contra costa county
Employees' Retirement Association
1355 willow way suite 221 concord ca 94520
925.521.3960 fax: 925.646.5747

August 10, 2011
Agenda Item 14

RETIREMENT BOARD MEETING **SPECIAL BOARD MEETING** 9:00 a.m. July 27, 2011	Retirement Board Conference Room The Willows Office Park 1355 Willow Way Suite 221 Concord, California

THE RETIREMENT BOARD MAY DISCUSS AND TAKE ACTION ON THE FOLLOWING:

1. Pledge of Allegiance

2. Accept comments from the public.

3. Approve minutes from the July 13, 2011 meeting.

4. Discussion with consultant regarding managers scheduled to present.

5. Manager presentations:

   Global Fixed Income

9:15 a.m. – 9:45 a.m.	Lazard Asset Management

   Large Capitalization Domestic Equity

9:50 a.m. – 10:20 a.m.	Delaware Investment Advisors
10:20 a.m. – 10:40 a.m.	BREAK
10:40 a.m. – 11:10 a.m.	INTECH
11:15 a.m. – 11:45 a.m.	Wentworth, Hauser & Violich

6. Miscellaneous
   a. Staff Report
   b. Outside Professionals' Report
   c. Trustees' comments

The Retirement Board will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Retirement Office at least 24 hours before a meeting.

MEMO

Date: July 27, 2011

To: Employers, District Boards
Employee Representatives,
Other Interested Parties

From: Marilyn Leedom, Retirement Chief Executive Officer

Subject: Board Meeting, August 10, 2011

In the next week, you will receive the agenda for the Retirement Board meeting on August 10, 2011. Of particular importance, The Segal Company will present the results of the annual *Actuarial Valuation and Review* for the period ended December 31, 2010. The report will include proposed employer contribution rates for the period July 1, 2012 through June 30, 2013. This will be the second full actuarial valuation since the depooling process began. You are invited to attend this meeting.

CCCERA's basic financial goal is to establish contributions which fully fund the system's liabilities, and which, as a percentage of payroll, remain as level as possible for each generation of active members. Annual actuarial valuations measure the progress toward this goal, as well as test the adequacy of the contribution rates.

Copies of the full Valuation Report:

- Will be available next week, beginning on Thursday, for those who want to stop by the office before the meeting.
- Will be provided to attendees at the meeting.
- Will be mailed to employers who weren't able to attend the meeting.
- Will be available on our website at www.cccera.org on Friday, August 5th.

This is an opportunity for all interested parties, including staff and Boards of our participating employers, to learn more about the actuarial process. The Segal Company will present their findings and answer questions regarding the valuation.

We invite you to attend this meeting, ask questions and learn more about this critical subject.

CCCERA
CONTRA COSTA COUNTY
EMPLOYEES RETIREMENT ASSOCIATION
1355 Willow Way, Suite 221, Concord, CA 94520-5728
Telephone: (925) 646-5741, Fax: (925) 646-5747

contra costa county
Employees' Retirement Association
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July 28, 2011

Lou Ann Texeria
Contra Costa County Local Agency Formation Commission
651 Pine Street, 8th Floor
Martinez, CA 94553

RE: Assembly Bill 340 Analysis and Presentation

Dear Lou Ann Texeria:

At the July 13, 2011 Retirement Board meeting, CCCERA trustees requested an analysis of AB 340 by our fiduciary counsel. This analysis was scheduled for presentation at the August 10, 2011 board meeting.

AB 340 is still on the Senate floor as of July 29, 2011. As such, the legislation may not be in its final form; amendments are still possible prior to the bill arriving at the Governor's desk for approval or veto.

For this reason, CCCERA is temporarily postponing our analysis and presentation until the bill is sent to the Governor's desk.

In the meantime, we are enclosing the text of the bill, as amended in the Senate as of June 22, 2011, along with the Senate Rules Committee analysis, and formal arguments in support and opposition to this legislation.

We will notify you when our fiduciary counsel's analysis and presentation are placed on the Board meeting agenda.

Sincerely,

Marilyn Leedom

Marilyn Leedom
Retirement Chief Executive Officer

AMENDED IN SENATE JUNE 22, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

AMENDED IN ASSEMBLY FEBRUARY 24, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 340

Introduced by Assembly Member Furutani
(Coauthor: Assembly Member Ma)

February 10, 2011

An act to amend Section 31461 of, and to add Sections 31540, 31540.2, 31541, 31569, and 31680.9 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 340, as amended, Furutani. County employees' retirement.

(1) The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts, as defined, to provide a system of retirement benefits to their employees. CERL defines compensation earnable for the purpose of calculating benefits as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay, as determined by the retirement board.

