
28 ~~or other remuneration was paid for the principal purpose of~~
29 ~~enhancing a member's benefits under that system may be reversed.~~

30 ~~(d) Cash conversions of accrued employee benefits in amounts~~
31 ~~that exceed the amount that is both earned and payable to the~~
32 ~~member during a pay period shall not be credited to or included~~
33 ~~in any calculation of compensation earnable by any state or local~~
34 ~~public retirement system.~~

35 ~~(e) Final settlement or termination pay or similar payment that~~
36 ~~is received by a member in anticipation of retirement, upon~~
37 ~~retirement, or separation from employment, shall not be credited~~
38 ~~to or included in any calculation of compensation earnable by any~~
39 ~~state or local public retirement system.~~

1 (f) A retired person, who has not reinstated following retirement,
2 whether or not he or she has attained the normal retirement age,
3 shall have a bona fide separation in service before performing
4 service for any employer covered by a state or local retirement
5 system as an employee, through a third party, or as an independent
6 contractor. A board of a state or local retirement system shall
7 establish, by regulation, the criteria under which a bona fide
8 separation is satisfied. A bona fide separation established by the
9 system shall not be less than six months.

10 (g) Compensation credited to, or included in, any calculation
11 of compensation earnable for an employee who is not in a group
12 or class shall not exceed, during the final compensation period as
13 well as two years immediately preceding the final compensation
14 period, the average increase in compensation earnable during the
15 same period for all employees of that same employer who are in
16 the closest related group or class.

17 (h) For the purposes of this section, the following definitions
18 shall apply:

19 (1) "A group or class of employees" means a number of
20 employees of the same employer considered together because they
21 share job similarities, work location, collective bargaining unit, or
22 other logical work grouping. Under no circumstance shall one
23 employee be considered a group or class.

24 (2) "Payrate or salary" means the normal monthly rate of pay
25 or monthly base pay of the member paid in cash and pursuant to
26 publicly available pay schedules to similarly situated members of
27 the same group or class of employment for services rendered on
28 a full-time basis during normal working hours.

29 (3) "Payrate or salary for a member who is not in a group or
30 class" means the monthly rate of pay or monthly base pay or salary
31 of the member, paid in cash and pursuant to publicly available pay
32 schedules, for services rendered on a full-time basis during normal
33 working hours, subject to the limitations of subdivision (g).

34 (4) "Special compensation" means a payment received for
35 special skills, knowledge, abilities, work assignment, workdays
36 or hours, or other work conditions.

37 (5) "Compensation earnable" means the salary or payrate,
38 special compensation, or other remuneration of the member used
39 in the determination of final compensation for the purposes of
40 calculation of a member's retirement benefit.

1 SEC. 3. (a) It is the intent of the Legislature to enact changes
2 in the Education Code applicable to the State Teachers' Retirement
3 System (Part 13 (commencing with Section 22000) of Title 1 of
4 the Education Code) to implement the provisions established in
5 Section 7500.5 of the Government Code.

6 (b) It is the intent of the Legislature to enact changes in the
7 Public Employee's Retirement Law (Part 3 (commencing with
8 Section 20000) of Division 5 of Title 2 of the Government Code)
9 to implement the provisions established in Section 7500.5 of the
10 Government Code.

11 (c) It is the intent of the Legislature to enact changes in the
12 County Employees Retirement Law (Part 3 (commencing with
13 Section 31200) of Division 4 of Title 3 of the Government Code)
14 to implement the provisions established in Section 7500.5 of the
15 Government Code.

16 (d) It is the intent of the Legislature to enact changes to Chapter
17 2 (commencing with Section 45300) of Division 5 of Title 4 of
18 the Government Code, governing retirement plans established by
19 cities, to implement the provisions established in Section 7500.5
20 of the Government Code.

21 (e) It is the intent of the Legislature to enact changes to Chapter
22 4 (commencing with Section 50800) of Part 1 of Division 1 of
23 Title 5 of the Government Code, governing police officers' pension
24 fund laws and firemen's pension fund laws, to implement the
25 provisions established in Section 7500.5 of the Government Code.

26 SEC. 4. The provisions of this act shall be operative for all
27 active and future members of the applicable retirement systems
28 commencing on July 1, 2011.

29 SEC. 2. Section 22112.5 of the Education Code is amended to
30 read:

31 22112.5. (a) "Class of employees" means a number of
32 employees considered as a group because they are employed to
33 perform similar duties, are employed in the same type of program,
34 or share other similarities related to the nature of the work being
35 performed.

36 (b) A class of employees may be comprised of one person if no
37 other person employed by the employer performs similar duties,
38 is employed in the same type of program, or shares other
39 similarities related to the nature of the work being performed and

1 ~~that same class is in common use among other employers. One~~
2 ~~employee shall not be considered a class of employees.~~

3 (c) The board shall have the right to override the determination
4 by an employer as to whether or not a group or an individual
5 constitutes a “class of employees” within the meaning of this
6 section.

7 ~~(d) The amendments to this section during the 1995–96 Regular~~
8 ~~Session of the Legislature shall be deemed to have become~~
9 ~~operative on July 1, 1996.~~

10 SEC. 3. Section 22119.2 of the Education Code is amended to
11 read:

12 22119.2. (a) “Creditable compensation” means remuneration
13 that is payable in cash by an employer to all persons in the same
14 class of employees, *if applicable*, and is paid to an employee for
15 performing creditable service. *Contributions paid on creditable*
16 *compensation shall be credited to either the member’s Defined*
17 *Benefit Program or the Defined Benefit Supplement Program, as*
18 *applicable, in accordance with subdivisions (b) and (f) and Section*
19 *22905. Creditable*

20 (1) *Creditable* compensation shall ~~include~~ *be designated as*
21 *either of the following:*

22 (1)

23 (A) Salary or wages paid in accordance with a salary schedule
24 or employment agreement *for services performed or the use of an*
25 *employer-approved leave during a specified period of time, the*
26 *right of which accrues in proportion to the service performed or*
27 *the leave used.*

28 (2)

29 (B) Remuneration that is paid in addition to salary, providing
30 it is payable to all persons who are in the same class of employees,
31 *if applicable*, in the same dollar amount, the same percentage of
32 salary, or the same percentage of the amount being distributed.
33 *For purposes of this subparagraph, “remuneration that is paid in*
34 *addition to salary” shall include:*

35 (i) *Reimbursements or allowances for expenses, the payment of*
36 *which is not substantiated pursuant to Section 274(d) of the*
37 *Internal Revenue Code.*

38 (ii) *Cash payments made by the employer in exchange for a*
39 *member’s waiver of a right to receive any payment, amount, or*
40 *benefit described in paragraphs (5) and (6) of subdivision (c).*

- 1 (iii) Compensation that is payable for a specified number of
 2 times as limited by law, a collective bargaining agreement, or an
 3 employment agreement.
- 4 (iv) Lump-sum payments or bonus payments that are paid for
 5 meeting career, educational, age, or performance-related criteria,
 6 the right of which does not accrue in proportion to the service
 7 performed or leave used.
- 8 (v) Any other payments the board may determine, pursuant to
 9 regulations, to be "remuneration that is paid in addition to salary.
- 10 ~~(3) Remuneration that is paid for the use of sick leave, vacation,
 11 and other employer-approved leave, except as provided in
 12 paragraph (4) of subdivision (c).~~
- 13 (2) Creditable compensation shall include the following:
- 14 ~~(4)~~
- 15 (A) Member contributions that are picked up by an employer
 16 pursuant to Section 22903 or 22904.
- 17 ~~(5)~~
- 18 (B) Amounts that are deducted from a member's compensation,
 19 including, but not limited to, salary deductions for participation
 20 in a deferred compensation plan; deductions to purchase an annuity
 21 contract, tax- deferred retirement plan, or insurance program; and
 22 contributions to a plan that meets the requirements of Section 125,
 23 401(k), ~~or~~ 403(b), or 457 of Title 26 of the United States Code.
- 24 ~~(6)~~
- 25 (C) Any other ~~payments~~ amounts the board ~~determines~~ may
 26 determine, pursuant to regulations, to be "creditable
 27 compensation."
- 28 (b) Any salary or other remuneration determined by the board
 29 to have been paid for the principal purpose of ~~enhancing to enhance~~
 30 a member's benefits under the plan shall not be credited under the
 31 Defined Benefit Program. Contributions on that compensation
 32 shall be credited to the Defined Benefit Supplement Program. A
 33 presumption by the board that salary or other remuneration was
 34 paid for the principal purpose of ~~enhancing to enhance~~ the
 35 member's benefits under the plan may be rebutted by the member
 36 or by the employer on behalf of the member. Upon receipt of
 37 sufficient evidence to the contrary, a presumption by the board
 38 that salary or other remuneration was paid for the principal purpose
 39 of ~~enhancing to enhance~~ the member's benefits under the plan
 40 may be reversed. For the purposes of this subdivision, the following

1 salary or remuneration shall be presumed to have been paid to
2 enhance a member's benefits:

3 (1) Remuneration increasing a member's compensation earnable
4 from one year to the next during the final compensation period or
5 in either of the two years prior to the final compensation period
6 in excess of the greater of either of the following:

7 (A) Ten percent.

8 (B) Twice the percentage increase in the average compensation
9 earnable by active members of the Defined Benefit Program from
10 the prior year, as determined by the system.

11 (2) Any other salary or remuneration determined by the board
12 to have been paid to enhance a member's benefits.

13 (c) "Creditable compensation" does not mean and shall not
14 include:

15 (1) Remuneration that is not payable in cash or is not payable
16 to all persons who are in the same class of employees.

17 (2) Remuneration that is paid for service that is not creditable
18 service pursuant to Section 22119.5.

19 (3) Remuneration that is paid in addition to salary if it is not
20 payable to all persons in the same class of employees in the same
21 dollar amount, the same percentage of salary, or the same
22 percentage of the amount being distributed pursuant to
23 subparagraph (B) of paragraph (2) (1) of subdivision (a).

24 (4) Remuneration that is paid for unused accumulated leave.

25 (5) Annuity contracts, tax-deferred retirement plans, or insurance
26 programs and contributions to plans that meet the requirements of
27 Section 125, 401(k), or 403(b) of Title 26 of the United States
28 Code when the cost is covered by an employer and is not deducted
29 from the member's salary.

30 (6) Fringe benefits provided by an employer.

31 ~~(7) Job-related expenses~~ Expenses paid or reimbursed by an
32 employer.

33 ~~(8) Expenses reimbursed by an employer, the payment of which~~
34 ~~is substantiated pursuant to Section 274(d) of the Internal Revenue~~
35 ~~Code.~~

36 ~~(8)~~

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

39 ~~(9)~~

1 (10) Any other payments the board ~~determines~~ *may determine,*
2 *pursuant to regulations,* not to be “creditable compensation.”

