AMENDED IN ASSEMBLY MARCH 24, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 963

Introduced by Assembly Member Bonilla

February 26, 2015

An act to amend Sections 22119.2, 22119.3, 22119.5, 22146, 22164.5, 26113, and 26135.7 of, and to add Sections 22119.6, 22458.3, 22458.5, and 22508.7 to, the Education Code, relating to state teachers’ retirement.

LEGISLATIVE COUNSEL’S DIGEST

AB 963, as amended, Bonilla. Teachers’ Retirement Law.
Existing law, the Teachers’ Retirement Law, establishes the Defined Benefit Program of the State Teachers’ Retirement Plan, which provides a defined benefit to members of the program. The defined benefit is based on final compensation, credited service, and age at retirement, subject to certain variations. The State Teachers’ Retirement System (STRS) is administered by the Teachers’ Retirement Board. Existing law establishes the Cash Balance Benefit Program, also administered by the Teachers’ Retirement Board, as a separate benefit program within the State Teachers’ Retirement Plan in order to provide a retirement plan for persons employed to perform creditable service for less than 50% of full-time service.

This bill would revise and recast the definition of creditable service for purposes of the Defined Benefit Program and the Cash Balance Benefit Program, as specified. The bill would, among other things, include as creditable service for the purposes of the Defined Benefit Program any activities that do not meet the definition of creditable service but were performed for an employer, as defined, on
or before December 31, 2015, and were reported as creditable service to STRS. The bill would revise the definition of “member” to include any person who has performed those activities. The bill would allow members and specified retired members who have performed those activities to irrevocably elect to have that service subject to coverage under a different public retirement system and excluded from coverage by the Defined Benefit Program, as specified. The bill would also allow a person who had service for those activities removed from STRS and reported to a different public retirement system, as directed by STRS, to make an irrevocable election to have all of that service and subsequent service in the same position to be subject to coverage by the Defined Benefit Program and excluded from that other system.

The bill would also require employers, upon request of the system, to provide the system with information relating to time creditable service activities and provisions of approved charters to perform creditable service, as specified.

The bill would make other conforming, nonsubstantive changes.


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

SECTION 1. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) “Creditable compensation” means remuneration that is paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position. Creditable compensation shall include:

1. Salary or wages paid in accordance with a publicly available written contractual agreement, including, but not limited to, a salary schedule or employment agreement.

2. Remuneration that is paid in addition to salary or wages, provided it is paid to all persons who are in the same class of employees in the same dollar amount, the same percentage of salary or wages, or the same percentage of the amount being distributed.

3. Remuneration that is paid for the use of sick leave, vacation, and other employer-approved leave, except as provided in paragraph (4) of subdivision (c).
(4) Member contributions that are picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts that are deducted from a member’s remuneration, including, but not limited to, deductions for participation in a deferred compensation plan; deductions to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United States Code.

(6) Any other payments the board determines to be “creditable compensation.”

(b) Any creditable compensation determined by the system to have been paid to enhance a member’s benefits shall not be credited under the Defined Benefit Program. Contributions on that compensation shall be credited to the Defined Benefit Supplement Program. A presumption by the system that creditable compensation was paid to enhance a member’s benefits may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the system that creditable compensation was paid to enhance the member’s benefits may be reversed.

(c) “Creditable compensation” does not mean and shall not include:

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

(2) Remuneration that is paid for service that is not creditable service pursuant to Section 22119.5 or 22119.6.

(3) Remuneration that is paid in addition to salary or wages if it is not paid to all persons in the same class of employees in the same dollar amount, the same percentage of salary or wages, or the same percentage of the amount being distributed pursuant to paragraph (2) of subdivision (a).

(4) Remuneration that is paid in exchange for the relinquishment of unused accumulated leave.

(5) Payments, including, but not limited to, those for participation in a deferred compensation plan; to purchase an annuity contract, tax-deferred retirement plan, or insurance program; and for contributions to a plan that meets the requirements of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title
26 of the United States Code when the cost is covered by an
employer and is not deducted from the member’s salary.

(6) Fringe benefits provided by an employer.

(7) Expenses paid or reimbursed by an employer.

(8) Severance pay, including lump-sum and installment
payments, or money paid in excess of salary or wages to a member
as compensatory damages or as a compromise settlement.

(9) Any other payments the board determines not to be
“creditable compensation.”