This bill would prohibit a variety of payments, including ~~bonus payments, housing allowances, severance pay, vehicle allowances, and~~

unscheduled overtime, payments for unused vacation, sick leave, or compensatory time off, exceeding what may be earned and payable in ~~a~~ *each* 12-month period *during the final average salary period, and specified payments made at the termination of employment* from being included in compensation earnable. *The bill would additionally prohibit employer-provided housing allowances and employer-provided vehicle allowances from being included in compensation earnable for members first hired on or after January 1, 2012.* The bill would ~~prohibit any compensation determined by the board to have been~~ *require the board to establish a procedure for assessing and determining whether an element of compensation was* paid for the *principal* purpose of enhancing a member's retirement benefit *and would prohibit that compensation* from being included in compensation earnable. The bill would except from this prohibition compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement. ~~The~~

The bill would require the board to provide notice to the member and employer upon a final determination that compensation was paid for the principal purpose of enhancing a member's retirement benefit. The bill would authorize the member or employer to obtain judicial review of the board's action by filing a petition for writ of mandate, as specified. The bill would permit a member or employer to present evidence that compensation was not paid for the *principal* purpose of enhancing a member's benefit and would permit the board to revise its determination upon receipt of sufficient evidence to that effect.

The bill would also require a county or district, when reporting compensation to a retirement board, to identify the pay period in which the compensation was earned regardless of when it was reported or paid. The bill would authorize the board to assess a county or district a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that a county or district knowingly failed to comply with these requirements, as specified. The bill would authorize a retirement board to audit a county or district and to require a county or district to provide information, or make information available for examination or copying at a specified time and place, to determine the correctness of retirement benefits, reportable compensation, and enrollment in, and reinstatement to, the system.

(2) CERL generally provides that each person entering employment becomes a member of a retirement system on the first day of the calendar

month after his or her entrance into service, unless otherwise provided by regulations adopted by the board. CERL permits people in certain employment classifications to elect membership in the retirement system, including elective officers, and prohibits membership for persons providing temporary technical or professional services under contract.

This bill would require a county or district that fails to enroll an employee into membership within 90 days of when he or she becomes eligible, when the employer knows or should have known that the person was eligible, to pay all costs in arrears for member contributions and administrative costs of $500 per member.

(3) CERL permits members of a county retirement system who have retired to be reemployed without reinstatement into the system in certain circumstances including in a position requiring special skills or knowledge.

This bill, on and after January 1, 2012, would prohibit a person who has been retired for service from a CERL retirement system from being reemployed in any capacity without reinstatement into the system by a district or county operating a county retirement system established under CERL unless at least 180 days have elapsed since the person's date of retirement, except as specified. The bill would prohibit a person whose employment without reinstatement is authorized under CERL from receiving service credit for that employment. The bill would require ~~that a retired member employed in violation of provisions regarding~~ employment without reinstatement to reimburse the retirement system for any retirement allowance received during that period ~~and pay for administrative expenses incurred in responding to the violation~~. The bill would also require the county or district to reimburse the retirement system *for administrative expenses incurred* in this regard in specified circumstances.

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

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

SECTION 1. The Legislature finds and declares that the amendments made to the County Employees Retirement Law of 1937 by this act are intended to achieve the following reforms:

(a) To give the retirement boards the authority and the responsibility to audit and deny compensation items that are identified as being paid for the principal purpose of enhancing a member's retirement benefit.

(b) To require each retirement system to establish accountability provisions for participating employers that include an ongoing audit process and to allow the retirement system to assess penalties on employers for noncompliance.

(c) To prohibit final settlement pay and *the cash-out of* multiple year accruals of vacation time, annual leave, personal leave, or sick leave from being included in retirement calculations.

(d) To eliminate the practice of working for a participating employer while collecting a retirement benefit, also known as double-dipping, by prohibiting a retiree from returning to work as a retired annuitant or as a contract employee until at least 180 days have elapsed since that person's retirement.

SEC. 2. Section 31461 of the Government Code is amended to read:

31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid for the principal purpose of enhancing a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in-kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while

employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary regardless of when reported or paid.

~~(1)~~

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable ~~in a 12-month period~~ *each 12-month period during the final average salary period*, regardless of when reported or paid.

~~(2)~~

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

~~(3) Bonus payments.~~

~~(4) Housing allowance.~~

~~(5) Severance pay.~~

~~(6) Unscheduled overtime.~~

~~(7) Vehicle allowance.~~

(4) Unscheduled overtime.

(5) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(c) In addition to the provisions of subdivision (b), for members first hired on or after January 1, 2012, compensation earnable also does not include:

(1) Any employer-provided housing allowance.

(2) Any employer-provided vehicle allowance.