3 (d) An employer or individual who knowingly or willfully
4 reports compensation in a manner inconsistent with subdivision
5 (a) or (c) shall reimburse the plan for benefit overpayments that
6 occur because of that inconsistent reporting and may be subject to
7 prosecution for fraud, theft, or embezzlement in accordance with
8 the Penal Code. The system may establish procedures to ensure
9 that compensation reported by an employer is in compliance with
10 this section.

11 (e) For purposes of this section, remuneration shall be considered
12 payable if it would be paid to any person who meets the
13 qualifications or requirements specified in a collective bargaining
14 agreement or an employment agreement as a condition of receiving
15 the remuneration.

16 (f) This definition of “creditable compensation” reflects sound
17 principles that support the integrity of the retirement fund. Those
18 principles include, but are not limited to, consistent treatment of
19 compensation throughout a member’s career, consistent treatment
20 of compensation among an entire class of employees, preventing
21 adverse selection, and excluding from compensation earnable
22 remuneration that is paid for the ~~principal purpose of enhancing~~
23 ~~to enhance~~ a member’s benefits ~~under the plan~~. The board shall
24 determine the appropriate crediting of contributions between the
25 Defined Benefit Program and the Defined Benefit Supplement
26 Program according to these principles, to the extent not otherwise
27 specified pursuant to this part.

28 ~~(g) The section shall become operative on July 1, 2002, if the~~
29 ~~revenue limit cost-of-living adjustment computed by the~~
30 ~~Superintendent of Public Instruction for the 2001-02 fiscal year~~
31 ~~is equal to or greater than 3.5 percent. Otherwise this section shall~~
32 ~~become operative on July 1, 2003.~~

33 *SEC. 4. Section 22461 of the Education Code is amended to*
34 *read:*

35 22461. (a) ~~Upon retaining~~ *A school district, community college*
36 *district, county superintendent of schools, California State*
37 *University, or other employing agency that retains the services of*
38 *a retired member under Section 24116, 24214, or 24215, the school*
39 *district, community college district, county superintendent of*
40 *schools, California State University, or other employing agency*

1 shall do both of the following regardless of whether the retired
2 member performs the services as an employee of the employer,
3 an employee of a third party, or an independent contractor:

4 (1) ~~Advise Prior to retention, advise~~ the retired member of the
5 earnings limitation set forth in Sections 24116, 24214, ~~24214.5,~~
6 and 24215.

7 (2) Maintain accurate records of the retired member's earnings
8 and report those earnings monthly to the system and the retired
9 member regardless of the method of payment or the fund from
10 which the payments were made.

11 (b) This section shall not be construed to make any school
12 district, community college district, county superintendent of
13 schools, the California State University, or other employing agency
14 liable for any amount paid to the retired member in excess of the
15 earnings limitation under any circumstance, including the failure
16 to inform the retired member that continuation of service would
17 exceed the limitations.

18 *SEC. 5. Section 22905 of the Education Code is amended to*
19 *read:*

20 22905. (a) Member contributions pursuant to Section 22901,
21 employer contributions pursuant to Section 22903 or 22904, and
22 member contributions made by an employer pursuant to Section
23 22909 shall be credited to the member's individual account under
24 the Defined Benefit Program or the Defined Benefit Supplement
25 Program, whichever is applicable pursuant to the provisions of
26 this part.

27 (b) Member and employer contributions on a member's
28 compensation under the following circumstances shall be credited
29 to the member's Defined Benefit Supplement account:

30 (1) Compensation for creditable service that exceeds one year
31 in a school year.

32 (2) Compensation that is consistent with subdivision (b) of
33 Section 22119.2.

34 ~~Compensation that is payable for a specified number of times~~
35 ~~as limited by law, a collective bargaining agreement, or an~~
36 ~~employment agreement~~ *Remuneration that is paid in addition to*
37 *salary, in accordance with subparagraph (B) of paragraph (1) of*
38 *subdivision (a) of Section 2119.2.*

39 (4) *Remuneration increasing a member's compensation earnable*
40 *from one year to the next in excess of the average percentage*

1 increase in compensation earnable by the members in the closest
2 related class of employees during the same period reported by
3 each employer, as determined by the system, providing that:

4 (i) The remuneration is paid to a member who is not in a class
5 of employees in accordance with subdivision (b) of Section
6 22112.5.

7 (ii) The remuneration is either paid during the member's final
8 compensation period or either of the two years prior to the
9 member's final compensation period.

10 (iii) The remuneration is not paid as a result of a legitimate
11 change in the member's duties and responsibilities.

12 (c) A member may not make voluntary pretax or posttax
13 contributions under the Defined Benefit Supplement Program,
14 except as provided in subdivision (d), nor may a member redeposit
15 amounts previously distributed based on the balance in the
16 member's Defined Benefit Supplement account.

17 (d) Member and employer contributions pursuant to paragraph
18 (1) of subdivision (b) under the Defined Benefit Supplement
19 Program shall be credited to the accounts of members as of July
20 1 each year following a determination by the system under the
21 provisions of this part that those contributions should be credited
22 to the Defined Benefit Supplement Program. Any other
23 contributions under the Defined Benefit Supplement Program
24 pursuant to paragraph (2) ~~or~~, (3), or (4) of subdivision (b), shall
25 be credited to the individual account of the member upon receipt
26 by the system. Contributions to a member's Defined Benefit
27 Supplement account shall be identified separately from the
28 member's contributions credited under the Defined Benefit
29 Program.

30 ~~(e) The provisions of this section shall become operative on~~
31 ~~July 1, 2002, if the revenue limit cost-of-living adjustment~~
32 ~~computed by the Superintendent of Public Instruction for the~~
33 ~~2001-02 fiscal year is equal to or greater than 3.5 percent.~~
34 ~~Otherwise this section shall become operative on July 1, 2003.~~

35 SEC. 6. Section 24214.5 of the Education Code is amended to
36 read:

37 24214.5. (a) Notwithstanding Section 24214, ~~as of July 1,~~
38 ~~2010,~~ for employees retiring on or after January 1, 2011, the
39 postretirement compensation limitation that shall apply to the
40 compensation for performance of the activities identified in

1 subdivision (a) or (b) of Section 22119.5 either as an employee of
2 an employer, an employee of a third party, or as an independent
3 contractor *within the California public school system* shall be zero
4 dollars (\$0) during the first ~~six calendar months~~ 180 days after a
5 member retired for service under this part, ~~if the member is below~~
6 ~~normal retirement age at the time the compensation is earned.~~

7 (b) If a member retired for service under this part earns
8 compensation for performing activities identified in subdivision
9 (a) or (b) of Section 22119.5 in excess of the limitation specified
10 in subdivision (a), as an employee of an employer, as an employee
11 of a third party, or as an independent contractor, within the
12 California public school system, the member's retirement
13 allowance shall be reduced by the amount of the excess
14 compensation. The amount of the reduction may be equal to the
15 monthly allowance payable but may not exceed the amount of the
16 annual allowance payable under this part for the fiscal year in
17 which the excess compensation was earned.

18 *SEC. 7. Section 26505 of the Education Code is amended to*
19 *read:*

20 26505. If a participant who has retired and is receiving an
21 annuity under the Cash Balance Benefit Program becomes
22 reemployed prior to 60 years of age or becomes reemployed on or
23 after 60 years of age but within one year of his or her retirement
24 date, to perform creditable service ~~subject to coverage by the plan,~~
25 *as an employee of an employer, as an employee of a third party,*
26 *or as an independent contractor within the California public school*
27 *system*, the annuity shall be terminated, the employee account and
28 the employer account of the participant shall be credited with
29 respective balances that reflect the actuarial equivalent of the
30 participant's retirement benefit as of the date of the reemployment
31 and the Annuitant Reserve shall be reduced by the amount of the
32 credits. If a participant who has retired and is receiving an annuity
33 under the Cash Balance Benefit Program becomes reemployed on
34 or after age 60 and more than one year after retirement to perform
35 creditable service under the plan, the annuity shall continue and
36 employee contributions and employer contributions for the
37 creditable service shall be made to the plan and shall be credited
38 to new employee and employer accounts established on behalf of
39 the participant.

1 SEC. 8. Section 26806 of the Education Code is amended to
2 read:

3 26806. ~~The~~ (a) The normal form of retirement benefit under
4 this part is a lump-sum payment. Upon distribution of the
5 lump-sum payment to the participant, no further benefits shall be
6 payable from the plan with respect to the Cash Balance Benefit
7 Program. *The lump-sum payment shall not be payable before 180*
8 *days have elapsed following the date of termination of employment.*

9 (b) *The application to receive the normal form of a retirement*
10 *benefit shall be automatically canceled if the participant performs*
11 *creditable service as an employee of an employer, as an employee*
12 *of a third party, or as an independent contractor within the*
13 *California public school system within 180 days following the date*
14 *of termination of employment.*

15 SEC. 9. Section 7500.5 is added to the Government Code, to
16 read:

17 7500.5. (a) *In order to safeguard the integrity and soundness*
18 *of public retirement systems, assure prompt delivery of benefits*
19 *and related services to the participants and their beneficiaries,*
20 *and minimize employer expenses, state and local public retirement*
21 *systems shall administer retirement benefits in accordance with*
22 *the principles articulated in this section. Nothing in this section*
23 *shall be construed to limit the Legislature's authority to adopt*
24 *more restrictive benefit provisions applicable to a state or local*
25 *public retirement system.*

26 (b) *The board of each state and local public retirement system*
27 *shall establish, by statute or regulation, accountability provisions*
28 *that shall include an audit process to ensure compliance with the*
29 *principles articulated in the provisions of this section. The*
30 *accountability provisions shall be enforceable by the imposition*
31 *of monetary penalties or fees, including, but not limited to, untimely*
32 *or inaccurate submissions of any information that the board may*
33 *require in the administration of the system.*

34 (c) *Any payrate, salary, special compensation, or other*
35 *remuneration determined by the board of a state or local public*
36 *retirement system to have been paid for the principal purpose of*
37 *enhancing a member's retirement benefits under that system shall*
38 *not be included in compensation earnable. Where the board of a*
39 *state or local public retirement system determines that payrate,*
40 *salary, special compensation, or other remuneration was paid for*

1 *the principal purpose of enhancing a member's benefit, the member*
2 *or the employer may present evidence to the contrary. Upon receipt*
3 *of sufficient evidence to the contrary, a board may reverse its*
4 *determination that payrate, salary, special compensation, or other*
5 *remuneration was paid for the principal purpose of enhancing a*
6 *member's retirement benefits.*

7 *(d) Cash conversions of accrued employee benefits in amounts*
8 *that exceed the amount that is both earned and payable to the*
9 *member during the member's applicable final compensation*
10 *measurement period shall not be credited to, or included in,*
11 *compensation earnable by any state or local public retirement*
12 *system.*

13 *(e) Final settlement or termination pay or any similar payment*
14 *that is received by a member in anticipation of retirement, or*
15 *separation from employment, or upon retirement, shall not be*
16 *included in compensation earnable by any state or local public*
17 *retirement system.*

18 *(f) A retired person, who has not reinstated following retirement,*
19 *shall have a separation in service for a period of at least 180 days*
20 *before performing service for any employer covered by the state*
21 *or local retirement system from which he or she retired, whether*
22 *as an employee, through a third party, or as an independent*
23 *contractor. This requirement shall apply to all persons who retire*
24 *on and after January 1, 2011.*

25 *(g) Any increase in compensation earnable for an employee*
26 *who is not in a group or class shall not exceed, during the final*
27 *compensation period as well as two years immediately preceding*
28 *the final compensation period, the average increase in*
29 *compensation earnable during the same period for all similarly*
30 *situated members in the closest related group or class of that same*
31 *employer.*

32 *(h) For the purposes of implementing this section, all state or*
33 *local public retirement systems shall have terms or definitions*
34 *consistent with the following:*

35 *(1) "A group or class" means a number of employees of the*
36 *same employer considered together because they share job*
37 *similarities, work location, collective bargaining unit, or other*
38 *logical work grouping. Under no circumstance shall one employee*
39 *be considered a group or class.*

1 (2) "Payrate" or "salary" means the normal monthly rate of
2 pay or monthly base pay of the member paid in cash and pursuant
3 to publicly available pay schedules to similarly situated members
4 of the same group or class for services rendered on a full-time
5 basis during normal working hours.