(d) An employer or individual who knowingly or willfully
reports compensation in a manner inconsistent with subdivision
(a) or (c) may be subject to prosecution for fraud, theft, or
embezzlement in accordance with the Penal Code. The system
may establish procedures to ensure that compensation reported by
an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered
paid if distributed to any person in the same class of employees
who meets the qualifications or requirements specified in a publicly
available written contractual agreement, including, but not limited
to, a collective bargaining agreement or an employment agreement,
as a condition of receiving the remuneration.

(f) This definition of “creditable compensation” reflects sound
principles that support the integrity of the retirement fund. Those
principles include, but are not limited to, consistent treatment of
compensation throughout a member’s career, consistent treatment
of compensation among an entire class of employees, consistent
treatment of compensation for the position, preventing adverse
selection, and excluding from compensation earnable remuneration
that is paid to enhance a member’s benefits. The system shall
determine the appropriate crediting of contributions between the
Defined Benefit Program and the Defined Benefit Supplement
Program according to these principles, to the extent not otherwise
specified pursuant to this part.

(g) The section shall become operative on July 1, 2002.

(h) This section shall not apply to a member subject to the
California Public Employees’ Pension Reform Act of 2013.

SEC. 2. Section 22119.3 of the Education Code is amended to
read:

22119.3. (a) “Creditable compensation” for members who are
subject to the California Public Employees’ Pension Reform Act
of 2013 means remuneration that is paid each pay period in which
creditable service is performed for that position. Creditable
compensation shall be paid in cash by an employer to all persons
in the same class of employees in accordance with a publicly
available written contractual agreement, including, but not limited
to, a salary schedule or employment agreement. Creditable
compensation shall include:

1. Remuneration that is paid for the use of sick leave, vacation,
and other employer-approved leave, except as provided in
paragraph (4) of subdivision (b).

2. Member contributions that are picked up by an employer
pursuant to Section 22903 or 22904.

3. Amounts that are deducted from a member’s remuneration,
including, but not limited to, deductions for participation in a
deferred compensation plan; deductions to purchase an annuity
contract, tax-deferred retirement plan, or insurance program; and
contributions to a plan that meets the requirements of Section 125,
401(a), 401(k), 403(b), 457(b), or 457(f) of Title 26 of the United
States Code.

4. Notwithstanding paragraphs (6) and (8) of subdivision (c)
of Section 7522.34 of the Government Code, remuneration that is
paid for creditable service that exceeds one year in a school year.

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

1. Remuneration that is not paid in cash or is not paid to all
persons who are in the same class of employees.

2. Remuneration that is paid for service that is not creditable
service pursuant to Section 22119.5 or 22119.6.

3. Remuneration that is not paid each pay period in which
creditable service is performed for that position.

4. Remuneration that is paid in exchange for the relinquishment
of unused accumulated leave.

5. Payments, including, but not limited to, those for
participation in a deferred compensation plan; to purchase an
annuity contract, tax-deferred retirement plan, or insurance
program; and for contributions to a plan that meets the requirements
of Section 125, 401(a), 401(k), 403(b), 457(b), or 457(f) of Title
26 of the United States Code when the cost is covered by an
employer.

6. Fringe benefits provided by an employer.
(7) Expenses paid or reimbursed by an employer.
(8) Severance pay, including lump sum and installment payments, or money paid in excess of salary or wages to a member as compensatory damages or as a compromise settlement.
(9) Creditable compensation determined by the system to have been paid to enhance a member’s benefit.
(10) Compensation paid to the member in lieu of benefits provided to the member by the employer or paid directly by the employer to a third party other than the system for the benefit of the member.
(11) Any one-time or ad hoc payments made to a member.
(12) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniform.
(13) Any bonus paid in addition to compensation described in subdivision (a).
(14) Any other payments the board determines not to be “creditable compensation.”
(c) (1) Except for purposes of calculating credited service in the Defined Benefit Program and for reporting compensation earnable on or after January 1, 2013, creditable compensation in any fiscal year shall not exceed:
(A) One hundred twenty percent of the “contribution and benefit base,” as determined under Section 430(b) of the Social Security Act (42 U.S.C. Sec. 430(b)), on January 1, 2013, for a member whose service is not included in the federal system.
(B) One hundred percent of the “contribution and benefit base,” as determined under Section 430(b) of the Social Security Act (42 U.S.C. Sec. 430(b)), on January 1, 2013, for a member whose service is included in the federal system pursuant to any changes in state or federal law enacted on or after January 1, 2013.
(2) The system shall adjust the limit based on the annual changes to the Consumer Price Index for All Urban Consumers: U.S. City Average, calculated by dividing the Consumer Price Index for All Urban Consumers: U.S. City Average for the month of February in the fiscal year preceding the adjustment by the Consumer Price Index for All Urban Consumers: U.S. City Average for the month of February of the previous year rounded to the nearest thousandth.
7522.10 of the Government Code, the adjustment shall be effective
annually on July 1, beginning July 1, 2014.