SEC. 3. Section 31540 is added to the Government Code, to read:

31540. (a) ~~Any compensation determined by the board to have been paid for the purpose of enhancing a member's retirement benefit under that system shall not be included in compensation earnable.~~ *The board shall establish a procedure for assessing and determining whether an element of compensation was paid for the principal purpose of enhancing a member's retirement benefit.* If the board determines that compensation was paid for the *principal* purpose of enhancing a member's benefit, the member or the employer may present evidence that the compensation was not paid for that purpose. Upon receipt of sufficient evidence to the contrary, a board may reverse its determination that compensation was paid for the *principal* purpose of enhancing a member's retirement benefits.

(b) Upon a final determination by the board that compensation was paid for the principal purpose of enhancing a member's retirement benefit, the board shall provide notice of that determination to the member and employer. The member or employer may obtain judicial review of the board's action by filing a petition for writ of mandate within 30 days of the mailing of that notice.

~~(b)~~

(c) Compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement shall be considered compensation earnable and shall not be deemed to have been paid for the *principal* purpose of enhancing a member's retirement benefit.

SEC. 4. Section 31540.2 is added to the Government Code, to read:

31540.2. (a) When a county or district reports compensation to the board, it shall identify the pay period in which the compensation was earned regardless of when it was reported or paid. Compensation shall be reported in accordance with Section 31461 and shall not exceed compensation earnable, as defined in Section 31461.

(b) The board may assess a county or district a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that a county or district knowingly failed to comply with subdivision (a). A county or district shall be found to have knowingly failed to comply with subdivision (a) if the board determines that either of the following applies:

(1) The county or district knew or should have known that the compensation reported was not compensation earnable, as defined in Section 31461.

(2) The county or district failed to identify the pay period in which compensation earnable was earned, as required by this section.

(c) A county or district shall not pass on to an employee any costs assessed pursuant to subdivision (b).

SEC. 5. Section 31541 is added to the Government Code, to read:

31541. The board may audit a county or district to determine the correctness of retirement benefits, reportable compensation, and enrollment in, and reinstatement to, the system. During an audit, the board may require a county or district to provide information, or make available for examination or copying at a specified time and place, books, papers, data, or records, including, but not limited to, personnel and payroll records, as deemed necessary by the board.

SEC. 6. Section 31569 is added to the Government Code, to read:

31569. A county or district that fails to enroll an employee into membership within 90 days of when he or she becomes eligible, when the employer knows or would reasonably be expected to have known that the person was eligible, shall pay all costs in arrears for member contributions and administrative costs of five hundred dollars ($500) per member as a reimbursement to the system's current year budget.

SEC. 7. Section 31680.9 is added to the Government Code, to read:

31680.9. (a) Except as provided in Section 31680.1, any person who has been retired for service on or after January 1, 2012, as a member of a county retirement system established under this chapter shall not be reemployed in any capacity either as an employee, an independent contractor, or an employee of a third party without reinstatement by a district or county operating a county retirement system established under this chapter unless at least 180 days have elapsed since the person's date of retirement.

(b) A retired person whose employment, without reinstatement, is authorized by this article shall not acquire service credit or retirement rights under this part with respect to that employment.

(c) Any retired member employed in violation of this article ~~shall:~~

~~(1) Reimburse~~ *shall reimburse* the retirement system for any retirement allowance received during the period or periods of employment that are in violation of law.

~~(2) Contribute toward the reimbursement of the retirement system for administrative expenses incurred in responding to a~~

~~violation of this article, to the extent the member is determined by the executive officer to be at fault.~~

(d) Any county or district that employs a retired member in violation of this article shall contribute toward the reimbursement of the retirement system for administrative expenses incurred in responding to a violation of this article, to the extent the county or district is determined by the executive officer of this system to be at fault.

SEC. 8. The provisions of this act shall not be interpreted or applied to reduce the pension of any person who has retired prior to January 1, 2012.

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BILL ANALYSIS

|SENATE RULES COMMITTEE | AB 340|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 651-1520 Fax: (916) |
|327-4478 |

THIRD READING

Bill No: AB 340
Author: Furutani (D)
Amended: 6/22/11 in Senate
Vote: 21

SEN.PUBLIC EMPLOY. & RETIRE. COMMITTEE : 5-0, 6/27/11
AYES: Negrete McLeod, Walters, Gaines, Padilla, Vargas

ASSEMBLY FLOOR : 73-0, 5/12/11 - See last page for vote

SUBJECT : County employees retirement

SOURCE : Author

DIGEST : This bill prohibits certain cash payments from being included in compensation for the purpose of determining a retirement benefit in county retirement systems subject to the 1937 Act County Retirement Law, and prohibits retirees in those retirement systems from immediately returning to employment with the public employer on a part-time or contract basis.

