

**SANTA BARBARA COUNTY  
EMPLOYEES' RETIREMENT SYSTEM**

**COUNTY EMPLOYEES  
RETIREMENT LAW OF 1937  
(CERL)**

**2023 CERL APPLICABLE  
TO SBCERS**

## **INTRODUCTION**

The following document, consisting of statutes in the CERL applicable to SBCERS (and excluding statutes that are not applicable) was first prepared in 2008 as part of a successful application to the IRS for a Determination Letter with respect to the SBCERS plan. Unless otherwise noted, the statutes included are the versions in effect as of January 1, 2008. The document has been periodically updated for statutory additions and revisions since then and those updates are noted below the affected statutes.

Where available, the history of when optional statutes applicable to SBCERS were adopted by the Board of Supervisors ("BOS") or the Board of Retirement ("BOR") is noted below the relevant statutes. This document does not currently have links to the text of adoptive Ordinances and Resolutions, but copies of such documents may be obtained from SBCERS upon request. Subdivisions of statutes not adopted by the Board of Supervisors or the Board of Retirement (where other provisions are applicable) are also noted.

Finally, some explanatory notes are provided where one statute should be read in relation to another or where a statute applies to some SBCERS benefit plans but not to others. We hope to expand these explanatory notes in the future to provide further assistance to our members, beneficiaries, plan sponsors and interested members of the public.

Sincerely,

Greg Levin, CEO

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## CHAPTER 3. COUNTY EMPLOYEES RETIREMENT LAW OF 1937

### Article 1. General §§31450-31485.22

#### § 31450. Short title

This chapter may be cited as the County Employees Retirement Law of 1937.

#### § 31451. Purpose

The purpose of this chapter is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employees removed.

#### § 31452. Retirement allowances exempt from taxation and other process

The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, or the California Public Employees' Pension Reform Act of 2013, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district. They are not subject to execution or any other process of court whatsoever except to the extent permitted by Section 31603 of this code and Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this chapter.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 1.)

#### § 31452.5. Deduction from retirement allowance for insurance; order drawn monthly; fee

(a) The board may comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter, or the California Public Employees' Pension Reform Act of 2013, authorizing the treasurer or other entity authorized by the board to deduct a specified amount from the retirement allowance or benefit payable to any retired member or beneficiary of a retired member for any of the following purposes:

- (1) Paying premiums on any policy or certificate of group life insurance or group disability insurance issued by an admitted insurer.
- (2) Paying premiums for a prepaid group medical or hospital service plan.
- (3) Paying premiums for a vision care program or dental plan, approved by the board, for the benefit of the retired member or his or her dependents.
- (4) Paying premiums on national service life insurance or United States government converted insurance.

(5) Payment for the purchase of shares in or the payment of money to any regularly chartered credit union.

(6) Payment to a charitable organization or a federally chartered veterans' organizations that is approved by the board.

(7) Payments to a recognized retiree organization.

(8) Payment for the purchase of United States savings bonds.

(9) The payment of personal income taxes to the government of the United States or of the State of California.

(10) Payment for any retiree benefit programs available through the recognized retiree organization. The board may require that this payment be to a single party designated by the recognized retiree organization, either to itself or to a third-party administrator.

(b) Each month the order shall be drawn in favor of the insurer, institution, credit union, organization, or government named in the written authorization for an amount equal to the deductions authorized in subdivision (a) and made during the month.

(c) The board may charge a reasonable fee for the making of the deductions and payments.

(Amended by Stats.2012, c. 178 (S.B. 1382), Sec. 1; Stats. 2013, c. 247 (AB 1380), Sec. 2.)

#### § 31452.6. Delivery of benefits to financial institutions; refunds after death

(a) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter, or the California Public Employees' Pension Reform Act of 2013, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, or credit union to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter or the California Public Employees' Pension Reform Act of 2013 shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

IMPLEMENTED BY BOS RESOLUTION 75-119 (FEBRUARY 18, 1975).

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 3.)

#### § 31452.65. Issuance of duplicate for lost or destroyed warrant

Upon receipt of proof, satisfactory to the board, that a warrant or check drawn in payment of a retirement allowance or in payment of any other account due from the retirement system has been lost or destroyed, the treasurer or other entity authorized by the board upon request of the board of retirement shall as provided by Section 31590 issue a duplicate warrant or check bearing the same date as the original in payment of the same amount, without requiring a bond from the payee, and the treasurer or other entity authorized by the board shall pay the duplicate in lieu of the original warrant or check and any losses incurred by reason of the issuance of duplicate warrants or checks shall be a charge against the account from which the payment is derived.

This section shall not be operative in any county until the time as the board of supervisors shall, by resolution, make this section applicable in the county.

ADOPTED BY BOS RESOLUTION 75-435 (JUNE 23, 1975).

#### § 31452.7. Member's or survivor's death; payment of allowance

(a) Upon the death of any member after retirement, any retirement allowance earned but not yet paid to the member shall, notwithstanding any other provision of law, be paid to the member's designated beneficiary.

(b) Upon the death of any person receiving a survivor's allowance under this chapter, any allowance earned but not yet paid to the survivor shall, notwithstanding any other provision of law, be paid to the survivor's designated beneficiary.

(c) For purposes of this section, "beneficiary" includes, but is not limited to, a corporation, a trust, or an estate.

(Added by Stats. 2000, Ch. 497 (SB 2008), Sec. 1)

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 8)

#### § 31453. Actuarial valuation; recommendation as to changes in rates of interest, contributions, and appropriations; discretion of board; exception

(a) An actuarial valuation shall be made within one year after the date on which any system established under this chapter becomes effective, and thereafter at intervals not to exceed three years. The valuation shall be conducted under the supervision of an actuary and shall cover the mortality, service, and compensation experience of the members and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 45 days prior to the beginning of the succeeding fiscal year, recommend to the board of supervisors the changes in the rates of interest, in the rates of contributions of members, and in county and district appropriations as are necessary. With respect to the rates of interest to be credited to members and to the county or district, the board may, in its sound discretion, recommend a rate that is higher or lower than the interest assumption rate established by the actuarial survey. No adjustment shall be included in the new rates for time prior to the effective date of the revision.