(3) The Legislature reserves the right to modify the requirements
of this subdivision with regard to all members subject to this
subdivision, except that the Legislature may not modify these
provisions in a manner that would result in a decrease in benefits
accrued prior to the effective date of the modification.

(4) This subdivision shall apply to compensation paid during
the 2013–14 fiscal year and each fiscal year thereafter.

(d) An employer or individual who knowingly or willfully
reports compensation in a manner inconsistent with subdivision
(a) or (b) may be subject to prosecution for fraud, theft, or
embezzlement in accordance with the Penal Code. The system
may establish procedures to ensure that compensation reported by
an employer is in compliance with this section.

(e) For purposes of this section, remuneration shall be considered
paid if distributed to any person in the same class of employees
who meets the qualifications or requirements specified in a publicly
available written contractual agreement, including, but not limited
to, a collective bargaining agreement or an employment agreement,
as a condition of receiving the remuneration.

(f) This definition of “creditable compensation” reflects sound
principles that support the integrity of the retirement fund. Those
principles include, but are not limited to, consistent treatment of
compensation throughout a member’s career, consistent treatment
of compensation among an entire class of employees, consistent
treatment of compensation for the position, preventing adverse
selection, and excluding from creditable compensation
remuneration that is paid to enhance a member’s benefits. The
system shall determine the appropriate crediting of contributions
according to these principles, to the extent not otherwise specified
pursuant to this part. A presumption by the system that creditable
compensation was paid to enhance the member’s benefits may be
rebutted by the member or by the employer on behalf of the
member. Upon receipt of sufficient evidence to the contrary, a
presumption by the system that creditable compensation was paid
to enhance the member’s benefits may be reversed.

SEC. 3. Section 22119.5 of the Education Code is amended to
read:
(a) “Creditable service” means any of the activities described in subdivision (b) performed for any of the following employers:

1. Prekindergarten—A prekindergarten through grade 12 employer in a position requiring certification qualifications as designated in regulations adopted by the Commission on Teacher Credentialing pursuant to Section 44001.

2. Community—A community college employer by a faculty member, as defined in Section 87003, in an academic position, as defined in subdivision (b) of Section 87001, or by an educational administrator, as defined in subdivision (b) of Section 87002, subject to the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges pursuant to Section 87356, or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training.

3. Charter—A charter school employer under the provisions of an approved charter for the operation of a charter school for which the charter school is eligible to receive state apportionment.

(b) The types of activities are any of the following:

1. The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupation programs, child care centers, and prekindergarten programs pursuant to Section 22161.

2. Education or vocational counseling, guidance, and placement services.

3. The work of employees who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

4. The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to California public school curriculum.

5. The examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program.
(6) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other California public school health professionals.

(7) Services as a California public school librarian.

(8) Activities connected with the enforcement of the laws relating to compulsory education, coordination of child welfare activities involving the school and the home, and the school adjustment of pupils.

(9) The work of employees who are responsible for the supervision of persons or administration of the duties described in this subdivision.

(c) “Creditable service” also means the work of superintendents of California public schools, and presidents and chancellors of community college employers.

(d) “Creditable service” also means the performance of California public school activities relating to, and an outgrowth of, the instructional and guidance program of the California public school—*when* performed in addition to any of the activities described in subdivision (b) or (c).

(e) (1) All of the activities performed in a position shall be deemed “creditable service” if the employer requires one or more of the activities described in subdivision (b) or (c) to be performed in that position for more than 50 percent of the time, as established pursuant to Section 22138.5, for a class of employees performing just those activities described in subdivision (b).

(2) This subdivision shall not apply to a person who performs creditable service for fewer days or hours than the employer requires for full time as established pursuant to Section 22138.5.

(3) All of the activities performed in a position with service that has been deemed creditable pursuant to paragraph (1) shall be subject to coverage under the Defined Benefit Program until the member performing the activities becomes employed by the same or a different employer in a different position at which time an election may be made under Section 22508.

(f) The board shall have final authority for determining creditable service to cover any activities not already specified.