ANALYSIS :

Existing law:

1. Establishes the 20 county retirement systems operating under the 1937 Act County Retirement Law ('37 Act), which provide defined benefit retirement allowances based on employees' years of service, age at retirement, and final

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compensation (most commonly, the highest paid 12 or 36 months of employment).

2. Allows public employers, through laws, rules, local ordinances, and collective bargaining agreements, to pay differentials, bonuses, overtime, separation pay, holiday pay, and other forms of compensation in addition to base pay and requires that employers accurately and timely report to the retirement boards the amount of compensation paid to employees, including special forms of pay, changes in employment status, leaves, and other facts that impact compensation.

3. Defines "compensation earnable" in the '37 Act system as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.

4. Allows a retired public employee or teacher to return to public employment with an employer covered by the retirement system he or she retired from on a part-time basis, as specified. An employee who exceeds the limited time base or earnings, as specified, may be subject to reinstatement into the retirement system and reduction or cessation of his pr her retirement allowance or earnings.

This bill:

1. Makes findings and declarations that the act achieves pension reforms, including giving retirement boards the authority and responsibility to audit and deny compensation that is paid to spike a pension and assess penalties to employers for non-compliance, prohibiting final settlement pay and various types of leave pay from being included in retirement calculations, and prohibiting the practice of "double-dipping," defined as immediately (within 180 days) returning to public employment after retirement.

2. Excludes from the definition of "compensation earnable" payments for unused vacation time, annual leave, personal leave, sick leave, or compensatory time off

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that exceeds what is earned and payable in a 12-month period, payments for service rendered outside of normal working hours, bonus payments, housing allowances, severance pay, unscheduled overtime, and vehicle allowances, as specified.

3. Authorizes a '37 Act retirement board to establish a procedure for determining whether an element of compensation as paid for the principal purpose of pension spiking and requires the board to provide notice to the employer and member when such a termination has been made.

4. Specifies that compensation paid to a retiring member to restore compensation the member would have been entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or modified, as specified, will be considered compensation earnable and not considered to have been paid for the purpose of enhancing the member's retirement benefits.

5. Establishes compensation reporting requirements for counties and districts and authorizes a '37 Act retirement board to audit and determine the correctness of specified information and assess a county or district a reasonable cost to cover the cost of the audit and any necessary adjustment or correction if the board determines the county or district knowingly failed to comply with the compensation reporting requirements.

6. Requires a county or district to enroll an eligible employee into membership with the retirement system within 90 days. Employers who fail to meet this requirement are required to pay all costs in arrears for member contributions and administrative costs of $500 per member.

7. Prohibits a person who retires on or after January 1, 2012, from returning to work as a retired annuitant or as a contract employee for a period of 180 days after retirement.

8. Specifies that a retiree hired in violation of the 180 days rule is required to reimburse the retirement system

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for any retirement allowance received during that period and any administrative expenses incurred.

9. Specifies that a county or district that hires someone in violation of the 180 day rule is required to reimburse the retirement system for any administrative expenses incurred if the county or district is determined to be at fault by the executive officer of the retirement system.

10. Clarifies that this act shall not be applied to reduce the pension of any individual who has retired prior to January 1, 2012.

Comments

Similarity to SB 27 (Simitian) and Previously Vetoed Bills
The 180 day provision in this bill is similar to provisions contained in SB 27 (Simitian) of this year. SB 27 prohibits, for 180 days after the date of retirement, any member of the California Public Employees' Retirement System (CalPERS) or the California State Teachers' Retirement System (CalSTRS) who retires on or after January 1, 2013, from returning to work as a part-time, paid employee, contracting employee, or employee of a third party contractor for a period of 180 days following retirement.

The provisions relative to working after retirement were also contained in AB 1987 (Ma), 2009-10 Session, and SB 1425 (Simitian), 2009-10 Session, which were vetoed by the Governor. The Governor did not mention the 180 day provisions in his veto messages on the bills. Other concerns with the bills were cited.

Related and Prior Legislation

SB 27 (Simitian), 2011-12 Session, among other things, prohibits a retiree from returning to work as a retired annuitant or contract employee for a period of 180 days after retirement. (In Assembly Public Employees, Retirement and Social Security Committee)

SB 1425 (Simitian), 2009-10 Session, would have established

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minimum standards and requirements for all public retirement systems in California with respect to final compensation, ongoing audits with penalties for noncompliance, and prohibitions against a retiree from immediately returning to employment with the public employer on a part-time or contract basis. Passed the Senate with a vote of 37-0 on August 31, 2010. The bill was subsequently vetoed by Governor Schwarzenegger, whose veto message read:

"The enactment of this bill is contingent upon the enactment of AB 1987 (Ma). I am vetoing AB 1987 because it does not provide real pension reform. I am still hopeful that the Legislature will pass an acceptable bill that really addressed California's pension problem."