6 (3) "Payrate" or "salary" for a member who is not in a group
7 or class means the monthly rate of pay or monthly base pay, paid
8 in cash and pursuant to publicly available pay schedules, for
9 services rendered on a full-time basis during normal working
10 hours, subject to the limitations of subdivision (g).

11 (4) "Special compensation" includes a payment received for
12 special skills, knowledge, abilities, work assignment, workdays or
13 hours, or other work conditions.

14 (5) "Compensation earnable" includes payrate, salary, special
15 compensation, or other remuneration, or any combination of the
16 forgoing, of the member.

17 SEC. 10. Section 20221 of the Government Code is amended
18 to read:

19 20221. Each state-agency employer, school employer, and the
20 chief administrative officer of a contracting agency or any other
21 person who its governing body may designate shall furnish all of
22 the following:

23 (a) Immediate notice to the board, in the manner prescribed by
24 the system, of the change in status of any member resulting from
25 hiring, transfer, promotion, leave of absence, resignation,
26 reinstatement, dismissal, or death.

27 (b) Immediate notice to the board, in the manner prescribed by
28 the system, of any change that may impact a member's payrate or
29 special compensation, as defined in Section 20636 or 20636.1,
30 resulting from the adoption, termination or amendment of any
31 labor policy or agreement.

32 ~~(b)~~

33 (c) Any additional information concerning any member or the
34 employer that the board may require in the administration of this
35 system.

36 ~~(e)~~

37 (d) The services of its officer and departments that the board
38 may request in connection with claims by members against this
39 system.

1 *The board may assess a reasonable fee on any employer who*
2 *fails to provide information as required by this section within*
3 *applicable the time limits.*

4 *SEC. 11. Section 20630 of the Government Code is amended*
5 *to read:*

6 20630. (a) As used in this part, "compensation" means the
7 remuneration paid out of funds controlled by the employer in
8 payment for the member's services performed during normal
9 working hours or for time during which the member is excused
10 from work because of any of the following:

11 (1) Holidays.

12 (2) Sick leave.

13 (3) Industrial disability leave, during which, benefits are payable
14 pursuant to Sections 4800 and 4850 of the Labor Code, Article 4
15 (commencing with Section 19869) of Chapter 2.5 of Part 2.6, or
16 Section 44043 or 87042 of the Education Code.

17 (4) Vacation.

18 (5) Compensatory time off.

19 (6) Leave of absence.

20 (b) When compensation is reported to the board, the employer
21 shall identify the pay period in which the compensation was earned
22 regardless of when reported or paid. Compensation shall be
23 reported in accordance with Section 20636 or 20636.1 and shall
24 not exceed compensation earnable, as defined in Section 20636
25 or 20636.1.

26 (c) *The board may assess a reasonable amount to cover the cost*
27 *of audit, adjustment, or correction, where it determines that an*
28 *employer knowingly failed to comply with subdivision (b). An*
29 *employer will be found to have knowingly failed to comply with*
30 *subdivision (b) if the board determines that the employer either:*

31 (1) *Knew or should have known that the compensation reported*
32 *was not compensation earnable, as defined in Section 20636 or*
33 *20636.1.*

34 (2) *Failed to identify the pay period in which compensation*
35 *earnable was earned as required.*

36 (d) *An employer shall not pass on to an employee any costs*
37 *assessed pursuant to subdivision (c).*

38 *SEC. 12. Section 20636 of the Government Code is amended*
39 *to read:*

1 20636. (a) "Compensation earnable" by a member means the
2 payrate and special compensation of the member, as defined by
3 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

4 (b) (1) "Payrate" means the normal monthly rate of pay or
5 *monthly* base pay of the member paid in cash to similarly situated
6 members of the same group or class of employment for services
7 rendered on a full-time basis during normal working hours,
8 pursuant to publicly available pay schedules. "Payrate," for a
9 member who is not in a group or class, means the monthly rate of
10 pay or *monthly* base pay of the member, paid in cash and pursuant
11 to publicly available pay schedules, for services rendered on a
12 full-time basis during normal working hours, subject to the
13 limitations of paragraph (2) of subdivision (e).

14 (2) "Payrate" shall include an amount deducted from a member's
15 salary for any of the following:

16 (A) Participation in a deferred compensation plan.

17 (B) Payment for participation in a retirement plan that meets
18 the requirements of Section 401(k) of Title 26 of the United States
19 Code.

20 (C) Payment into a money purchase pension plan and trust that
21 meets the requirements of Section 401(a) of Title 26 of the United
22 States Code.

23 (D) Participation in a flexible benefits program.

24 (3) The computation for a leave without pay of a member shall
25 be based on the compensation earnable by him or her at the
26 beginning of the absence *and shall report special compensation*
27 *separately from payrate.*

28 (4) The computation for time prior to entering state service shall
29 be based on the compensation earnable by him or her in the position
30 first held by him or her in state service.

31 (c) (1) Special compensation of a member includes a payment
32 received for special skills, knowledge, abilities, work assignment,
33 workdays or hours, or other work conditions.

34 (2) Special compensation shall be limited to that which is
35 received by a member pursuant to a labor policy or agreement or
36 as otherwise required by state or federal law, to similarly situated
37 members of a group or class of employment that is in addition to
38 payrate. If an individual is not part of a group or class, special
39 compensation shall be limited to that which the board determines
40 is received by similarly situated members in the closest related

1 group or class that is in addition to payrate, subject to the
2 limitations of paragraph (2) of subdivision (e).

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

7 (4) Special compensation may include the full monetary value
8 of normal contributions paid to the board by the employer, on
9 behalf of the member and pursuant to Section 20691, if the
10 employer's labor policy or agreement specifically provides for the
11 inclusion of the normal contribution payment in compensation
12 earnable.

13 (5) The monetary value of a service or noncash advantage
14 furnished by the employer to the member, except as expressly and
15 specifically provided in this part, is not special compensation unless
16 regulations promulgated by the board specifically determine that
17 value to be "special compensation."

18 (6) The board shall promulgate regulations that delineate more
19 specifically and exclusively what constitutes "special
20 compensation" as used in this section. *A written petition to request
21 an addition to the exclusive list that identifies and defines "special
22 compensation" items contained in board regulations may be made
23 pursuant to Section 11340.7.* A uniform allowance, the monetary
24 value of employer-provided uniforms, holiday pay, and premium
25 pay for hours worked within the normally scheduled or regular
26 working hours that are in excess of the statutory maximum
27 workweek or work period applicable to the employee under Section
28 201 et seq. of Title 29 of the United States Code shall be included
29 as special compensation and appropriately defined in those
30 regulations.

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

32 (A) Final settlement pay.

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

35 (8) *A written request may be submitted for the board's
36 determination as to whether specific compensation items meet the
37 definition of special compensation. Determinations shall be made
38 on these requests within 90 calendar days of receipt of all
39 information required to be submitted by the board.*

1 (C) Other payments the board has not affirmatively determined
2 to be special compensation.

3 (d) Notwithstanding any other provision of law, payrate and
4 special compensation schedules, ordinances, or similar documents
5 shall be public records available for public scrutiny.

6 (e) (1) As used in this part, “group or class of employment”
7 means a number of employees considered together because they
8 share similarities in job duties, work location, collective bargaining
9 unit, or other logical work-related grouping. One employee may
10 not be considered a group or class.

11 (2) Increases in compensation earnable granted to an employee
12 who is not in a group or class shall be limited during the final
13 compensation period applicable to the employees, as well as the
14 two years immediately preceding the final compensation period,
15 to the average increase in compensation earnable during the same
16 period reported by the employer for all ~~employees~~ *similarly*
17 *situated members in the closest related group or class*, or who are
18 in the same membership classification, except as may otherwise
19 be determined pursuant to regulations adopted by the board that
20 establish reasonable standards for granting exceptions.

21 (f) As used in this part, “final settlement pay” means pay or
22 cash conversions of employee benefits that are in excess of
23 compensation earnable, that are granted or awarded to a member
24 in connection with, or in anticipation of, a separation from
25 employment. The board shall promulgate regulations that delineate
26 more specifically what constitutes final settlement pay.

27 (g) (1) Notwithstanding subdivision (a), “compensation
28 earnable” for state members means the average monthly
29 compensation, as determined by the board, upon the basis of the
30 average time put in by members in the same group or class of
31 employment and at the same rate of pay, and is composed of the
32 payrate and special compensation of the member. The computation
33 for an absence of a member shall be based on the compensation
34 earnable by him or her at the beginning of the absence and for time
35 prior to entering state service shall be based on the compensation
36 earnable by him or her in the position first held by him or her in
37 that state service.

38 (2) Notwithstanding subdivision (b), “payrate” for state members
39 means the average monthly remuneration paid in cash out of funds
40 paid by the employer to similarly situated members of the same

1 group or class of employment, *pursuant to publicly available pay*
2 *schedules*, in payment for the member's services or for time during
3 which the member is excused from work because of holidays, sick
4 leave, vacation, compensating time off, or leave of absence.
5 "Payrate" for state members shall include:

6 (A) An amount deducted from a member's salary for any of the
7 following:

8 (i) Participation in a deferred compensation plan established
9 pursuant to Chapter 4 (commencing with Section 19993) of Part
10 2.6.

11 (ii) Payment for participation in a retirement plan that meets
12 the requirements of Section 401(k) of Title 26 of the United States
13 Code.

14 (iii) Payment into a money purchase pension plan and trust that
15 meets the requirements of Section 401(a) of Title 26 of the United
16 States Code.

17 (iv) Participation in a flexible benefits program.

18 (B) A payment in cash by the member's employer to one other
19 than an employee for the purpose of purchasing an annuity contract
20 for a member under an annuity plan that meets the requirements
21 of Section 403(b) of Title 26 of the United States Code.