ONLY SUBSECTION (a) APPLIES TO SBCERS - SUBSECTION (b) NOT ADOPTED.

#### § 31453.5. Normal contribution rate; computation

Notwithstanding Section 31587, and in accordance with Section 31453 or 31510.1, the board may determine county or district contributions on the basis of a normal contribution rate which shall be computed as a level percentage of compensation which, when applied to the future compensation of the average new member entering the system, together with the required member contributions, will be sufficient to provide for the payment of all prospective benefits of such member. The portion of liability not provided by the normal contribution rate shall be amortized over a period not to exceed 30 years.

IMPLEMENTED BY BOS RESOLUTION 76-613 (NOVEMBER 22, 1976).

#### § 31453.6. Funding period to amortize unfunded accrued actuarial obligations; new amortization periods; requests

Notwithstanding any other provision of this chapter, the board of retirement may, at the request of the board of supervisors, adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations, as determined by their actuary or by an actuary employed by the board of investments, for benefits applicable to all membership categories for the purpose of determining employer contribution rates for counties and districts. The board of retirement shall approve a new amortization period based upon a request from the board of supervisors that demonstrates a financial necessity. The board of retirement may deny a request when the request would subject the fund to an unsound financial risk.

A board of retirement may take an action pursuant to this section only once.

#### § 31454. Adjustment by board or governing body of rates of interest, contributions, and appropriations

(a) The board of supervisors shall, not later than 90 days after the beginning of the immediately succeeding fiscal year, adjust the rates of interest, the rates of contributions of members, and county and district appropriations in accordance with the recommendations of the board, but shall not fix them in amounts that reduce the individual benefits provided in this chapter or the California Public Employees' Pension Reform Act of 2013.

ONLY SUBSECTION (a) APPLIES TO SBCERS - SUBSECTION (b) NOT ADOPTED.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 4.)

#### § 31454.1. Independent assumptions and calculations contained in actuarial valuation; meet and confer provisions; board of supervisors or governing body and recognized employee organization; legislative intent

(a) The independent assumptions and calculations of an actuary contained in the actuarial valuation required by Section 31453 shall not be subject to the "meet and confer" provisions of the Meyers-Milias-Brown Act; however, it is recognized that those provisions require that the board or the board of supervisors meet and confer with representatives of recognized employee

organizations prior to determining a course of action with respect to the recommendations contained in the actuarial valuation.

(c) The intent of the Legislature, in enacting this section, is to insure the solvency and actuarial soundness of the retirement systems governed by this chapter by preserving the independent nature of the actuarial evaluation process.

ONLY SUBSECTIONS (a) AND (c) APPLY TO SBCERS - SUBSECTION (b) NOT ADOPTED.

#### § 31454.5. Additional appropriations by board to fund deficits

In any county subject to the provisions of Section 31676.1, 31676.11, 31676.12, or 31695.1 the board of supervisors may, by vote entered in the minutes of the board, make an additional appropriation sufficient to fund over a period of 30 years any deficit which may result to the system because of the adoption of Section 31676.1, 31676.11, 31676.12, or 31695.1 or by the adoption of Articles 6.8, 7.5 and 8.7. The board of supervisors may make such additional appropriation whether recommended by the board or not.

#### § 31454.6. Additional appropriations by governing body of district to fund deficits

Whenever, in any county subject to the provisions of Section 31676.1 the board of supervisors makes any additional appropriations pursuant to Section 31454.5, the governing body of every district, including the board of supervisors where it is the governing body, also shall make an additional appropriation in the amount to which it has agreed, otherwise in the same proportion as the total pay roll deductions from the salaries of all members employed by such district for the latest pay roll period bear to the total pay roll deductions from the salaries of all members employed by the county for the same pay roll period.

#### § 31454.7. Board's plenary authority to recommend adjustments to county and direct contributions

The Legislature affirms the ruling of *Mijares v. Orange County Employees' Retirement System* (2019) 32 Cal.App.5th 316, with respect to a board's plenary authority to recommend adjustments to county and district contributions as necessary to ensure the appropriate funding of the system, and with respect to the mandate of Section 31454 that the county and districts adjust the rates of contributions of members and appropriations in accordance with the board's recommendations. Under all circumstances, the county and districts shall each remain liable to the retirement system for their respective share of any unfunded actuarial liability of the system, as determined by the board.

(Added by Stats. 2020, Ch. 275 (AB 2101), Sec. 29)



## § 31455. Controlling definitions and general provisions

Unless the context otherwise requires, or unless superseded by any provision of the California Public Employees' Pension Reform Act of 2013, the definitions and general provisions contained in this article govern the construction of this chapter

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 5.)

### § 31455.5. Unlawful acts affecting administration of benefits; violation; penalties

(a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit accrued or accruing to a person under this chapter.

(2) Present, or cause to be presented, any knowingly false material statement or material representation for the purpose of supporting or opposing an application for any benefit accrued or accruing to a person under this chapter.

(3) Knowingly accept or obtain payment from a retirement system with knowledge that the recipient is not entitled to the payment under the provisions of this chapter and with the intent to retain the payment for personal use or benefit.

(4) Knowingly aid, abet, solicit, or conspire with any person to do an act prohibited by this section.

(b) For purposes of this section, "statement" includes, but is not limited to, any oral or written application for benefits, report of family relationship, report of injury or physical or mental limitation, hospital records, test results, physician reports, or other medical records, employment records, duty statements, reports of compensation, or any other evidence material to the determination of a person's initial or continued eligibility for a benefit or the amount of a benefit accrued or accruing to a person under this chapter.

(c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to the retirement system, or to any other person determined by the court, for the amount of the benefit unlawfully obtained, unless the court finds that restitution, or a portion of it, is not in the interests of justice. Any restitution order imposed pursuant to this section shall be satisfied before any criminal fine imposed under this section may be collected.

(e) The provisions provided by this section are cumulative and shall not be construed as restricting the application of any other law.