AB 1987 (Ma), 2009-10 Session, would have established minimum standards and requirements for all public retirement systems in California with respect to final compensation, ongoing audits with penalties for noncompliance, and prohibitions against a retiree from immediately returning to employment with the public employer on a part-time or contract basis. Passed the Senate with a vote of 28-1 on August 30, 2010. The bill was subsequently vetoed by Governor Schwarzenegger, whose veto message read:

"The practice of pension-spiking is a serious one that deserves significant attention by the Legislature in curbing the unacceptable manner in which individual workers are able to artificially boost their retirement payouts. There are numerous examples of public employees taking home larger pension checks in retirement than what they earned in base salary when they were actually working.

"California does need a consistent standard that is transparent, understandable, and implementable throughout the state. While this bill purports to address this issue by segregating out some of the factors that have allowed pension spiking, in some instances it still allows local pension boards to determine what is ultimately counted in an employee's

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pension calculation. This does not provide a consistent treatment of all employees. The taxpayers of California deserve better. I am still hopeful that the Legislature can send me acceptable pension reform legislation."

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 6/29/11)

American Federation of State, County and Municipal Employees, AFL-CIO
Association for Los Angeles Deputy Sheriffs
California Association of Psychiatric Technicians
California School Employees Association
Glendale City Employees Association
Los Angeles County Probation Officers Union
Organization of SMUD Employees
Redondo Beach Chamber of Commerce
Retired Public Employees Association
San Bernardino Public Employees Association
San Luis Obispo County Employees Association
Santa Rosa City Employees Association
Service Employees International Union
South Bay Association of Chambers of Commerce

OPPOSITION : (Verified 6/29/11)

Association of California Water Agencies
California District Attorneys Association
California State Association of Counties (oppose unless amended)

ARGUMENTS IN SUPPORT : According to the author's office, "California's public pension systems were established to provide retirement security for those who give their lives in public service. Recently, the benefits provided by those systems have been tainted by a few individuals who have taken advantage of the system. This is in part due to the "37 Act's very broad and general definition of 'compensation earnable' (the amount of which a member's pension is calculated). In these counties some public employees, most of them in upper level positions, have

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taken advantage of this situation to include items in their compensation that 'spike' their final compensation to create vastly increased pension checks for themselves.

"The abusive practices engaged in by a few individual have put retirement benefits at risk for the vast majority of honest, hard-working public servants. Additionally, the practice of having someone retire on Friday and come back to work on Monday and being able to collect a full retirement benefit along with a full paycheck, is something the public simply will not tolerate any longer. Allowing this 'double-dipping' to continue only adds to the growing public concern over the pension being received by public employees."

The author concludes, "This measure will address these abusive practices by giving the '37 Act retirement boards the authority and the obligation to deny compensation items that are provided to an employee for the principal purpose of enhancing a member's retirement, specifically excluding certain payments from the definition of 'compensation earnable', and requiring an employee to 'sit out' for 180 days after retirement before returning to service."

Supporters state, "AB 340 would eliminate the current ability for employees to manipulate their final compensation calculations to enhance their retirement benefits. Additionally, AB 340 restricts the ability of members to retire immediately and return to employment as a retired annuitant and begin collecting a salary and pension simultaneously?AB 340 ends 'double-dipping' employed by many of the managers and highly compensated employees."

ARGUMENTS IN OPPOSITION : Those opposed to the bill are concerned about the provision prohibiting a retiree from returning to work for their previous employer until 180 days have elapsed from the day of retirement. They state, "The use of recent retirees allows public agencies to save public dollars during the recruitment period and until the position is filled with a competent person. Many of the positions for which retirees are re-hired temporarily are highly skilled trade's positions which are difficult to fill."

CONTINUED

ASSEMBLY FLOOR : 73-0, 5/12/11
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Chesbro, Cook, Davis, Dickinson, Donnelly, Eng, Feuer, Fletcher, Fong, Fuentes, Furutani, Beth Gaines, Gatto, Gordon, Grove, Hagman, Halderman, Hall, Harkey, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pan, Perea, V. Manuel Pérez, Silva, Skinner, Smyth, Solorio, Swanson, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez
NO VOTE RECORDED: Cedillo, Conway, Galgiani, Garrick, Gorell, Portantino, Torres

CPM:cm. 6/29/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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BILL ANALYSIS

SENATE PUBLIC EMPLOYMENT & RETIREMENT BILL NO: AB 340
Gloria Negrete McLeod, Chair Hearing date: June 27, 2011
AB 340 (Furutani) as amended 6/22/11 FISCAL: NO