22 (C) Employer "pick up" of member contributions that meets
23 the requirements of Section 414(h)(2) of Title 26 of the United
24 States Code.

25 (D) Disability or workers' compensation payments to safety
26 members in accordance with Section 4800 of the Labor Code.

27 (E) Temporary industrial disability payments pursuant to Article
28 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

29 (F) Other payments the board may determine to be within
30 "payrate."

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

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

37 (B) Compensation for performing normally required duties,
38 such as holiday pay, bonuses (for duties performed on regular work
39 shift), educational incentive pay, maintenance and noncash
40 payments, out-of-class pay, marksmanship pay, hazard pay,

1 motorcycle pay, paramedic pay, emergency medical technician
2 pay, Peace Officer Standards and Training (POST) certificate pay,
3 and split shift differential.

4 (C) Compensation for uniforms, except as provided in Section
5 20632.

6 (D) Other payments the board may determine to be within
7 “special compensation.”

8 (4) “Payrate” and “special compensation” for state members do
9 not include any of the following:

10 (A) The provision by the state employer of a medical or hospital
11 service or care plan or insurance plan for its employees (other than
12 the purchase of annuity contracts as described below in this
13 subdivision), a contribution by the employer to meet the premium
14 or charge for that plan, or a payment into a private fund to provide
15 health and welfare benefits for employees.

16 (B) A payment by the state employer of the employee portion
17 of taxes imposed by the Federal Insurance Contribution Act.

18 (C) Amounts not available for payment of salaries and that are
19 applied by the employer for the purchase of annuity contracts
20 including those that meet the requirements of Section 403(b) of
21 Title 26 of the United States Code.

22 (D) Benefits paid pursuant to Article 5 (commencing with
23 Section 19878) of Chapter 2.5 of Part 2.6.

24 (E) Employer payments that are to be credited as employee
25 contributions for benefits provided by this system, or employer
26 payments that are to be credited to employee accounts in deferred
27 compensation plans. The amounts deducted from a member’s
28 wages for participation in a deferred compensation plan may not
29 be considered to be “employer payments.”

30 (F) Payments for unused vacation, annual leave, personal leave,
31 sick leave, or compensating time off, whether paid in lump sum
32 or otherwise.

33 (G) Final settlement pay.

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

36 (I) Compensation for additional services outside regular duties,
37 such as standby pay, callback pay, court duty, allowance for
38 automobiles, and bonuses for duties performed after the member’s
39 regular work shift.

- 1 (J) Amounts not available for payment of salaries and that are
2 applied by the employer for any of the following:
- 3 (i) The purchase of a retirement plan that meets the requirements
4 of Section 401(k) of Title 26 of the United States Code.
- 5 (ii) Payment into a money purchase pension plan and trust that
6 meets the requirements of Section 401(a) of Title 26 of the United
7 States Code.
- 8 (K) Payments made by the employer to or on behalf of its
9 employees who have elected to be covered by a flexible benefits
10 program, where those payments reflect amounts that exceed the
11 employee's salary.
- 12 (L) Other payments the board may determine are not "payrate"
13 or "special compensation."
- 14 (5) If the provisions of this subdivision, including the board's
15 determinations pursuant to subparagraph (F) of paragraph (2) and
16 subparagraph (D) of paragraph (3), are in conflict with the
17 provisions of a memorandum of understanding reached pursuant
18 to Section 3517.5 or 3560, the memorandum of understanding
19 shall be controlling without further legislative action, except that
20 if the provisions of a memorandum of understanding require the
21 expenditure of funds, those provisions may not become effective
22 unless approved by the Legislature in the annual Budget Act. No
23 memorandum of understanding reached pursuant to Section 3517.5
24 or 3560 may exclude from the definition of either "payrate" or
25 "special compensation" a member's base salary payments or
26 payments for time during which the member is excused from work
27 because of holidays, sick leave, vacation, compensating time off,
28 or leave of absence. If items of compensation earnable are included
29 by memorandum of understanding as "payrate" or "special
30 compensation" for retirement purposes for represented and higher
31 education employees pursuant to this paragraph, the Department
32 of Personnel Administration or the Trustees of the California State
33 University shall obtain approval from the board for that inclusion.
- 34 (6) (A) Subparagraph (B) of paragraph (3) prescribes that
35 compensation earnable includes compensation for performing
36 normally required duties, such as holiday pay, bonuses (for duties
37 performed on regular work shift), educational incentive pay,
38 maintenance and noncash payments, out-of-class pay,
39 marksmanship pay, hazard pay, motorcycle pay, paramedic pay,
40 emergency medical technician pay, POST certificate pay, and split

1 shift differential; and includes compensation for uniforms, except
2 as provided in Section 20632; and subparagraph (I) of paragraph
3 (4) excludes from compensation earnable compensation for
4 additional services outside regular duties, such as standby pay,
5 callback pay, court duty, allowance for automobile, and bonuses
6 for duties performed after regular work shift.

7 (B) Notwithstanding subparagraph (A), the Department of
8 Personnel Administration shall determine which payments and
9 allowances that are paid by the state employer shall be considered
10 compensation for retirement purposes for an employee who either
11 is excluded from the definition of state employee in Section 3513,
12 or is a nonelected officer or employee of the executive branch of
13 government who is not a member of the civil service.

14 (C) Notwithstanding subparagraph (A), the Trustees of the
15 California State University shall determine which payments and
16 allowances that are paid by the trustees shall be considered
17 compensation for retirement purposes for a managerial employee,
18 as defined in Section 3562, or supervisory employee as defined in
19 Section 3580.3.

20 *SEC. 13. Section 20636.1 of the Government Code is amended*
21 *to read:*

22 20636.1. (a) Notwithstanding Section 20636, and Section
23 45102 of the Education Code, "compensation earnable" by a school
24 member means the payrate and special compensation of the
25 member, as defined by subdivisions (b) and (c), and as limited by
26 Section 21752.5.

27 (b) (1) "Payrate" means the normal monthly rate of pay or
28 *monthly* base pay of the member paid in cash to similarly situated
29 members of the same group or class of employment for services
30 rendered on a full-time basis during normal working hours,
31 *pursuant to publicly available pay schedules*. For purposes of this
32 part, for classified members, full-time employment is 40 hours per
33 week, and payments for services rendered, not to exceed 40 hours
34 per week, shall be reported as compensation earnable for all months
35 of the year in which work is performed. "Payrate," for a member
36 who is not in a group or class, means the monthly rate of pay or
37 *monthly* base pay of the member, paid in cash and pursuant to
38 publicly available pay schedules, for services rendered on a
39 full-time basis during normal working hours, subject to the
40 limitations of paragraph (2) of subdivision (e).

1 (A) For the purposes of this section, “classified members” shall
2 mean members who retain membership under this system while
3 employed with a school employer in positions not subject to
4 coverage under the Defined Benefit Program under the State
5 Teacher’s Retirement System.

6 (B) For the purposes of this section, and Sections 20962 and
7 20966, “certificated members” shall mean members who retain
8 membership under this system while employed in positions subject
9 to coverage under the Defined Benefit Program under the State
10 Teacher’s Retirement System.

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

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

17 (c) (1) Special compensation of a school member includes any
18 payment received for special skills, knowledge, abilities, work
19 assignment, workdays or hours, or other work conditions.

20 (2) Special compensation shall be limited to that which is
21 received by a member pursuant to a labor policy or agreement or
22 as otherwise required by state or federal law, to similarly situated
23 members of a group or class of employment that is in addition to
24 payrate. If an individual is not part of a group or class, special
25 compensation shall be limited to that which the board determines
26 is received by similarly situated members in the closest related
27 group or class that is in addition to payrate, subject to the
28 limitations of paragraph (2) of subdivision (e).

29 (3) Special compensation shall be for services rendered during
30 normal working hours and, when reported to the board, the
31 employer shall identify the pay period in which the special
32 compensation was earned, *and shall report special compensation*
33 *separately from payrate.*

34 (4) Special compensation may include the full monetary value
35 of normal contributions paid to the board by the employer, on
36 behalf of the member and pursuant to Section 20691, provided
37 that the employer’s labor policy or agreement specifically provides
38 for the inclusion of the normal contribution payment in
39 compensation earnable.

1 (5) The monetary value of any service or noncash advantage
2 furnished by the employer to the member, except as expressly and
3 specifically provided in this part, shall not be special compensation
4 unless regulations promulgated by the board specifically determine
5 that value to be “special compensation.”

6 (6) The board shall promulgate regulations that delineate more
7 specifically and exclusively what constitutes “special
8 compensation” as used in this section. *A written petition to request
9 an addition to the exclusive list that identifies and defines “special
10 compensation” items contained in board regulations may be made
11 pursuant to Section 11340.7.* A uniform allowance, the monetary
12 value of employer-provided uniforms, holiday pay, and premium
13 pay for hours worked within the normally scheduled or regular
14 working hours that are in excess of the statutory maximum
15 workweek or work period applicable to the employee under Section
16 201 et seq. of Title 29 of the United States Code shall be included
17 as special compensation and appropriately defined in those
18 regulations.

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

20 (A) Final settlement pay.

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

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

25 (8) *A written request may be submitted for the board’s
26 determination as to whether specific compensation items meet the
27 definition of special compensation. Determinations shall be made
28 on these requests within 90 calendar days of receipt of all
29 information required to be submitted by the board.*

30 (d) Notwithstanding any other provision of law, payrate and
31 special compensation schedules, ordinances, or similar documents
32 shall be public records available for public scrutiny.

33 (e) (1) As used in this part, “group or class of employment”
34 means a number of employees considered together because they
35 share similarities in job duties, work location, collective bargaining
36 unit, or other logical work-related grouping. Under no
37 circumstances shall one employee be considered a group or class.

38 (2) Increases in compensation earnable granted to any employee
39 who is not in a group or class shall be limited during the final
40 compensation period applicable to the employees, as well as the

1 two years immediately preceding the final compensation period,
2 to the average increase in compensation earnable during the same
3 period reported by the employer for all ~~employees~~ *similarly*
4 *situated members in the closest related group or class* or who are
5 in the same membership classification, except as may otherwise
6 be determined pursuant to regulations adopted by the board that
7 establish reasonable standards for granting exceptions.

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

14 *SEC. 14. Section 21220 of the Government Code is amended*
15 *to read:*

16 21220. (a) A person who has been retired under this system,
17 for service or for disability, may not be employed in any capacity
18 thereafter by the state, the university, a school employer, or a
19 contracting agency, unless *any of the following conditions are*
20 *satisfied:* ~~the~~

21 (1) *The* employment qualifies for service credit in the University
22 of California Retirement Plan or the State Teachers' Retirement
23 Plan, ~~unless he.~~

24 (2) *He* or she has first been reinstated from retirement pursuant
25 to this chapter, ~~or unless the employment.~~

26 (3) *For a person retiring on or after January 1, 2011, the*
27 *employment, without reinstatement, is authorized by this article*
28 *and at least 180 days have elapsed since that person's retirement*
29 *date.* ~~A~~

30 (b) A retired person whose employment without reinstatement
31 is authorized by this article shall acquire no service credit or
32 retirement rights under this part with respect to the employment.