(Added by Stats. 2008, c. 369 (A.B. 1844), Sec. 5.)

### § 31456. "Actuarial equivalent defined"

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted by the board of supervisors and regular interest thereon.

#### § 31457. "Annuity" defined

"Annuity" means payment for life derived from contributions made by a member.

#### § 31458. "Beneficiary" defined

"Beneficiary" means any person in receipt of a pension, annuity, retirement allowance, death benefit, or any other benefit.

#### § 31458.2. Death of member prior to designation of beneficiary; surviving spouse as beneficiary; procedure

If, after December 31, 1957, and either before or after retirement a member dies leaving a spouse and has not designated a beneficiary, and, prior to the payment of any portion of the death benefit, such spouse files with the board written evidence, satisfactory to the board, that she or he is the surviving spouse and the date of the marriage, such surviving spouse shall be deemed, for the purposes of this chapter, to have been nominated as the beneficiary by such member.

#### § 31460. "Compensation" defined

"Compensation" means the remuneration paid in cash out of county or district funds, plus any amount deducted from a member's wages for participation in a deferred compensation plan established pursuant to Chapter 8 (commencing with Section 18310) of Part 1 of Division 5 of Title 2 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to a member.

#### § 31461. "Compensation earnable" defined

(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 to enhance 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 period regardless of when reported or paid.

(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 each 12-month period during the final average salary period, regardless of when reported or paid.

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

(4) 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) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003) 110 Cal.App.4th 426.

(Amended by Stats. 2012, c. 296 (A.B.340), § 28; Stats. 2012, c. 297 (A.B.197), § 2.)

#### § 31461.2. "Compensation earnable" defined

"Compensation earnable" by a public administrator, coroner or coroner-public administrator member compensated by means of fees means the average compensation as determined by the board, for the period under consideration, upon the basis of the average amount of fees received each month by such member.

NOTE: PA AND CORONER ARE NOT COMPENSATED BY FEES.

#### § 31461.3. Members of state or county retirement system; average compensation

(a) The average compensation during any period of service as a member of the Public Employees' Retirement System, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2 shall be considered compensation earnable by a member for purposes of computing final compensation for that member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or six months if Section 31840.4 applies.

(2) He or she retires concurrently under both systems and is credited with that period of service under the other system at the time of retirement.

(b) This section shall be applied retroactively under this chapter in favor of any member whose membership in the Public Employees' Retirement System or in a retirement system established under this chapter in any county terminated prior to October 1, 1957, provided that he or she was eligible to and elected deferred retirement therein within 90 days after eligibility for reciprocity, the period intervening between active memberships in the respective systems did not exceed 90 days, or six months if Section 31840.4 applies, and he or she retires concurrently under both systems and is credited with that period of service under the other system at the time

of retirement. The limitation of the 90-day or six-month period between the active membership in the two retirement systems shall not apply to an employee who entered the employment in which he or she became a member of the State Employees Retirement System prior to July 18, 1961; provided he or she entered that employment within 90 days, or six months if Section 31840.4 applies, after the termination of employment in the county system, whether that employment is with the state or with a county, a city, or other public agency that contracts with the Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2.

#### § 31461.5. Executive and Unclassified Management Operational Incentive Plan; exclusion from retirement benefits

Notwithstanding any other provision of law, salary bonuses or any other compensation incentive payments for regular duties or for additional services outside regular duties received under the program known on April 1, 1997, as the Executive and Unclassified Management Operational Incentive Plan or any successor program that is substantially similar by any members who are in positions identified as executive or unclassified management shall be excluded from all retirement benefit calculations.

#### § 31461.6. "Compensation earnable" defined

(a) "Compensation earnable" shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 and following of Title 29 of the United States Code.

(b) This section shall not apply to a member who is subject to the California Public Employees' Pension Reform Act of 2013.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 6.)

#### § 31462. "Final compensation" defined

(a) "Final compensation" means the average annual compensation earnable by a member during any three years elected by a member at or before the time he or she files an application for retirement, or, if he or she fails to elect, during the three years immediately preceding his or her retirement. If a member has less than three years of service, his or her final compensation shall be determined by dividing his or her total compensation by the number of months of service credited to him or her and multiplying by 12.

(b) This section shall not apply to a member who is subject to the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 7)

THIS STATUTE IS APPLICABLE TO CERTAIN SBCERS MEMBERS DEPENDING UPON RETIREMENT PLAN AND BARGAINING UNIT.

#### § 31462.05. Determination of "final compensation"

(a) For a member who is subject to the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system, "final compensation" as defined in Section 7522.32 shall apply.

(b) If a member has less than three years of service, that member's final compensation shall be determined by dividing the total compensation by the number of months of service credited to the member and multiplying by 12.

(c) When determining final compensation for a member who does not have three consecutive years of earned pensionable compensation due to an absence, the compensation for any absence shall be based on the pensionable compensation of the position held by the member immediately prior to the absence.

(Added by Stats. 2013, c. 247 (AB 1380), Sec. 8.)

(Amended by Stats. 2014, c. 741 (AB 2474), Sec. 1.)

THIS STATUTE APPLICABLE TO ALL PLAN 8 MEMBERS.

#### § 31462.1. "Final compensation" based on compensation for one year; adoption by counties

(a) (1) "Final compensation" means the average annual compensation earnable by a member during any year elected by a member at or before the time he files an application for retirement, or, if he fails to elect, during the year immediately preceding his retirement.

(2) This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions of this section applicable in such county.

(b) This section shall not apply to a member who is subject to the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 9)

ADOPTED BY BOS RESOLUTION 72 -1156, (NOVEMBER 6, 1972). THIS STATUTE IS APPLICABLE TO CERTAIN SBCERS MEMBERS DEPENDING UPON RETIREMENT PLAN AND BARGAINING UNIT.

#### § 31462.11. Recalculation of allowances based on compensation for one year; prospective application; resolution by board

In any county subject to the provisions of Section 31462.1, every retirement allowance, optional death allowances, or annual death allowance, payable to or on account of any member, granted prior to the effective date of Section 31462.1 in such county, shall be recalculated as though Section 31462.1 had been in force in such county on the effective date of such allowance.