1937 ACT COUNTY RETIREMENT SYSTEMS: PROHIBITS PENSION SPIKING AND REQUIRES 180 DAY BREAK IN EMPLOYMENT FOLLOWING RETIREMENT

HISTORY :

Sponsor: Author

Prior legislation: SB 27 (Simitian), 2011
in Assembly PER&SS Committee
SB 1425 (Simitian), 2010
Vetoed
AB 1987 (Ma), 2010
Vetoed

ASSEMBLY VOTES :

PER & SS	5-0	5/04/11
Assembly Floor	73-0	5/12/11

SUMMARY :

Prohibits certain cash payments from being included in compensation for the purpose of determining a retirement benefit in county retirement systems subject to the 1937 Act County Retirement Law ('37 Act), and prohibits retirees in those retirement systems from immediately returning to employment with the public employer on a part-time or contract basis.

BACKGROUND AND ANALYSIS :

1) Existing law :

a) establishes the 20 county retirement systems operating under the '37 Act, which provide defined benefit

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retirement allowances based on employees' years of service, age at retirement, and final compensation (most commonly, the highest paid 12 or 36 months of employment).

b) allows public employers, through laws, rules, local ordinances, and collective bargaining agreements, to pay differentials, bonuses, overtime, separation pay, holiday pay, and other forms of compensation in addition to base pay and requires that employers accurately and timely report to the retirement boards the amount of compensation paid to employees, including special forms of pay, changes in employment status, leaves, and other factors that impact compensation.

c) defines "compensation earnable" in the '37 Act system as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.

d) allows a retired public employee or teacher to return to public employment with an employer covered by the retirement system he or she retired from on a part-time basis, as specified. An employee who exceeds the limited time base or earnings, as specified, may be subject to reinstatement into the retirement system and reduction or cessation of his or her retirement allowance or earnings.

2) This bill :

a) makes findings and declarations that the act achieves pension reforms, including giving retirement boards the authority and responsibility to audit and deny compensation that is paid to spike a pension and assess penalties to employers for non-compliance; prohibiting final settlement pay and various types of leave pay from being included in retirement calculations; and prohibiting the practice of "double-dipping," defined as immediately (within 180 days) returning to public employment after retirement.

b) excludes from the definition of "compensation earnable" payments for unused vacation time, annual leave, personal leave, sick leave, or compensatory time off that exceeds what is earned and payable in a 12-month period, payments for service rendered outside of normal working hours, bonus payments, housing allowances, severance pay, unscheduled overtime, and vehicle allowances, as specified.

c) authorizes a '37 Act retirement board to establish a procedure for determining whether an element of compensation as paid for the principal purpose of pension spiking, and requires the board to provide notice to the employer and member when such a termination has been made.

d) specifies that compensation paid to a retiring member to restore compensation the member would have been entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or modified, as specified, will be considered compensation earnable and not considered to have been paid for the purpose of enhancing a member's retirement benefits.

e) establishes compensation reporting requirements for counties and districts and authorizes a '37 Act retirement board to audit and determine the correctness of specified information and assess a county or district a reasonable cost to cover the cost of the audit and any necessary adjustment or correction if the board determines the county or district knowingly failed to comply with the compensation reporting requirements.

f) requires a county or district to enroll an eligible employee into membership with the retirement system within 90 days. Employers who fail to meet this requirement are required to pay all costs in arrears for member contributions and administrative costs of $500 per member.

g) prohibits a person who retires on or after January 1, 2012, from returning to work as a retired annuitant or

as a contract employee for a period of 180 days after retirement.

h) specifies that a retiree hired in violation of the 180 day rule is required to reimburse the retirement system for any retirement allowance received during that period and any administrative expenses incurred.

i) specifies that a county or district that hires someone in violation of the 180 day rule is required to reimburse the retirement system for any administrative expenses incurred if the county or district is determined to be at fault by the executive officer of the retirement system.

j) clarifies that this act shall not be applied to reduce the pension of any individual who has retired prior to January 1, 2012.

3) Similarity to SB 27 and previously vetoed bills:

The 180 day provision in this bill is similar to provisions contained in SB 27 (Simitian) of this year. SB 27 prohibits, for 180 days after the date of retirement, any member of the California Public Employees' Retirement System (CalPERS) or the California State Teachers' Retirement System (CalSTRS) who retires on or after January 1, 2013, from returning to work as a part-time, paid employee; contracting employee; or employee of a third party contractor for a period of 180 days following retirement.

The provisions relative to working after retirement were also contained in AB 1987 (Ma) and SB 1425 (Simitian) from 2010, which were vetoed by the Governor. The Governor did not mention the 180 day provisions in his veto messages on the bills. Other concerns with the measures were cited.