33 ~~(b)~~
34 (c) Any retired member employed in violation of this article
35 shall:

36 (1) Reimburse this system for any retirement allowance received
37 during the period or periods of employment that are in violation
38 of law.

39 (2) Pay to this system an amount of money equal to the
40 employee contributions that would otherwise have been paid during

1 the period or periods of unlawful employment, plus interest
2 thereon.

3 (3) Contribute toward reimbursement of this system for
4 administrative expenses incurred in responding to this situation,
5 to the extent the member is determined by the executive officer to
6 be at fault.

7 (e)

8 (d) Any public employer that employs a retired member in
9 violation of this article shall:

10 (1) Pay to this system an amount of money equal to employer
11 contributions that would otherwise have been paid for the period
12 or periods of time that the member is employed in violation of this
13 article, plus interest thereon.

14 (2) Contribute toward reimbursement of this system for
15 administrative expenses incurred in responding to this situation,
16 to the extent the employer is determined by the executive officer
17 of this system to be at fault.

18 *SEC. 15. Section 21220.3 is added to the Government Code,*
19 *to read:*

20 *21220.3. (a) A person who has retired under this system, for*
21 *service or for disability, may not render services for compensation*
22 *in any capacity for the state, the university, a school employer, or*
23 *a contracting agency, through a third party or as an independent*
24 *contractor, for a period of 180 days following the date of his or*
25 *her retirement.*

26 *(b) Any retired member who provides services in violation of*
27 *this section shall:*

28 *(1) Cease performing services for compensation and shall not*
29 *be eligible to again perform services for a period of 180 days*
30 *following the last date he or she performed services.*

31 *(2) Contribute toward reimbursement for administrative*
32 *expenses incurred by the system because of the violation, to the*
33 *extent that the retired member is determined by the executive officer*
34 *of this system to be at fault. For purposes of this subdivision, a*
35 *retired member shall be determined to be at fault if the retired*
36 *member knew or should have known that he or she was performing*
37 *services in violation of this section.*

38 *(c) Any public employer that utilizes the services of a retired*
39 *member in violation of this section shall contribute toward*
40 *reimbursement of this system for administrative expenses incurred*

1 *by this system because of the violation, to the extent that the*
2 *employer is determined, by the executive officer of this system, to*
3 *be at fault. For purposes of this subdivision, a public employer*
4 *shall be determined to be at fault if the public employer knew or*
5 *should have known that the retired member was performing*
6 *services in violation of this section.*

7 *(d) This section shall apply to all persons who retire on and*
8 *after January 1, 2011.*

9 *SEC. 16. Except as otherwise specifically provided, the*
10 *provisions of this act shall become operative on July 1, 2011.*

11 *SEC. 17. This bill shall become operative only if Assembly Bill*
12 *1987 of the 2009–10 Regular Session is enacted and takes effect*
13 *on or before January 1, 2011.*

O



April 2, 2010

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95814

The Honorable Joe Simitian
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**Re: SB 1425 (Simitian and Correa) – Public Retirement: final compensation:
computation: retirees
As introduced – Oppose Unless Amended
Set for hearing April 12, 2010 – Senate Public Employment and Retirement**

Dear Senator Simitian:

On behalf of the California State Association of Counties (CSAC), I want to thank you for taking the time to relay your concerns about public pensions and your reasons for introducing SB 1425. We've had an opportunity to review SB 1425 and seek feedback from individual counties. While we generally support your efforts to curb pension spiking, this letter identifies concerns we have with the bill's spiking provisions and explains our request that you amend SB 1425 to remove the provision related to reinstatement to county employment (7500.5 (f)).

First, we provide background and the context through which CSAC analyzes pension issues. The unprecedented market decline of 2008 has serious and long-term consequences for public retirement funds. As rate increases begin to take effect, counties can expect employer contributions for pensions to account for a larger and growing share of our budgets. Because increased employer costs are coming at a time when counties are facing severe state budget cuts and unprecedented declines in local revenue, the sustainability of public pensions and public scrutiny is an evermore present issue.

CSAC approaches the concept of pension reform and ongoing local negotiations over pension benefits with the overarching goal of ensuring trust in public pension systems and empowering local elected officials to exercise sound fiduciary management. In response to pension reform initiatives under consideration in 2005, CSAC adopted a set of guiding principles that reflect local priorities and values. (See Attachment I)

Counties and other local agencies are addressing the challenge of pension costs directly in their negotiations with employees. Counties, including Alameda, Orange, and Shasta, have recently negotiated contract changes that address the long-term sustainability of the pension benefits provided to public safety employees. CSAC supports these efforts to reduce and contain pension costs through local negotiations.

We appreciate that you introduced SB 1425 in response to the constituent concerns you've heard regarding "pension spiking" abuses, where employees artificially inflate their compensation in the year(s) immediately preceding retirement in order to receive larger pensions than they otherwise would be entitled to receive. Eliminating abuse is

one of CSAC's guiding principles for pension reform and we agree that the spiking cases that have been identified, while isolated, are inappropriate and need to end.

Unfortunately, SB 1425 falls short of a complete fix by targeting those members not in a group or a class and protecting any spiking that may occur as a result of pay differentials or remuneration that is included in a Memorandum of Understanding. Court decisions interpreting the law have led to the inclusion of education incentives, uniform allowances, shift differentials, and longevity pay, among other things, in the calculation of final compensation simply because they are provided for in a labor contract. The simple and direct solution to pension spiking is to reverse the impacts of the *Ventura County* and subsequent judicial decisions that expand the factors used to determine final compensation. Legislation should simply restrict final compensation earnable to base salary or wage compensation only.

Another concern counties have with SB 1425 is that by requiring each retirement system to enact regulations to determine whether remuneration has been paid "for the principal purpose of enhancing a member's benefits" and creating a presumption which the employee has the burden to rebut, SB 1425 will result in unequal and disparate treatment of members of state and local public retirement systems. The Legislature should provide standards to guide the various retirement systems in devising and applying such regulations so there can be consistent application of the rules.

With any change to retirement benefits, we must also be concerned with vested rights. Because the bill does not take on the *In re Retirement Cases* directly and strictly ban inclusion of remuneration other than wage income, it may be considered a significant alteration in the amount of allowable final compensation that results in a disadvantage to the employee that is not accompanied by comparable new advantages, leaving counties in 1937 Act retirement systems vulnerable to a challenge. Prospective application of the bill might resolve the pension vesting rights issue, but we understand that it could also undermine the impact of this reform.

Finally, we raise the issue of retirees' ability to return to work for a public agency. Regrettably, we must oppose SB 1425 unless this section is deleted or amended to address our concerns. This provision limits all flexibility for counties in dealing with shrinking budgets and the "brain drain" that occurs when long time county employees retire. Counties want to recruit the best candidates available. This provision eliminates a class of employees from consideration for public service; would we exclude retirees from the federal government, a private employer with a pension, or another state?

Counties have legitimate needs for the use of retired annuitants. Counties hire retirees as extra help in times of crisis and to fill short-term needs in all areas: public safety, health and human services, road maintenance, etc. A county may hire a new department head or other key employee who decides he or she is not the right fit. The recent retiree from that position is the obvious choice to fill the position while a new recruitment begins. In this case, a six-month wait would result in an unmanageable vacancy in that position. Also, after a six-month absence from a Sheriff's Department,

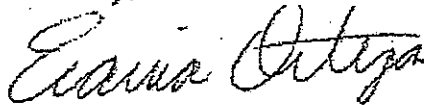
a new background investigation is required. Background checks are time-consuming and costly; this would limit the flexibility to bring back retired annuitants in all positions in our public safety departments.

Many counties have adopted reasonable local rules for retired annuitants, for example requiring employees who are not of normal retirement age to wait 30, 60, or 90 days before returning to service. Employees of normal retirement age are typically allowed to work for the county immediately. Caps on the number of hours annuitants can work already exist.

Addressing the most egregious abuses of returning to service makes sense; perhaps a ban on a return to service, without reinstatement, for any employee who receives an early retirement incentive or "golden handshake". A six-month wait for every retiree is overly broad and is an inappropriate interference on a local public employer's ability to choose the best candidate for a job and to efficiently and effectively manage resources.

In conclusion, while we do have some concerns about SB 1425 as it relates to pension spiking, overall we support your effort to curb the abuses that shake the public's faith in the integrity of public employment and benefits. We do, however, ask that you remove or amend section (7500.5 (f)) of the bill related to retirees' ability to return to public employment. If you have any questions about our position, please do not hesitate to contact me at 916-650-8180 or eortega@counties.org.

Sincerely,



Eraina Ortega
Legislative Representative

Attachment I CSAC Pension Reform Guiding Principles

Protect Local Control and Flexibility

Local elected officials should be able to develop pension systems that meet the needs of their workforce, maintain principles of sound fiduciary management, and preserve their ability to recruit and retain quality employees for key positions that frequently pay less than comparable positions in the private sector. A statewide mandated retirement system is neither appropriate nor practical, given the diversity of California's communities. Further, a mandated defined contribution retirement system could force a reconsideration of the decision of local governments not to participate in Social Security.

Eliminate Abuse

Public pension systems provide an important public benefit by assisting public agencies to recruit and retain quality employees. Any fraud or abuse must be eliminated to ensure the public trust and to preserve the overall public value of these systems.

Reduce and Contain Costs

Public pension reform should provide for cost relief for government, public employees, and taxpayers.

Increase Predictability of Costs and Benefits for Employee and Employer

Responsible financial planning requires predictability. Employers must be able to predict their financial obligations in future years. Employees should have the security of an appropriate and predictable level of income for their retirement after a career in public service.

Strengthen Local Control to Develop Plans with Equitable Sharing of Costs and Risks between Employee and Employer

Equitable sharing of pension costs and risks promotes shared responsibility for the financial health of pension systems and reduces the incentive for either employees or employers to advocate changes that result in disproportionate costs to the other party, while diminishing the exclusive impact on employers for costs resulting from increases in unfunded liability.

Increase Pension System Accountability

Public pension systems boards have a constitutional duty to (a) protect administration of the system to ensure benefits are available to members and (b) minimize employer costs. The constitutional provisions and state statutes governing such boards should promote responsible financial management and discourage conflicts of interest.

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Opinion

California's \$500-billion pension time bomb

The staggering amount of unfunded debt stands to crowd out funding for many popular programs. Reform will take something sadly lacking in the Legislature: political courage.

By David Crane

April 6, 2010

The state of California's real unfunded pension debt clocks in at more than \$500 billion, nearly eight times greater than officially reported.

That's the finding from a study released Monday by Stanford University's public policy program, confirming a recent report with similar, stunning findings from Northwestern University and the University of Chicago.

To put that number in perspective, it's almost seven times greater than all the outstanding voter-approved state general obligation bonds in California.