SEC. 4. Section 22119.6 is added to the Education Code, to read:

22119.6. (a) Creditable service shall also include any activities that do not meet the definition of creditable service under Section
22119.5, but were performed for any employer, as defined in
Section 22131, on or before December 31, 2015, and were reported
as creditable service to the system.
(b) The type of activities described in subdivision (a) performed
by a member who becomes employed by the same or a different
employer in a new position on or after January 1, 2016, shall be
subject to Section 22119.5.

SEC. 5. Section 22146 of the Education Code is amended to
read:
22146. “Member” means any person, unless excluded under
other provisions of this part, who has performed creditable service
as defined in Section 22119.5 or 22119.6 and has earned creditable
compensation for that service and has not received a refund for
that service and, as a result, is subject to the Defined Benefit
Program. A member’s rights and obligations under this part with
respect to the Defined Benefit Program shall be determined by the
applicability of subdivision (a), (b), (c), or (d), and subject to any
applicable exceptions under other provisions of this part.
(a) An active member is a member who is not retired or disabled
and who earns creditable compensation during the school year.
(b) An inactive member is a member who is not retired or
disabled and who has not earned creditable compensation during
the current or preceding school year.
(c) A disabled member is a member to whom a disability
allowance is payable under Chapter 25 (commencing with Section
24001).
(d) A retired member is a member who has terminated
employment and has retired for service under the provisions of
Chapter 27 (commencing with Section 24201), or has retired for
disability under the provisions of Chapter 26 (commencing with
Section 24100) or retired for service or disability under the
provisions of Chapter 21 (commencing with Section 23400), and
to whom a retirement allowance is therefore payable.

SEC. 6. Section 22164.5 of the Education Code is amended to
read:
22164.5. (a) “Retired member activities” means one or more
activities identified in subdivision (b), (c), or (d) of Section 22119.5
or subdivision (b), (c), or (d) of Section 26113 within the California
public school system and performed by a member retired for
service under this part as one of the following:
(1) An employee of an employer.
(2) An employee of a third party, except as specified in subdivision (b).
(3) An independent contractor.
(b) The activities of an employee of a third party shall not be included in the definition of “retired member activities” if all of the following conditions apply:
(1) The employee performs an assignment of 24 months or less.
(2) The third-party employer does not participate in a California public pension system.
(3) The activities performed by the individual are not normally performed by employees of an employer, as defined in Section 22131.

SEC. 7. Section 22458.3 is added to the Education Code, to read:
22458.3. Upon request from the system, each employer shall provide the system with information regarding the percentage of time that creditable service activities, as described in paragraph (1) of subdivision (e) of Section 22119.5, are performed in a position.

SEC. 8. Section 22458.5 is added to the Education Code, to read:
22458.5. Upon request from the system, each employer shall provide the system with information regarding the certification qualifications, minimum standards, or provisions of an approved charter for the operation of a charter school required to perform creditable service pursuant to subdivision (a) of Section 22119.5, in a position.

SEC. 9. Section 22508.7 is added to the Education Code, to read:
22508.7. (a) This section shall apply to service deemed creditable service pursuant to subdivision (a) of Section 22119.6 and a person who performs that service.
(b) (1) A member, including a member who retires on or before December 31, 2015, may elect to have all of that service subject to coverage by a different public retirement system and excluded from coverage by the Defined Benefit Program, if the member is not excluded from coverage by that public retirement system.
(2) If an election is made pursuant to this subdivision, all of the following shall apply:
(A) All service that was subject to coverage by the Defined Benefit Program shall be subject to coverage by the other public retirement system, if the member is not excluded from coverage by that public retirement system.

(B) Any member contributions and credited interest, as determined by the system, and employer contributions, less any amounts previously paid to the person, shall be returned to the employer for that service, with the system recovering from the person any amounts that were paid to the person and not recovered from withheld member contributions, credited interest, or employer contributions.

(C) Any amounts not recovered pursuant to subparagraph (B) shall be paid in full by the member before his or her service can be subject to coverage by the other public retirement system.

(3) If an election is made pursuant to this subdivision, the following shall apply:

(A) A member not subject to the California Public Employees’ Pension Reform Act of 2013 in the Defined Benefit Program shall not be subject to that act in the other public retirement system.

(B) A member subject to the California Public Employees’ Pension Reform Act of 2013 in the Defined Benefit Program shall be subject to that act in the other public retirement system.