Any increased allowances resulting from such recalculation shall be payable only prospectively on and after the operative date of this section in that county.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS RESOLUTION 86-041, (JANUARY 27, 1986).  
(REQUIRED RECALCULATION OF BENEFITS OF PRE-1972 RETIREES.)

§ 31462.2. "Final compensation" defined as used in relation to intermittent members

(a) "Final compensation" for members whose service is on a tenure that is temporary, seasonal, intermittent, or for part time only means one-third of the total compensation earned for that period of time during which the member rendered the equivalent of three years of full-time service.

(b) The member may elect at or before the time he or she files an application for retirement the period of time during which he or she has earned three full years of credit upon which final compensation shall be calculated. If he or she does not so elect, that period of time immediately preceding his or her retirement shall be used.

(c) This section also applies to a member meeting the conditions specified in subdivision (a), and who is subject to the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1).

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 10.)

(Amended by Stats. 2014, c. 741 (AB 2474), Sec. 2.)

EMPLOYEES WHO ARE TEMPORARY, SEASONAL OR INTERMITTENT ARE EXCLUDED. (SEE 31527(e) AND BOR BYLAW 400) PART-TIME EMPLOYEES WHO WORK AT LEAST 40 HOURS PER PAY PERIOD ARE INCLUDED IN MEMBERSHIP BY BOS MINUTE ORDER MAY 24, 1993 AND BOR BYLAW 400 AND ARE SUBJECT TO THIS PROVISION.

§ 31463. "Normal contributions" defined

"Normal contributions" means contributions by a member at the normal rates of contributions, but does not include additional contributions by a member.

§ 31464. "Accumulated normal contributions" defined

"Accumulated normal contributions" means the sum of all normal contributions standing to the credit of a member's individual account and regular interest thereon.

§ 31465. "Additional contributions" defined

"Additional contributions" means contributions made by members in addition to normal contributions under Section 31627.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 30)

§ 31466. "Accumulated additional contributions" defined

"Accumulated additional contributions" means the sum of all additional contributions standing to the credit of a member's individual account and regular interest thereon.



#### § 31467. "Accumulated contributions" defined

"Accumulated contributions" means accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account.

#### § 31468. "District" defined

(a) "District" means a district, formed under the laws of the state, located wholly or partially within the county other than a school district.

(b) "District" also includes any institution operated by two or more counties, in one of which there has been adopted an ordinance placing this chapter in operation.

(c) "District" also includes any organization or association authorized by Chapter 26 of the Statutes of 1935, as amended by Chapter 30 of the Statutes of 1941, or by Section 50024, which organization or association is maintained and supported entirely from funds derived from counties, and the board of any retirement system is authorized to receive the officers and employees of that organization or association into the retirement system managed by the board.

(d) "District" also includes, but is not limited to, any sanitary district formed under Part 1 (commencing with Section 6400) of Division 6 of the Health and Safety Code.

(e) "District" also includes any city, public authority, public agency, and any other political subdivision or public corporation formed or created under the constitution or laws of this state and located or having jurisdiction wholly or partially within the county.

(f) "District" also includes any nonprofit corporation or association conducting an agricultural fair for the county pursuant to a contract between the corporation or association and the board of supervisors under the authority of Section 25905.

(g) "District" also includes the Regents of the University of California, but with respect only to employees who were employees of a county in a county hospital, who became university employees pursuant to an agreement for transfer to the regents of a county hospital or of the obligation to provide professional medical services at a county hospital, and who under that agreement had the right and did elect to continue membership in the county's retirement system established under this chapter.

ONLY SUBSECTIONS (a-g) ARE APPLICABLE TO SBCERS; SUBSECTIONS (h-m) ARE NOT APPLICABLE TO SBCERS.

#### § 31469. "Employee" defined

(a) "Employee" means any officer or other person employed by a county whose compensation is fixed by the board of supervisors or by statute and whose compensation is paid by the county, and any officer or other person employed by any district within the county.

(b) "Employee" includes any officer or attache of any superior court that has been brought within the operation of this chapter.

(c) "Employee" includes any officer or other person employed by a district as defined in subdivision (c) of Section 31468 and whose compensation is paid from funds of the district.

(d) "Employee" includes any member paid from the county school service fund who elected pursuant to Section 1313 of the Education Code to remain a member of this system.

(e) "Employee" includes any person permanently employed by a local agency formation commission including the executive officer thereof.

#### § 31469.1. "County peace officer" defined

(a) "County peace officer" means the sheriff and any officer or employee of the sheriff's office of a county employed and qualifying as a constable or deputy constable or marshal or deputy marshal or deputy sheriff or equal or higher rank, irrespective of the duties to which that person may be assigned, excepting, however, those employees whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic.

(b) Any other provision in the Government Code to the contrary notwithstanding, "county peace officer" shall also include and mean any inspectors, detectives and investigators employed by the district attorney, whose principal duties are to investigate crime and criminal cases and to receive regular compensation for that service.

(c) "County peace officer" does not include a local prosecutor, local public defender, or local public defender investigator, as defined in Section 31469.2.

#### § 31469.3. "Safety member" defined

"Safety member" means any person who is any of the following:

(a) A member of a pension system established pursuant to either Chapter 4 or Chapter 5, who elects by written notice filed with the board, to become a safety member.

(b) Any person employed by a county, subject to Section 31676.1 or 31695.1 or by a district or court organized or existing within such a county, whose principal duties consist of active law enforcement or active fire suppression as described in Section 31470.2 and 31470.4, or active lifeguard service as limited by Section 31470.6 or juvenile hall group counseling and group supervision if adopted by the board of supervisors as provided in Section 31469.4.

ONLY SUBSECTIONS (a) and (b) ARE APPLICABLE TO SBCERS; SUBSECTION (c) IS NOT APPLICABLE.

#### § 31469.4. "Safety member" defined

"Safety member" means persons employed as probation officers, juvenile hall or juvenile home group counselors, and group supervisors who are primarily engaged in the control and custody of delinquent youths who must be detained under physical security in order not to be harmful to themselves or others.