Why should Californians care? Because this year's unfunded pension liability is next year's budget cut to important programs. For a glimpse of California's budgetary future, look no further than the \$5.5 billion diverted this year from higher education, transit, parks and other programs in order to pay just a tiny bit toward current unfunded pension and healthcare promises. That figure is set to triple within 10 years and -- absent reform -- to continue to grow, crowding out funding for many programs vital to the overwhelming majority of Californians.

How did we get here? The answer is simple: For decades -- and without voter consent -- state leaders have been issuing billions of dollars of debt in the form of unfunded pension and healthcare promises, then gaming accounting rules in order to understate the size of those promises.

As we saw during the recent financial crisis, hiding debt is not a new phenomenon. Indeed, General Motors did something similar to obscure the true cost of its retirement promises. Through aggressive accounting, for a while it, too, got away with making pension contributions that were a fraction of what it really needed to make, thereby reporting better earnings than was truly the case.

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But eventually the pension promises come due, and for GM, that meant having to add extra costs to its cars, making its prices less attractive to consumers and contributing to its eventual bankruptcy.

In California's case, past pension underfunding means reduced funding of current programs. This explains why pension costs rose 2,000% from 1999 to 2009, while state funding for higher education declined over the same period.

What can we do about this? For the promises already made, nothing. They are contractual, and because that \$500 billion of debt must be paid, retirement costs will rise dramatically no matter what we do. But we *can* reduce the sizes of promises made to new employees and require full and truthful disclosure so that pension debt can never again be hidden.

Last summer Gov. Arnold Schwarzenegger proposed exactly that. Since then? Silence. State legislators are afraid even to utter the words "pension reform" for fear of alienating what has become -- since passage of the Dills Act in 1978, which endowed state public employees with collective bargaining rights on top of their civil service protections -- the single most politically influential constituency in our state: government employees.

Because legislators are unwilling to raise issues that might offend that constituency, they have effectively turned the peroration of Abraham Lincoln's Gettysburg Address on its head: Instead of a government of the people, by the people and for the people, we have become a government of its employees, by its employees and for its employees.

This explains why legislators fight harder to overturn employee furloughs than to reform pensions and elect to pay more in compensation to just 65,000 employees in one single department -- corrections -- than they spend on a higher education system serving 10 times as many people.

Simply put, the single most important step a legislator can take to protect programs and taxpayers is to embrace pension reform. There is no structural impediment to pension reform, and no initiative has forced legislators to issue all that pension debt. All of the damage has been caused by legislation, most notoriously SB 400 in 1999, which retroactively and prospectively boosted pension promises by billions of dollars without boosting contributions. Likewise, all the remediation can be accomplished by legislation.

Even the state legislature of Illinois -- a legendary poster state for pension misbehavior -- has now passed pension reform. There's no reason the California Legislature cannot do the same.

Call or write your legislator about pension reform, and while you're at it, remind him or her that we are indeed a government of the people, by the people and for the people.

David Crane is special advisor to Gov. Arnold Schwarzenegger for jobs and economic growth.

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3PM

THIRD PARTY MARKETERS ASSOCIATION

April 5, 2010

The Honorable Ed Hernandez
California State Assembly
State Capitol
10th and L Street
Sacramento, CA 95814

Dear Assembly Member Hernandez:

I am writing this letter to you today regarding Assembly Bill 1743 ("AB 1743") introduced to amend the Government Code relating to the Political Reform Act of 1974. This letter is being submitted on behalf of the Members of the Third Party Marketers Association ("3PM").

3PM believes that increased regulation and oversight are appropriate measures which will help monitor and prescribe the activities of placement agents, restore integrity to the investment decision making process in California and eliminate the inappropriate behavior that took place at one of California's pension plans. That said we believe that as drafted, AB 1743:

- i) will create unintended consequences that are adverse to the best interests of the State of California and the beneficiaries of its public pension plans,
- ii) will not adequately solve the problems the proposed legislation attempts to address,
- iii) runs counter to what appears to be the emerging trend in addressing the issues regarding placement agents, fixers and finders which in our view, have incorrectly identified these parties as all performing the same function.

This letter will provide you with background on 3PM, identify and speak to a host of consequences which are important to consider when framing any legislation that will address what is a very real and legitimate concern, and suggest what we believe to be the appropriate framework for regulating placement agent activities, and eliminating inappropriate behavior in the investment decision making process in California.

The Third Party Marketers Association (3PM)

3PM was founded in 1998 to act as a trade group for placement agents. Today, the Association is comprised of 73 member firms. 3PM was formed to maintain a standard of excellence in the industry and to share information and ideas among independent sales and marketing firms. The Association helps to cultivate relationships and business opportunities among its members, and works to provide them with information and ongoing education about the investment management industry. 3PM's goal is to enhance our profession's standards, integrity and business practices. This is accomplished by advancing an ongoing agenda in the areas of regulation and compliance as well as adherence to the highest professional and ethical standards and best practices utilized throughout the financial services industry.

A typical 3PM member firm consists of 2 to 5 highly experienced investment management marketing executives with, on average, 10 or more years of experience of selling success in the institutional and/or retail distribution channels. The Association's members run the gamut in terms of the products they represent. Approximately 50% of the Association's members work as investment advisers with traditional separate account managers covering strategies such as domestic and international equity, and fixed income. In the alternative arena, members operate as broker-dealers and represent fund products like mutual funds, hedge funds, private equity, fund of funds and real estate. More than two thirds of 3PM's members work in both capacities.

3PM member firms that work with traditional separate account managers are typically registered under the investment adviser rules with the states in which they solicit business. Since the Association's members do not manage money they generally are not eligible to register directly with the SEC. For the Association's members that work with Fund products deemed to be securities, these firms are either registered with FINRA as broker-dealers or work as Registered Representatives of an established broker-dealer to offer securities. Regardless of the structure within which 3PM members operate, they do fall under the scrutiny of one or more regulatory authorities.

For the purpose of this comment letter, and for consistency with the terminology utilized in AB 1743, we will use the term "placement agent" to encompass the myriad of terms used to describe paid intermediaries which include individuals referred to as third party marketer, solicitor, or third party intermediary. The term "investment manager" or "investment adviser" will be used to collectively include firms or individuals that oversee the management of client assets in a specified investment strategy. This group includes registered investment advisers as well as managers that do not legally require registration with the SEC, FINRA or other governing bodies. We have also provided a list of definitions for a number of terms used in the industry to describe the differing participants and their roles.

The Role of Placement Agents

Most placement agents provide investment managers with a comprehensive suite of value added sales and marketing services. Unlike the finders and fixers that were the principal focus of New York Attorney General Cuomo's inquiries, a placement agent's role is much more than merely arranging a meeting between an investment manager and potential investors. Most bona fide placement agents aid in identifying the most appropriate and suitable target markets for the fund manager's products, identify which distribution channels would be most effectively and efficiently utilized, and work with the fund manager to be as effective as possible in presenting the fund manager's story in those markets. In addition, most placement agents work with their clients to help them throughout the capital raising process, which typically includes helping fund managers put together the private placement memorandum, helping to develop with fund manager's investor presentations, helping to answer due diligence questionnaires and giving advice on governing document terms and conditions. This work is most often driven by years of experience, and constant work with investors (both public and private) to understand the investors' programs and needs, so as to be able to present those investors with fund managers that are suitable to and satisfy the investors' interests and needs. This efficiency and effectiveness is of enormous benefit to both the fund manager represented as well as to the potential investor.

A small or emerging firm will generally not have the resources or background to recognize how to prioritize and approach the most likely prospective investors within a universe numbers in excess of 3,000 institutions. Conversely, institutional investors find value in knowing that products represented by placement agents will generally be more appropriate to that institution's investment program and strategy preferences.

Placement agents help fund managers define and position their products in what has become a very competitive market environment. As previously discussed, the typical scope of work that placement agents undertake is substantial. Placement agents do not just set up meetings; they create meeting agendas, organize the required materials, attend the meetings along with the firm's portfolio professionals, moderate the meeting, and help to ensure the clarity of fund manager's message as well as the investment objectives of each potential investor. Once the investment manager has been selected, the placement agent often continues to have an ongoing client servicing role which helps to facilitate communication between the fund manager and the investor.

3PM's Position

Recent events and the efforts to address certain corrupt actions have cast a shadow over what separates legitimate placement agents from the illegitimate ones. Over the past year, 3PM has worked tirelessly to differentiate the services offered by our members, who operate in a professional and ethical manner, from the unscrupulous few whose actions have tainted our industry. We have also tried to

educate both the industry and broader audiences as to what a placement agent does and to articulate that a placement agent's role is much more expansive than the roles played by introducing agents, finders, fixers and especially lobbyists. We strongly agree with the approach used by the State of California to take steps to correct and ideally to eliminate the pay-to-play issue through enhanced disclosure, and with certain aspects of its currently proposed-rulemaking, but without instituting a complete ban on placement agents.

3PM fully endorses a framework that increases the integrity of the investment decision making process and applauds the State of California for working towards achieving this goal. Despite our agreement with the intent of this proposed legislation, 3PM does have serious concerns with several areas of the proposal as it currently stands.

The following commentary is intended to provide insights and information regarding the current trends in regulation, the consequences of AB 1743 as drafted, and suggests changes that 3PM believes will enhance the bill, in ways that we believe are in the best interests of better government and the elimination of the practices that gave rise to this legislation.

Current Proposals Attempting to Eliminate Pay to Play Practices

As you are no doubt aware, the Securities and Exchange Commission (the "SEC") recently proposed a rule that would have banned placement agents from working with public pension plans. After substantial public comment, the SEC backed away from this approach, and has asked FINRA to take over the regulation of placement agents.

A number of states have also examined and acted on this issue, and have implemented policies and procedures aimed at ending this unscrupulous behavior. In New York, Attorney General Cuomo has led a charge to ban public pension plans from hiring investment managers utilizing the services of a placement agent. To date, the only New York plans that have banned the use of placement agents are the New York State Common Retirement Plan (NYCRF) and the New York City Retirement System (NYCERS). In fact, the ban implemented by NYCERS was a temporary ban and one that was intended to be overturned once the City could adopt rules and regulations to govern the actions of placement agents. In the past month, the NYC Comptroller's Office issued a proposed rule which will allow placement agents to participate in the investment process. AG Cuomo also took his efforts one step further and has attempted to implement the Public Pension Plan Code of Conduct (Code of Conduct) which he asked more than 37 different State Governors to support. To date, no Governors have thrown their support behind Cuomo and his efforts to ban placement agents. Furthermore, Cuomo's goal was to have investment managers sign the Code of Conduct indicating that they would not retain the services of placement agents for any business involving public pension plans. While Cuomo has been successful in obtaining some signatories, it should be noted that every firm that signed this Code of Conduct did so as part of their settlement of other legal matters with the State of New York. New

Mexico has decided to ban the use of placement agents. Illinois has banned contingent compensation arrangements, while a number of other states' public pension plans now require comprehensive disclosure of dealings involving placement agents. Among these are North Carolina and Texas.