(4) If an election is not made pursuant to this subdivision, all service performed shall continue to be subject to coverage by the Defined Benefit Program until the member becomes employed pursuant to subdivision (b) of Section 22119.6.

(c) (1) A person who had service removed from the system and reported to a different public retirement system, as directed by the system, including a person who received a benefit on or before December 31, 2015, may elect to have all of that service and subsequent service in the same position subject to coverage by the Defined Benefit Program and excluded from coverage by the other public retirement system.

(2) If an election is made pursuant to this subdivision, all of the following shall apply:

(A) All of that service and subsequent service in the same position that was subject to coverage by the other public retirement system shall be subject to coverage by the Defined Benefit Program and reported to the system pursuant to Chapter 17 (commencing with Section 23000).
(B) Any employee and employer contributions for that service and subsequent service in the same position shall be remitted to the system pursuant to Chapter 17 (commencing with Section 23000).

(3) If an election is made pursuant to this subdivision, the following shall apply:

(A) A person not subject to the California Public Employees’ Pension Reform Act of 2013 in the other public retirement system shall not be subject to that act in the Defined Benefit Program.

(B) A person subject to the California Public Employees’ Pension Reform Act of 2013 in the other public retirement system shall be subject to that act in the Defined Benefit Program.

(4) If an election is not made pursuant to this subdivision, all service performed will continue to be subject to coverage by the other public retirement system.

(d) The election shall be made in writing and filed with the office of the system on a form prescribed by the system on or before June 30, 2016, and a copy of the election shall be filed with the other public retirement system.

(e) Only a person who has performed service creditable under subdivision (a) of Section 22119.6 can make an election under this section.

(f) An election made pursuant to this section shall be irrevocable.

(g) The board shall be under no obligation to identify, locate, or notify a person who has performed service creditable pursuant to subdivision (a) of Section 22119.6 and is eligible to make an election pursuant to this section.

SEC. 10. Section 26113 of the Education Code is amended to read:

26113. (a) “Creditable service” means any of the activities described in subdivision (b) performed for any of the following employers:

(1) Prekindergarten—A prekindergarten through grade 12 employer in a position requiring certification qualifications as designated in regulations adopted by the Commission on Teacher Credentialing pursuant to Section 44001.

(2) Community—A community college employer by a faculty member, as defined in Section 87003, in an academic position, as defined in subdivision (b) of Section 87001, or by an educational administrator, as defined in subdivision (b) of Section 87002,
subject to the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges pursuant to Section 87356, or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training.

(3) **Charter.** A charter school employer under the provisions of an approved charter for the operation of a charter school for which the charter school is eligible to receive state apportionment.

(b) The types of activities are any of the following:

1. The work of teachers, instructors, district interns, and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupational programs, child care centers, and prekindergarten programs pursuant to Section 22161.

2. Education or vocational counseling, guidance, and placement services.

3. The work of employees who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

4. The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to California public school curriculum.

5. The examination, selection, in-service training, mentoring, or assignment of teachers, principals, or other similar personnel involved in the instructional program.

6. The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other California public school health professionals.

7. Services as a California public school librarian.

8. Activities connected with the enforcement of the laws relating to compulsory education, coordination of child welfare activities involving the school and the home, and the school adjustment of pupils.

9. The work of employees who are responsible for the supervision of persons or administration of the duties described in this subdivision.

10. Trustee service as described in Section 26403.
(c) “Creditable service” also means the work of superintendents of California public schools, and presidents and chancellors of community college employers.

(d) “Creditable service” also means the performance of California public school activities related to, and an outgrowth of, the instructional and guidance program of the California public school when performed in addition to any of the activities described in subdivision (b) or (c).

(e) The board shall have final authority for determining creditable service to cover activities not already specified.

SEC. 11. Section 26135.7 of the Education Code is amended to read:

26135.7. (a) “Retired participant activities” means one or more activities identified in subdivision (b), (c), or (d) of Section 22119.5 or (b), (c), or (d) of Section 26113 within the California public school system and performed by a participant retired for service under this part as one of the following:

(1) An employee of an employer.

(2) An employee of a third party, except as specified in subdivision (b).

(3) An independent contractor.

(b) The activities of an employee of a third party shall not be included in the definition of “retired participant activities” if all of the following conditions apply:

(1) The employee performs an assignment of 24 months or less.

(2) The third-party employer does not participate in a California public pension system.

(3) The activities performed by the individual are not normally performed by employees of an employer, as defined in Section 22131.