The provisions of this section shall not be applicable in any county until the board of supervisors by resolution make the provisions applicable.

ADOPTED BY BOS RESOLUTION 90-836, (DECEMBER 18, 1990).

#### § 31469.6. Law enforcement employees of harbor improvement district as safety members

Law enforcement employees of a harbor improvement district are safety members subject to Article 6.8 (commencing with Section 31639) and Article 7.5 (commencing with Section 31662) of this chapter, and to such other provisions of this chapter as apply to safety members.

NO CURRENT MEMBERS ARE SUBJECT TO THIS STATUTE.



## § 31470. "Member" defined

"Member" means any person included in the membership of the retirement association pursuant to Article 4, and includes safety members as defined in Sections 31469.3, 31470.2, 31470.4 and 31470.6, or any person who has elected in writing to come within the provisions of Article 9.

### § 31470.1. "Member" as including "county peace officer member", application of special provisions

"Member" includes "county peace officer member" except in sections where county peace officer members are specifically excluded. Anything else in this act to the contrary notwithstanding, where there is a conflict with the special provisions pertaining to county peace officer members said special provisions shall apply.

### § 31470.2. Persons eligible

(a) All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys, deputies sheriff, bailiffs, constables, deputies constable, motorcycle officers, aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff, detectives and investigators in the office of the district attorney, marshals, court service officers only in a county of the third class, as defined in Sections 28020 and 28024, and all regularly appointed deputy marshals are eligible.

ONLY SUBSECTION (a) IS APPLICABLE TO SBCERS; SUBSECTION (b) IS NOT APPLICABLE; SUBSECTION (c) HAS NOT BEEN ADOPTED.

### § 31470.3. Persons ineligible

Clerks, bookkeepers, stenographers, court service officers, except in a county of the third class, as defined in Sections 28020 and 28024, and other employees who may have been appointed as deputies sheriff or deputies marshal but who do not perform the duties of any peace officers enumerated and honorary deputies sheriff or other persons holding appointments as deputies sheriff who receive no compensation therefor who do not regularly perform official duties and those whose principal duties clearly do not fall within the scope of active law enforcement, even though such a person is subject to occasional call, or is occasionally called upon to perform duties within the scope of active law enforcement are ineligible.

### § 31470.4. Persons eligible

All county foresters, county firewardens, deputies or assistant county foresters, deputies or assistant county firewardens, firefighters, fire apparatus engineers, fire prevention inspectors, forest firemen, fire patrolmen, aircraft pilots, and foremen assigned to fire suppression crews, all other personnel assigned to active fire suppression in any county forester's or county firewarden's department and all officers, engineers, and firemen of any county fire protection district, and all other personnel assigned to active fire suppression in any county fire protection district are

eligible.

#### § 31470.5. Persons ineligible

Bookkeepers, stenographers, cooks, laborers, county fire protection district fire foremen, call firemen, and firefighters whose principal duties clearly do not fall within the scope of active fire suppression, even though the person is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active fire suppression, and volunteer employees, honorary deputy county foresters, honorary deputy county firewardens, and voluntary firewardens holding appointments as such who receive no compensation therefor and who do not regularly perform official duties, are ineligible.

#### § 31470.7. Status as "member" during public or county service

The election by a member to receive credit for employment in public service or in county service pursuant to Section 31641.1 or 31641.5 does not make such person a member during any part of such public service or county service.

ADOPTED BY BOS RESOLUTION 24579, (MARCH 15, 1965); HOWEVER ONLY APPLICABLE TO MEMBERS HIRED BEFORE JULY 16, 1977 PER BOS RESOLUTION 77-325, (JULY 5, 1977).

#### § 31470.8. Determination of eligibility

In cases of doubt as to whether a person is eligible to become a safety member, the board shall decide.

#### § 31470.9. Eligibility of public administrators, coroners, and coroner-public administrators

All public administrators, coroners and coroner-public administrators, whether compensated on a fee or salary basis, are eligible, except that the membership of such persons is subject to the approval of the board of supervisors.

#### § 31470.11. Ineligibility of welfare fraud investigators and administrators; counties in the 16th class; exceptions

Notwithstanding Section 31470.2, all welfare fraud investigators and administrators in counties of the 16th class, as described by Sections 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, shall be ineligible for safety membership, unless and until the board of supervisors shall elect, by resolution adopted by a majority vote, to make those investigators and administrators eligible.

ADOPTED BY (BOS RESOLUTION 01-245, (AUGUST 7, 2001); MADE SAFETY MEMBERSHIP AVAILABLE BUT ONLY FOR SERVICE RENDERED AFTER AUGUST 6, 2001.

#### § 31471. "Pension" defined

"Pension" means payments for life derived from contributions made from funds

controlled by the board of supervisors, or from funds of a district.

#### § 31472. "Regular interest" defined

"Regular interest" means interest at 2 1/2 percent a year until otherwise determined by the board compounded semiannually on June 30th and December 31st.

#### § 31472.1. "Regular interest" or "interest" defined; deposits as including redeposits

"Regular interest" or "interest" when used for purposes of computing deposits under this chapter, except as otherwise specifically provided, shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contributions required to be deposited had been made in the amounts and at the times required if the member had been making such deposits during the time service was rendered until the amount required to be deposited has been paid. For purposes of this section "deposits" includes "redeposits".

#### § 31473. "Retirement allowance" defined

"Retirement allowance" means the pension plus the annuity.

#### § 31474. "Retirement association" defined

"Retirement association" means an association of all persons who may qualify as annuitants or beneficiaries pursuant to this chapter.

#### § 31475. "Retirement fund" defined

"Retirement fund" means the Employees Retirement Fund.

#### § 31476. "Retirement system" defined; system created by Stats.1937, c.677 as amended, continued

"Retirement system" means each of the systems created and established pursuant to this chapter or its predecessor.

The retirement system for county employees created by Chapter 677 of the Statutes of 1937, as amended, is continued in existence under this chapter.