There have also a number of public pension plans that have written policies regarding the use of placement agents including CalPERS, the state of New Jersey, and the State of Connecticut.

While the approaches discussed are indeed diverse, we believe that the approach mostly likely to address the unscrupulous behavior that occurred and which have led to the drafting of AB 1743 are best addressed by a combination of placement agent regulation and laws aimed at regulating the conduct of public pension plan decision makers and influencers.

Placement Agents Benefit Small CA Pension Plans

Placement agents provide important services to investors who, like many smaller California public pension plans, do not have the time, resources or experience to review all potential opportunities that cross their desks. In order to be successful, placement agents need to conduct a thorough and comprehensive review of any fund manager it is considering representing. Not only must this review examine the fund manager's current performance, but it must include a detailed assessment of the product to ensure it will meet the investors' minimum investment criteria. By passing this step results in a failed business strategy for placement agents, both in the near and long term. Sales professionals rely on their reputations to garner new business. This naturally aligns with what is best for investors, and especially those that are constrained with regard to resources to review fund managers that come across their desks. Two of the key value propositions that placement agents provide are the initial vetting of fund managers, and the aligning of those qualified sponsors with investment programs that want what the sponsors are offering.

If investors believe that a marketer is credible about the products he or she represents, the investor will probably return the marketer's phone calls and respond to their emails understanding that they are likely to be introduced to quality managers. Alternatively, if a marketer consistently presents the potential investor with inferior managers, with undesirable investment strategies or uncompetitive performance, eventually, the sales professional will be viewed negatively and will be ignored by the prospect. As a result, many investors have come to rely on trustworthy placement agents to identify superior managers they would be interested in meeting.

Alternatively, several of the large pension plans who have the staff and infrastructure to implement open door policies, such as CalPERS and CalSTRS, believe that investment managers do not require their services because they are willing to meet with small managers. In keeping with CalPERS' policy mandates to invest in women and minority owned managers, placement agents help those managers to position themselves successfully so that they can rise above the noise, and get the attention of investors

like PERS and STRS, even though they may not have the resources otherwise necessary to obtain commitments from this kind of investor. In such cases, placement agents provide a number of services from identifying the correct points of contact, scheduling meetings, evaluating and positioning the product, and creating and preparing marketing materials. All of these tasks are all extremely time consuming and necessary to win investment commitments. In small firms that cannot afford internal sales professionals these responsibilities are often handled by the Investment Team. Since time is a limited resource, the more time spent working on sales and marketing means that less time is committed to managing clients' portfolios. From a fiduciary perspective, all investors should want to see legislation enacted that would ensure that portfolio managers have the time they need to do the jobs they were hired to do.

We believe that the limitations on fees currently embedded in AB 1743 will result in California public pension plans becoming investors of last because those fund sponsors that require the services of placement agent will find no agents willing to work for free. This result is anathema to what you are trying to achieve.

Women, Minority and Emerging Managers

In the investment industry, small managers are often referred to as emerging managers. At one time, the term emerging manager referred exclusively to minority and women owned investment firms. In recent years, the emerging manager universe has expanded out to include spin-out groups (that is, groups that had previously worked in other, often larger firms) and small firms regardless of the gender or race of their principals. Today, investors are even conducting searches in the alternative investment space and including both private equity and hedge fund emerging managers in their capital allocations.

California has a longstanding tradition of encouraging investment with and in minority and women owned and operated businesses. This holds true in the fund manager arena as well¹. In our experience many of these women and minority owned fund sponsors tend to be newer, emerging managers. As a result, they tend to lack the resources both to be able to effectively present themselves to investors and to pay advisory fees to placement agents on a non-contingent basis. As a result, it is our view that enacting AB 1743 as written would severely impair minority and women managers' access to capital from public pension plans based in California.

The Importance of Emerging Managers

The impetus for the growth and evolution of this sector has been investors' search for superior performance returns. Over time, many studies have shown that small firms have consistently

¹ For example, the CalPERS AIM California Initiative Program

outperformed larger firms. In one such recent paper published by Northern Trust in July 2009, titled "Insights on Emerging Managers; Emerging Managers Holding Their Edge Versus Elephants", Ted Krum, Vice President of Portfolio Management writes, "In six studies of emerging investment manager performance spanning 16 years of stock market history, Northern Trust has demonstrated that the smallest firms, collectively accounting for only 1% of institutional market share, enjoy a consistent advantage over industry leaders."

In a 2008 article entitled "Successful Emerging Manager Strategies for the 21st Century", written by Thurman White, President and CEO of Progress Investment Management Company, LLC, states that the New York City pension plans, who actively invest in emerging managers, defines them as follows: "In the public markets 'emerging managers' are defined as those managers with zero to \$1 billion in assets under management. In private equity, NYC defines 'emerging' as zero to \$400 million under management in first and second-time funds, while in real estate, 'emerging' is defined as zero to \$300 million in first and second-time funds." 3PM believes that this definition is especially relevant in this instance not only because it corresponds to the beliefs stated above of one of the largest investors in the emerging manager space, but it also represents the opinion of a public fund, both of which focus on the exact constituency which the Commission's proposed rule is intended to protect.

According to Altura Capital, a firm that specializes in the emerging manager universe, their Emerging Manager Information Platform shows that the total assets managed by the emerging manager universe, which is tracked by their database, totals \$233.2 billion, and represents more than 1,300 managers. This suggests an average of \$180 million of AUM per investment adviser. Of this total, \$71.2 billion is managed by 138 firms that are 50% or more owned by women, minorities or both. According to the website of Leading Edge Investment Advisers, a provider of multi-manager products utilizing emerging managers, the firm follows "over 1,200 asset managers in the traditional asset categories."

Analysis of data gathered from Preqin and Hedge Fund Research ("HFR") reveals that there are a significant number of emerging alternative managers comprise the current marketplace. According to Preqin, as of July 2009, more than 880 private equity funds were in the market raising capital. On average, these funds had a target fund size of \$260 million, a size classified in the industry as "emerging". In the hedge fund arena, HFR estimates that as of the second quarter of 2009, there were more than 6,870 hedge funds and Fund of Funds in the market with less than \$500 million in assets.

In a study entitled "Venture Capital Funds Investing in Minority Owned Businesses: Evaluating Performance and Strategy", conducted in part by the Ewing Marion Kauffman Foundation, William Bradford, Professor of Finance at the University of Washington said, "The way we see it, the minority business is growing three times faster than the primarily white (owned) businesses."

We believe that these numbers generated by established resources evidence the overall significance of emerging managers, and especially minority and women-owned firms, in the current investment landscape a factor which is not apparently in account in AB 1743 as proposed.

If AB 1743 is enacted as proposed, the probability that these firms will succeed will be greatly diminished, because they will have far more difficulty accessing the capital they need to be successful. These small firms frequently need the help of seasoned and experienced sales and marketing professionals who know what the investor community wants and needs, how to present that effectively, and who are motivated to obtain investor commitments.

Other Investment Managers Who Engage Placement Agents

In the private equity and real estate spaces, it is customary for many fund managers to launch new closed ended funds every two to three years. A significant number of these firms have chosen to retain the services of external placement agents because placement agents provide them with both better real time market data on the wants and needs of professional investors, with more efficiency than an internal full time investor relations staff can deliver.

According to Preqin as of mid-year 2009, there were 4,327 private equity and real estate funds. During the three year period ending 2008, roughly one half of these firms utilized the services of a placement agent.

This data is important for several reasons. First, it shows that the market place is very large and that there are a lot of funds seeking capital making it extremely competitive. Second, it proves the point that a significant number of private equity firms utilize the services of placement agents to help them navigate the investment industry. Finally, considering the extremely large number of potential private equity investments, it is unrealistic to assume that public entities will have the resources to allow them to effectively screen this large universe of managers without external assistance.

Preqin also tracked the level of private equity investing among US public pension funds. It reports that since 2006, public entities have made more than 2,455 separate commitments to private equity, real estate and infrastructure funds, totaling approximately \$484 billion. Overall, the Preqin data confirms that private equity investing goes far beyond the preferences of a few state entities. Rather, private equity comprises a central component of the investment programs of a majority of public pension plans. It also suggests that despite the allegation that the industry is rampant with imprudent and illegal behavior, the majority of funds have entered into transactions which are legal, ethical and proper. Further, despite the fact that more than 50% of private equity managers utilize the services of a placement agent, there are precious few that involved any sort of pay to play activities.

Aside from the unintended consequences of such legislation, the passage of AB 1743 will not address the root of the issue. State officials in California have said that when contingency payments are involved and can impact the decisions of public officials that the potential for corruption exists.

We believe this is no more relevant to the investments industry than to any other industry, such as real estate, legal services, or even manufacturing. Notably, all of these industries derive revenue from performance-related compensation.

Although some of the people accused of being involved in corrupt activities were identified as placement agents, we believe that these operators are not “true” placement agents, but rather finders or fixers. Furthermore, all of the cases of pay to play activities identified to date also included “public officials” who were involved in the investment process. 3PM strongly believes that any proposed regulation should make a distinction between placement agents and those who are acting as finders or fixers. In addition, any legislation enacted should also include additional provisions aimed at preventing the kinds of recent corruption of public officials from occurring.

Prohibition on Contingency Fees

While the authors of AB 1743 are attempting to avoid banning placement agents from the investment process, we believe the result of their approach is likely to lead to unintended consequences as well. The current proposal would prohibit placement agents from accepting or agreeing to accept “any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.” If contingency fees are eliminated, placement agents would need to restructure their compensation structure to comply with this law. If AB 1743 is passed, the only acceptable form of payment would be in the form of a flat fee. As previously mentioned, most emerging managers lack the resources to pay a placement agent a flat fee or a “retainer” since much of their capital is allocated to the facilities and personnel required to manage portfolios.

If contingency fees were prohibited, we believe the consequences would harm both small and emerging funds and the public pension plans alike. First, since most small and emerging managers would have difficulty paying a fixed fee, their access to public pension funds would decrease. Second, many smaller public pension funds do not have the staff necessary to evaluate the wide array of investment options presented to them.

We believe the restriction on contingency fees will drive opportunity away from California. Placement agents working with more compelling managers will steer those managers towards other investors, creating an adverse selection process that will likely hurt the investment returns achieved by California public pension plans. Finally, since placement agents assist many investors by screening managers that are not a good fit for an investor’s portfolio, a bias will likely develop for California pension managers whereby public pension funds will either continue to invest with existing managers, or place bigger amounts of money with managers because they do not have the bandwidth to properly assess and evaluate new offerings, resulting in an investment bias toward larger funds, which we believe runs counter to prudent investment strategy.

Contingent compensation arrangements help to align interests among all of the parties involved in the fund manager selection process. Placement agents need to make good manager choices, or they won't be successful or get paid. Managers win because they only have to pay a placement agent based on the results the placement agent is able to achieve. This type of fee structure also assists investors. Placement agents serve as a filter that weeds out managers not worthy of investment and narrows down the universe of managers which they need to review.