FISCAL

Unknown.

COMMENTS :

1) Arguments in Support

According to the author,

"California's public pension systems were established to provide retirement security for those who give their lives to public service. Recently, the benefits provided by those systems have been tainted by a few individuals who have taken advantage of the system. This is in part due to the '37 Act's very broad and general definition of "compensation earnable" (the amount on which a member's pension is calculated). In these counties some public employees, most of them in upper level positions, have taken advantage of this situation to include items in their compensation that "spike" their final compensation to create vastly increased pension checks for themselves.

"The abusive practices engaged in by a few individual have put retirement benefits at risk for the vast majority of honest, hard-working public servants. Additionally, the practice of having someone retire on Friday and come back to work on Monday and being able to collect a full retirement benefit along with a full paycheck, is something the public simply will not tolerate any longer. Allowing this "double-dipping" to continue only adds to the growing public concern over the pensions being received by public employees."

The author concludes, "This measure will address these abusive practices by giving the '37 Act retirement boards the authority and the obligation to deny compensation items that are provided to an employee for the principal purpose of enhancing a member's retirement, specifically excluding certain payments from the definition of 'compensation earnable', and requiring an employee to 'sit out' for 180 days after retirement before returning to service."

Supporters state, "AB 340 would eliminate the current ability for employees to manipulate their final compensation calculations to enhance their retirement

benefits. Additionally, AB 340 restricts the ability of members to retire immediately and return to employment as a retired annuitant and begin collecting a salary and pension simultaneously. AB 340 ends the 'double-dipping' employed by many of the managers and highly compensated employees."

2) Arguments in Opposition

Those opposed to the bill are concerned about the provision prohibiting a retiree from returning to work for their previous employer until 180 days have elapsed from the day of retirement. They state, "The use of recent retirees allows public agencies to save public dollars during the recruitment period and until the position is filled with a competent person. Many of the positions for which retirees are re-hired temporarily are highly skilled trade's positions which are difficult to fill."

3) SUPPORT :

American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO
Association for Los Angeles Deputy Sheriffs (ALADS)
California Association of Psychiatric Technicians (CAPT)
California School Employees Association (CSEA)
Glendale City Employees Association (GCEA)
Los Angeles County Probation Officers Union
Orange County Professional Firefighters' Association, IAFF, Local 3631
Organization of SMUD Employees (OSE)
Retired Public Employees Association (RPEA)
Riverside Sheriffs' Association
San Bernardino Public Employees Association (SBPEA)
San Luis Obispo County Employees Association (SLOCEA)
Santa Rosa City Employees Association (SRCEA)
Service Employees International Union (SEIU)

4) OPPOSITION :

Association of California Water Agencies (ACWA)
California District Attorneys Association (CDAA)

California State Association of Counties (CSAC), Oppose unless amended

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BILL ANALYSIS

CONCURRENCE IN SENATE AMENDMENTS
AB 340 (Furutani)
As Amended June 22, 2011
Majority vote

ASSEMBLY:	73-0	(May 12, 2011)	SENATE:	35-0	(July 11, 2011)

Original Committee Reference: P.E.,R.& S.S.

SUMMARY : Prohibits certain cash payments from being counted as compensation earnable for retirement purposes in counties operating retirement systems pursuant to the County Employees' Retirement Law of 1937 ('37 Act) and prohibits a retiree in those counties from immediately returning to employment with the public employer on a part-time or contract basis. Specifically, this bill :

1) Excludes from the definition of "compensation earnable" any compensation determined by the retirement board to have been paid for the principal purpose of enhancing a member's retirement benefit which may include specified payments or cash conversions made at the termination of employment or during the final average salary period.

2) Excludes, further, from the definition of "compensation earnable" payments for unused vacation time, annual leave, personal leave, sick leave, or compensatory time off that exceeds what is earned and payable in each 12-month period during the final average salary period, payments for service rendered outside of normal working hours, unscheduled overtime, and payments made at the termination of employment, as specified.

3) Excludes, additionally, from the definition of "compensation earnable," for members first hired on or after January 1, 2012, employer provided housing and vehicle allowances.

4) Requires a '37 Act retirement board to establish a procedure for determining whether an element of compensation as paid for the principal purpose of pension spiking, and requires the board to provide notice to the employer and member when such a determination has been made.

5) Specifies that compensation paid to a retiring member to restore

compensation the member would have been entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or modified, as specified, will be considered compensation earnable and not considered to have been paid for the purpose of enhancing a member's retirement benefits.

6) Establishes compensation reporting requirements for counties and districts and authorizes a '37 Act retirement board to audit to determine the correctness of specified information and assess a county or district a reasonable cost to cover the cost of the audit and any necessary adjustment or correction if the board determines the county or district knowingly failed to comply with the compensation reporting requirements.