#### § 31477. "Salary fund" defined

"Salary fund" means the fund from which salaries are ordinarily paid.

#### § 31478. "Public agency" defined

"Public agency" means the United States of America, this state, or any department or agency of either, or any county, or any city, which city or county is within this state, or any public corporation, municipal corporation, or public district, which public corporation, municipal

corporation, or public district is situated in whole or in part within the county, and any local agency formation commission.

Section 31468 does not apply to this section.

ADOPTED BY BOS RESOLUTION 24579, (MARCH 15, 1965); HOWEVER ONLY APPLICABLE TO MEMBERS HIRED BEFORE JULY 16, 1977 PER BOS RESOLUTION 77-325, (JULY 5, 1977).

#### § 31479. "Public service" defined

"Public service" means service rendered as an officer or employee of a public agency for which service the officer or employee received compensation from the public agency and with respect to which he is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he becomes a member of this system.

ADOPTED BY BOS RESOLUTION 24579, (MARCH 15, 1965); HOWEVER ONLY APPLICABLE TO MEMBERS HIRED BEFORE JULY 16, 1977 PER BOS RESOLUTION 77-325, (JULY 5, 1977).

#### § 31479.2. Public service; officer or employee for department or agency of the District of Columbia

"Public service" also means service rendered as an officer or employee of a department or agency of the District of Columbia for which the officer or employee received compensation and with respect to which he is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he becomes a member of this system.

ADOPTED BY BOS RESOLUTION 24579, (MARCH 15, 1965); HOWEVER ONLY APPLICABLE TO MEMBERS HIRED BEFORE JULY 16, 1977 PER BOS RESOLUTION 77-325, (JULY 5, 1977).

#### § 31480. Service requirements

The provisions of this chapter, as they apply to retirement for service or disability, deferred retirement, and the death benefit, shall not be applicable to any member claiming public service pursuant to Section 31478 or to any member claiming service credit for uncompensated illness leave of absence in excess of 12 consecutive months pursuant to Section 31646.1, unless such member has rendered service, other than the public service or the uncompensated illness leave of absence for which the member has elected to receive credit, sufficient to meet the minimum requirements of this chapter covering each of the benefits enumerated in this section.

ADOPTED BY BOS RESOLUTION 24579, (MARCH 15, 1965); HOWEVER ONLY APPLICABLE TO MEMBERS HIRED BEFORE JULY 16, 1977 PER BOS RESOLUTION 77-325, (JULY 5, 1977).

#### § 31481. Effect of amendment of chapter

An amendment either heretofore or hereafter made to this chapter, unless expressly stated otherwise, does not grant, take away, or otherwise affect the right to, or the amount of, any retirement allowance, or other benefit, of:

(a) Any member who has retired or shall retire prior to the effective date of such amendment.

(b) The spouse, children, beneficiary or coannuitant of any member if such member has retired or shall retire prior to the effective date of such amendment.

(c) The spouse, children, beneficiary or coannuitant of any member, if such member has died or shall die, prior to retirement and prior to the effective date of such amendment.

#### § 31482. Participant in deferred compensation plan; eligibility for participation

Notwithstanding any other provision of law, a participant in a deferred compensation plan established pursuant to Chapter 8 (commencing with Section 18310) of Part 1 of Division 5 of Title 2 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, may also participate in a retirement system of a public agency established pursuant to this chapter.

#### § 31482.5. Application; concurrent participation; credit for service

(a) Notwithstanding any provisions to the contrary in Section 20894, this section shall apply to all participants in retirement systems governed by this chapter.

(b) A person shall not receive credit for the same service in two retirement systems supported wholly or in part by public funds under any circumstance.

(c) Nothing in this section shall preclude concurrent participation and credit for service in a public retirement system and in a deferred compensation plan that meets the requirements of Section 457 of Title 26 of the United States Code, a tax-deferred retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code, or a defined contribution plan and trust that meets the requirements of Section 401(a), 403(b), or 415(m) of Title 26 of the United States Code.

(d) Nothing in this section shall preclude concurrent participation and credit for service in the defined benefit plan provided under this chapter and in a supplemental defined benefit plan maintained by the employer that meets the requirements of Section 401(a) of Title 26 of the United States Code, provided all of the following conditions exist:

(1) The defined benefit plan provided under this chapter has been designated as the employer's primary plan for the person and the supplemental defined benefit plan is adopted by the governing body of the employer.

(2) The supplemental defined benefit plan has received a ruling from the Internal Revenue Service stating that the plan qualifies under Section 401(a) of Title 26 of the United States Code, and has furnished proof thereof to the employer.

(3) The person's participation in the supplemental defined benefit plan does not, in any way, interfere with the person's rights to membership in the defined benefit plan, or any benefit provided, under this chapter.

(e) If any provision of this section conflicts with the California Public Employees'

Pension Reform Act of 2013, that provision shall not apply to a member who is subject to the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system.

(Added by Stats.2008, c. 219 (A.B.1963), § 1.)

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 12.)

### § 31483. Termination of optional provisions

Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter applicable in such county or district through the adoption of an ordinance or resolution, such governing body may at any time thereafter adopt a further ordinance or resolution terminating the applicability of such provision or provisions as to employees of the county or district whose services commence after a given future date specified in the latter ordinance or resolution.

### § 31485.5. Defined contribution plans; administration; legislative intent

It is the intent of the Legislature that counties that are considering the adoption of defined contribution plans, also consider having those plans administered by their county retirement systems.

### § 31485.6. Treasurer

"Treasurer" as used in Sections 31595.9, 31625, 31625.1, 31629, and 31706 means the county treasurer or any other entity authorized by the board.

### § 31485.7. Retirement service credit; purchase; operation of section

(a) Notwithstanding any other contrary provision of this chapter, a member who elects to purchase retirement service credit under Section 31486.3, 31486.35, 31499.3, 31499.13, 31641.1, 31641.5, 31641.55, 31646, 31652, or 31658, or under the regulations adopted by the board pursuant to Section 31643 or 31644 shall complete that purchase within 120 days after the effective date of his or her retirement.