The manner in which placement agents are currently compensated is no different than any success-based compensation program. Contingency fees are used in a variety of industries as a way to incentivize service providers, align the interests of various parties and share the risks involved in processes with uncertain outcomes. Throughout the United States, contingent fee arrangements are used to compensate lawyers, real estate agents, brokers and sales professionals. They are also commonplace in the investment arena including many California state government agencies, where they are used as part of the compensation package for portfolio managers, investment analysts, traders and of course for sales professionals. The critical point for consideration should not be focused on the form of the payment, but rather on three key elements: i) knowing who is being incentivized, ii) making sure that the person or organization is legitimate and is providing an actual service, and iii) providing transparency as to how any such payment could influence investment decisions.

Often contingency fees are used by pension plans and other investors, in the form of performance fees, to try to garner high returns from the investment managers they hire. The thought behind this kind of fee structure is that the more incentive the portfolio manager has to generate returns the harder he or she will work to attain that stated goal, creating a win-win situation for all parties involved.

It should also be noted that when a contingency fee is paid to a placement agent, the fee is not paid by the investors, but rather by the investment manager retaining the placement agent's services. This approach is no different than the compensation an internal sales professional would receive. In fact, by hiring a placement agent, an investment manager could actually save money by reducing the overhead costs allocated to full-time employees. These funds could then be allocated to other areas of their businesses which could help achieve higher investment returns.

Sales and marketing are essential to growing most businesses regardless of industry. The cost for this imperative resource is generally chalked up to the cost of doing business. We believe by prohibiting contingency fees, the State of California is in fact dictating the manner in which an investment manager can run their business, simply because a handful of political officials acted badly.

Without contingency fees, investment managers will need to find other ways to grow their assets or risk going out of business. Some may resort to unethical approaches and use loopholes to get around the rules. Managers, who "game" the system by finding alternative ways to get paid higher fees if business is awarded, will be further injuring the integrity of the investment process rather than improving it.

We believe AB 1743 favors larger funds, funds capable of affording to allocate resources to internal infrastructure. For instance, AB 1743 provides an exemption to “an employee, officer, director, equity holder, partner, member, or trustee of an external manager who spends one-third or more of his or her time, during a calendar year, managing assets controlled by the external manager.” This result is problematic not only to the investment management firm, but also to the pension plans hiring them. This will result in a natural bias toward larger funds which can afford such an allocation of resources, and runs counter to many CalPERS policies which encourage the pension plan to invest in minority and emerging managers. For smaller firms, unable to hire dedicated sales personnel, portfolio managers will now have to split their time between managing portfolios and their new sales and marketing function. It is likely that they will also need to spend time learning how to market their products, identifying the appropriate contacts, scheduling meetings, as well as creating presentations and other collateral materials required by the sales process, all of which will take away from their primary responsibility, to manage the monies given to them to achieve maximum returns. As fiduciaries, pension plans should want to see their portfolio managers spending as much of their time as possible on investments, rather than travelling around the country attending sales meetings. But whether they realize this or not, this is the behavior AB 1743 will engender.

Placement Agents are not Lobbyists

Section 82039 of the California Government Code defines a lobbyist as an individual who is compensated for directly communicating with a qualifying official when trying to influence legislative or administrative action. (See full definition at the end of this letter.) Placement Agents are not lobbyists. Such a comparison is undeniably inaccurate and assumes that every Placement Agent has connections with the people who are in a position to influence investment decisions whether they are politicians or the internal staff members of a public pension plan or that we are in a position to contribute significant funds to influence the process. Our mission is not to adversely influence the decision makers but rather to help present the managers we represent in a way that best demonstrates its investment capabilities. In order for us to be successful, these managers need to receive fair and equal consideration and participate in an investment environment where awards are made on the basis of merit rather than undue influence. No one wants to restore integrity back to the investment process more than the Placement Agents who have been labeled as the notorious villains responsible for causing the pay to play issues.

Placement Agent Registration and Oversight

3PM has long recognized the need for regulatory oversight and additional transparency in the financial industry and we believe that the investment process can be strengthened by mandating additional disclosure and regulation. In this respect, we would support the implementation of new legislation

which included registration requirements for placement agents similar in nature to those currently used for lobbyists.

Given the inherent differences in the roles of a placement agent and a lobbyist as well as the fact that the constituencies who hire each of these professionals is distinct, we believe that the process should to be modified to effectively enhance transparency and the usefulness of registration and disclosure.

We believe that the registration and disclosure process should be modified so that it would correctly reflect the information relevant to placement agents. Simply using existing forms which may not apply to placement agents will only lead to confusion in the process. The current system was designed to add transparency to the process by giving the public access to information relating to registered lobbyists and their activities. Adding placement agents to this site would not promote clarity, but would rather lead to misunderstandings regarding the information provided. We believe that employees of the State who are using this system to ensure corruption is not occurring would be better served if they could identify the exact nature of payments that are disclosed through this system.

3PM believes that an ethics course could be an important registration enhancement so long as the course requirements are specific to the work and responsibilities of placement agents, and specifically in identifying situations where conflicts of interest are likely to occur. Under the current framework, the ethics training is only provided in the Sacramento area, making it extremely difficult for those living and working outside this geographic region to reasonably gain access to it. Since this course is a registration requirement, many Placement Agents would have to travel a considerable distance to get access to the training if they wanted to conduct business with any of the State's public pension plans. Alternatively, we believe that the ethics training should be offered in an on-line format or could be made available in testing centers around the country.

3PM believes that it would be more than reasonable to require placement agents to fully disclose any contributions made or gifts given to or at the request or suggestion of any public official or other person with the ability to influence the investment process. Members of the Association would even go so far as to prohibit their employees from making direct or indirect contributions to any official who partakes in the investment decision making process.

The Impact of AB 1743

While simple in approach, we believe that the authors of AB 1743 miss the mark by adding a sentence to an existing rule as the way to cure the ills that have resulted in the incidents of corruption that have recently been uncovered. Simply stated, we believe that rigorous registration, qualification and disclosure requirements will serve the interests of all constituents in this arena far better than the seemingly simple approach contemplated by AB 1743. The current approach undermines the important role that placement agents play both for investors of all kinds and for a broad swath of investment

managers, and fails to address the real underlying problem at work here. This bill will not only have a negative effect on placement agents, but also on a variety of constituencies which include public pension plan sponsors and a variety of investment managers including women, minority and emerging managers, who, given their size often utilize the services of a placement agent.

3PM Recommendations

While we are in agreement that change is necessary and appropriate, we are not convinced that AB 1743 will facilitate the changes needed to ensure that corruption is eradicated from the investment process. We believe that the proposed bill will not only prove ineffective but will also be counterproductive. As such we recommend the following amendments be made to the current version of the proposed legislation.

In order to promote transparency a new policy specific to placement agents should be created. The legislation should contain registration and disclosure requirements appropriate to the nature of the placement agent business rather than trying to use an inherently political model (lobbyists) in a financial setting. These disclosure and registration requirements should include:

A requirement that all placement agents be registered with FINRA;

- All professionals employed by or working as placement agents have and maintain appropriate registrations with FINRA;
- A requirement that all placement agents register with the state of California if they wish to do business with any public pension plans, and make quarterly reports regarding their activities involving any California based public pension plans;
- A requirement that all placement agents offer and provide a broad range of services that extends beyond mere introductions. Specifically, these should services that include the preparation of marketing materials and strategy pieces, due diligence questionnaire preparation, and the like, and that all placement agents be required to prove that they work with a broad range of investors;
- A requirement that all placement agents and their compliance officers understand and agree to abide by a set of ethical standards established by the state of California;
- A prohibition on all political and charitable contributions and other gifts by placement agents and their immediate family to any California domiciled pension plan or to any person, organization or other entity that could directly or indirectly influence any investment decision by such a pension plan;

- A requirement to report all gifts and contributions made by placement agents and their immediate families so as to assure the State of California that no untoward or indirect attempts are made to circumvent the requirements described above; and
- Full disclosure of all fees and other consideration paid to placement agents by investment managers associated with capital committed by any California public pension plans.

We are convinced that legislation alone will not be enough to fix what is broken. The State of California must go forward and make changes not only to the way placement agents operate, but must also address deficiencies in the way that public officials are regulated when they are involved, directly or indirectly in an investment decisions of any public pension plan. New policies and procedures that can effectively monitor the conduct of all parties and can appropriately identify individual interests that may influence investment policies and practices are also needed. Any changes implemented should include enough transparency to identify those who receive compensation from investment decisions and related activities and provide disclose relating to who is paying such compensation. Finally, a system of oversight must also be put in place along with harsh penalties for those that engage in corrupt and illegal behavior whether they are placement agents, pension plan staff or public officials.

If you have any questions or comments regarding any of the information contained in this letter or would like to discuss any of these comments in further detail, please feel free to contact me directly by phone at (212) 209-3822 or by email at donna.dimaria@tesseractcapital.com.

Thank you in advance for your consideration.

Regards,



Donna DiMaria
President of the Third Party Marketers Association

For more information on 3PM and its members, please visit www.3pm.org

CC: Honorable Warren Furutani, Honorable Jim Beall, Honorable Brian Nestande, Honorable Alberto Torrico, Honorable Paul Fong, Honorable Anthony Adams, Honorable Bill Berryhill, Honorable Joe Coto, Honorable Tony Mendoza, Honorable Lori Saldana, Honorable Sandre Swanson

Definitions

Third Party Marketer - An unaffiliated firm which enters into agreements with investment managers to provide sales, marketing and client service. The term is general and is not specific to any one asset class or product offering. Most Third Party Marketers are registered with the FINRA and/or the States in which they conduct business.

Placement Agent: A company that specializes in finding investors that are willing and able to invest in private placement funds such as private equity and real estate. Most Placement Agents are registered with FINRA

Finder or Fixer: Someone who finds, introduces and brings together parties interested in a specific business transaction. Generally the parties themselves negotiate and consummate any relationship or agreement. A finder: (1) locates, introduces or refers any person to an issuer; (2) does not give investment advice about the advantages or disadvantages of an investment; (3) does not participate in any presentations or negotiations about any material term of an investment; and, (4) does not receive compensation based on the amount of any investment made but may otherwise receive compensation. Generally is not registered,

Lobbyist: A person, acting for a special interest group, who tries to influence the introduction of or voting on legislation or the decisions of government administrators.

Lobbyist as defined by California Government Code Section 82039: Lobbyist (a) means any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. (b) For the purposes of subdivision (a), a proceeding before the Public Utilities Commission constitutes "administrative action" if it meets any of the definitions set forth in subdivision (b) or (c) of Section 82002. However, a communication made for the purpose of influencing this type of Public Utilities Commission proceeding is not within subdivision (a) if the communication is made at a public hearing, public workshop or other public forum that is part of the proceeding, or if the communication is included in the official record of the proceeding.