7) Requires a county or district to enroll an eligible employee into membership with the retirement system within 90 days. Employers who fail to meet this requirement are required to pay all costs in arrears for member contributions and administrative costs of $500 per member.

8) Prohibits a person who retires on or after January 1, 2012, from returning to work as a retired annuitant or as a contract employee for a period of 180 days after retirement.

9) Specifies that a retiree hired in violation of the 180 day rule is required to reimburse the retirement system for any retirement allowance received during that period.

10) Specifies that a county or district that hires someone in violation of the 180 day rule is required to reimburse the retirement system for any administrative expenses incurred if the county or district is determined to be at fault by the executive officer of the retirement system.

The Senate amendments :

1) Specify that certain payments or cash conversions made at the termination of employment or during the final average salary period may be excluded from the definition of "compensation earnable" if a retirement board determines that those amounts were paid for the principal purpose of enhancing a member's retirement benefit.

2) Specify that employer provided housing and vehicle allowances are

only excluded from the definition of "compensation earnable," for

members first hired on or after January 1, 2012.

3) Require a '37 Act retirement board to establish a procedure for determining whether an element of compensation as paid for the principal purpose of pension spiking, and require the boards to provide notice to the employer and member when such a determination has been made.

EXISTING LAW :

1) Establishes the '37 Act, which provides for retirement systems for county and district employees in those counties adopting its provisions. Currently 20 counties operate retirement systems under the '37 Act. These systems provide defined benefit retirement allowances based on employees' years of service, age at retirement, and final compensation (highest paid 12 or 36 months of employment).

2) Defines "compensation earnable" in the '37 Act as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.

3) Allows a retired public employee to return to public employment with an employer covered by the retirement system he or she retired from on a part-time basis, as specified. An employee who exceeds the limited time base or earnings, as specified, may be subject to reinstatement into the retirement system and reduction or cessation of his or her retirement allowance or earnings.

AS PASSED BY THE ASSEMBLY , this bill was substantially similar to the version approved by the Senate.

FISCAL EFFECT : Unknown

COMMENTS : According to the author, "California's public pension systems were established to provide retirement security for those who give their lives to public service. Recently, the benefits provided by those systems have been tainted by a few individuals who have taken advantage of the system. This is in part due to the '37 Act's very broad and general definition of "compensation earnable" (the amount on which a member's pension is calculated). In these counties some public employees, most of them in upper level positions, have taken advantage of this situation to include items

in their compensation that "spike" their final compensation to create vastly increased pension checks for themselves.

"The abusive practices engaged in by a few individual have put retirement benefits at risk for the vast majority of honest, hard-working public servants. Additionally, the practice of having someone retire on Friday and come back to work on Monday and being able to collect a full retirement benefit along with a full paycheck, is something the public simply will not tolerate any longer. Allowing this "double-dipping" to continue only adds to the growing public concern over the pensions being received by public employees."

The author concludes, "This measure will address these abusive practices by giving the '37 Act retirement boards the authority and the obligation to deny compensation items that are provided to an employee for the principal purpose of enhancing a member's retirement, specifically excluding certain payments from the definition of 'compensation earnable', and requiring an employee to 'sit out' for 180 days after retirement before returning to service."

Supporters state, "AB 340 would eliminate the current law ability for employees to manipulate their final compensation calculations to enhance their retirement benefits. Additionally, AB 340 restricts the ability of members to retire immediately and return to employment as a retired annuitant and begin collecting a salary and pension simultaneously...AB 340 ends the 'double-dipping' employed by many of the managers and highly compensated employees."

Those opposed to the bill are concerned about the provision prohibiting a retiree from returning to work for their previous employer until 180 days have elapsed from the day of retirement. They state, "The use of recent retirees allows public agencies to save public dollars during the recruitment period and until the position is filled with a competent person. Many of the positions for which retirees are re-hired temporarily are highly skilled trade's positions which are difficult to fill."

The 180 day provision in this bill is similar to provisions contained in SB 27 (Simitian) of 2011. SB 27 (Simitian) prohibits, for 180 days after the date of retirement, any member of the California Public Employees' Retirement System (CalPERS) or the California State Teachers' Retirement System (CalSTRS) who retires on or after January 1, 2013, from returning to work as a part-time,

paid employee; contracting employee; or, employee of a third party contractor.

These provisions were also contained in AB 1987 (Ma) of 2010 and SB 1425 (Simitian) of 2010, which were vetoed by Governor Schwarzenegger. Governor Schwarzenegger did not mention the 180 day provisions in his veto messages on the bills. Other concerns with the measures were cited.

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