(b) This section is not operative in any county until the board of supervisors, by resolution, makes this section applicable in the county.

ADOPTED BY BOS RESOLUTION 04-074, (MARCH 23, 2004).

### § 31485.9. Retirement benefits for general members of counties or districts; bargaining units or unrepresented groups; changing membership classification; application

(a) Notwithstanding any other provision of law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, no resolution, ordinance, contract, or contract amendment under this chapter adopted on or after January 1, 2004, may provide any retirement benefits for some, but not all, general members of a county or district.

(b) No resolution, ordinance, contract, or contract amendment under this chapter adopted

on or after January 1, 2004, may provide different retirement benefits for any subgroup of general members within a membership classification, including, but not limited to, bargaining units or unrepresented groups, unless benefits provided by statute for members hired on or after the date specified in the resolution are adopted by the county or district governing board, by resolution adopted by majority vote, pursuant to a memorandum of understanding made under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 2). All nonrepresented employees within similar job classifications as employees in a bargaining unit subject to a memorandum of understanding, or supervisors and managers thereof, shall be subject to the same formula for the calculation of retirement benefits applicable to the employees in the bargaining unit. No retirement contract amendment may be imposed by the employer in absence of a memorandum of understanding under the Meyers-Milias-Brown Act.

(c) This section does not preclude changing membership classification from one membership classification to another membership classification.

#### § 31485.12. Retirement benefits for some safety member bargaining units (Expired January 1, 2011)

(a) Notwithstanding any other provision of law, in a county of the 16th class, as defined in Sections 28020 and 28037, or a county of the 22nd class, as defined in Sections 28020 and 28043, each as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may, by resolution, ordinance, contract, or contract amendment under this chapter, provide different retirement benefits for some safety member bargaining units within the safety member classification of a county retirement system.

(b) The resolution, ordinance, contract, or contract amendment described in subdivision (a) may provide a different formula for calculation of retirement benefits by making any section of this chapter that is applicable to different safety member bargaining units within the safety member classification applicable to service credit earned on and after the date specified in the resolution, which date may be earlier than the date the resolution is adopted. The terms of an agreement or memorandum of understanding reached with a recognized employee organization, pursuant to this subdivision, may be made applicable by the board of supervisors to any unrepresented group within the same or similar membership classification as the employees represented by the recognized employee organization or bargaining unit.

(c) A resolution, ordinance, contract, or contract amendment adopted pursuant to this section may require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (b), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution, ordinance, contract, or contract amendment. The payment by a member shall become part of the accumulated contributions of the member. For those members who are represented by a bargaining unit, the payment requirement shall be approved in a memorandum of understanding executed by the board of supervisors and the employee representatives.

(d) This section shall only apply to members who retire on or after the effective date of the resolution, ordinance, contract, or contract amendment described in subdivision (a) or (b), or on or after the date provided in the memorandum of understanding described in subdivision (c).



(e) The board of supervisors, in the resolution, ordinance, contract, or contract amendment described in subdivision (a), shall not require that a bargaining unit be divided solely for the purpose of providing different retirement benefits. However, if the members of a bargaining unit within the same or similar membership classification so elect, retirement benefits may be separately negotiated with that bargaining unit.

(f) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

THIS STATUTE HAS EXPIRED PURSUANT TO ITS TERMS BUT PROVIDES THE HISTORIC LEGAL BASIS FOR ACTIONS TAKEN BY THE BOARD OF SUPERVISORS WHILE THE STATUTE WAS EFFECTIVE, SPECIFICALLY BOS RESOLUTION 06-173, (JUNE 30, 2006) ADOPTING SECTION 31664.1 FOR DEPUTY SHERIFFS.

#### § 31485.13. Internal Revenue Code Compliance; Prohibition against increase in benefits prescribed by this chapter due to forfeiture of benefits

In accordance with Section 401(a)(8) of Title 26 of the United States Code, a forfeiture of benefits under this chapter shall not be applied to increase benefits that a member would otherwise receive under this chapter.

#### § 31485.14. Internal Revenue Code Compliance; Distributions

All distributions of benefits provided under this chapter shall comply with the requirements of Section 401(a)(9) of Title 26 of the United States Code that are applicable to public employee plans, including, but not limited to, requirements relating to the following:

(a) The time that benefit payments begin, including benefit payments paid after the death of a member.

(b) the form of distribution of benefits.

(c) Incidental death benefits.

#### § 31485.15. Internal Revenue Code Compliance; Eligible rollover distributions; Trustee-to-trustee transfer

In accordance with Section 401(a)(31) of Title 26 of the United States Code, a person who is entitled to a distribution under this chapter that is an eligible rollover distribution may elect to have all or a part of that distribution paid directly to an eligible, specified plan, subject to terms and conditions established by the board. If a person elects to have the eligible rollover distribution paid to an eligible, specified plan, the payment, when it is distributable, shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan.



**§31485.17. Death of member while performing qualified military service; survivors entitled to additional benefits; service-connected death or disability; credit of service for vesting; application**

(a) In accordance with Section 401(a)(37) of Title 26 of the United States Code, if a member dies while performing qualified military service, as defined in Section 414(u) of Title 26 of the United States Code, the survivors of the member shall be entitled to any additional benefits that would have been provided under the retirement system had the member resumed his or her prior employment with an employer that participates in the system and then terminated employment on account of death.

(b) For purposes of this section, “additional benefits” shall not include benefit accruals relating to the period of qualified military service.

(c) The death of a member or former member while performing qualified military service shall not be treated as a service-connected death or disability.

(d) Service for vesting purposes shall be credited to a member who dies while performing qualified military service for the period of his or her qualified military service.

(e) This section shall apply to deaths occurring on or after January 1, 2007.

(Added by Stats. 2010, Ch. 188 (AB 1354), Sec. 1.)

**§ 31485.19. Rights to accrued retirement benefits nonforfeitable**

Notwithstanding any other provision of this chapter, the rights of each member to his or her accrued retirement benefits under the retirement system shall be nonforfeitable, in accordance with the requirements of Sections 401(a) of Title 26 of the United States Code that are applicable to public employee plans, to the extent then funded, on the date of the termination of the system, the partial termination of the system, or the complete discontinuance of contributions under the system, as provided in Title 26 of the United States Code.

(Added by Stats. 2014, c. 740 (AB 2473), Sec. 1.)

**§ 31485.20. Distribution prior to the time allowed under statute**

Notwithstanding any other provision of this chapter, no amount shall be distributed from a retirement system established under this chapter prior to the time that the distribution may be made in compliance with the requirements of Section 401(a) of Title 26 of the United States Code that are applicable to public employee plans, including, but not limited to, requirements relating to the distribution of amounts prior to the earlier of a member’s death, disability, separation from service with all employers that maintain the retirement system, or attainment of normal retirement age, as defined by the retirement system.

(Added by Stats. 2014, c. 740 (AB 2473), Sec. 2.)

§ 31485.21 Member who has not attained normal retirement age; bona fide separation of service

(a) A member who has not attained normal retirement age shall have a bona fide separation from service to the extent required by Section 401(a) of Title 26 of the United States Code before working for the county or a district. The board shall establish, by regulation, the criteria under which a bona fide separation is satisfied.

(b) Notwithstanding any other provision of this chapter, to the extent required or permitted by Section 401(a) of Title 26 of the United States Code, no amount shall be paid to any member before the date the member has attained normal retirement age or has had a bona fide separation from service, whichever is earlier.

(c) The board may establish, by regulation, normal retirement age consistent with federal law and eligibility requirements under state law.

(d) To the extent that the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1) would provide for greater restrictions with regard to separation from service, the provisions of that act shall prevail.

(Added by Stats. 2014, c. 740 (AB 2473), Sec. 3.)

§ 31485.22. Benefits payable under retirement system; requirements to be fully vested

(a) A member who, while currently employed, has reached normal retirement age, as defined by the retirement system, and has met the benefit commencement requirements in Article 8 or Article 9, shall be fully vested in the benefits payable under the retirement system. Upon satisfying the requirements of this section, a member may be retired upon filing with the board a written application in the manner provided in Articles 8 and 9 of this chapter, as applicable.

(b) Notwithstanding subdivision (a), Articles 8 and 9 of this chapter, or any other applicable law, a member's earned and accrued benefits may be forfeited under Section 7522.70, 7522.72, or 7522.74.

(Added by Stats. 2014, c. 740 (AB 2473), Sec. 4.)

#### **Article 1.4 Alternative Plan for Counties of the 16th Class §§31486-31486.12**

THIS ARTICLE ADOPTED BY BOS RESOLUTION 86-337, (JUNE 23, 1986), AND 12/16/85 MOU WITH SEIU LOCAL 535. THIS ARTICLE WAS MADE AVAILABLE TO ALL GENERAL MEMBERS UP UNTIL JANUARY 10, 1999, AT WHICH TIME THE PLAN WAS CLOSED TO ALL NEW MEMBERS.

##### **§ 31486. Designation as Retirement Plan 2; purpose, application of article and other laws**

- (a) The retirement plan created by this article shall be known as Retirement Plan 2.
- (b) This article shall be applicable in the retirement system of any county of the 16th class as described by Sections 28020 and 28037, if the board of supervisors executes a memorandum of understanding with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.
- (c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.
- (d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan herein created, shall be governed by this article.
- (e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.
- (f) Except as otherwise provided in this subdivision, the provisions contained in this chapter shall apply:
  - (1) Article 9 (commencing with Section 31700) shall not apply.
  - (2) Article 10 (commencing with Section 31720) shall not apply.
  - (3) Article 11 (commencing with Section 31760) shall not apply.
  - (4) Article 12 (commencing with Section 31780) shall not apply.
  - (5) Article 16.5 (commencing with Section 31870) shall not apply.
- (g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions shall not be applicable.
- (h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.
- (i) Unless specifically otherwise provided therein, no amendment to this article enacted subsequent to the effective date of this article shall apply to any county or to the employees of any county unless and until mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

## § 31486.1. Definitions

Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed or, if no election is made, during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, and eligible for membership as defined by the board in accordance with subdivision (h) of Section 31527, except an employee eligible for or employed in a position eligible for safety membership as defined in Sections 31470.2 and 31470.4.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age of 65.

(g) "Service" means the period of uninterrupted employment of a member. Except as otherwise provided, a member shall not be credited with service for any period of time in which the member is absent from work without pay.

## § 31486.2. No contributions by general members; transferees; refunds; interest; election; prior public service

(a) (1) Except as otherwise provided in Section 31486.3 or 31486.35, there shall be no general members' contributions under the plan created by this article.

(2) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. A refund under this section shall be payable to the member.

(3) A member who has five or more years of county service as defined in subdivision (g) of Section 31486.1 may elect to leave his or her contributions on deposit for service retirement benefits only.

(b) (1) Except as provided in Sections 31486.3 and 31486.9 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and may not receive

credit for that prior public service.

(2) Absence from work without pay may not be considered as breaking the continuity of service.

(Added Stats. 2006, Ch. 117 (AB 2041), Sec. 1)

#### § 31486.36. Death of active member of retirement plan established by this article; contributions paid to beneficiaries

Upon the death of an active or former member of the plan established by this article, an amount equal to the accumulated contributions made by the member pursuant to this article, with interest on that amount, shall be paid to the member's beneficiaries.

(Added by Stats.2008, c. 72 (A.B.2041), § 1.)

#### § 31486.4. Retirement; time of vesting; eligibility; application; benefits

(a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(d) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 10 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary insurance amount, shall not exceed 80 percent of the member's final compensation.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55 .....	.39
56 .....	.43
57 .....	.47
58 .....	.51
59 .....	.56
60 .....	.61
61 .....	.67
62 .....	.74
63 .....	.82
64 .....	.90

The ERA Factors set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise qualify for the survivor allowance provided for in Section 31486.6.

(j) Notwithstanding subdivision (e) of Section 31486.4, any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

#### § 31486.5. Modification election to coordinate with federal pension

A member who retires for service prior to the age of becoming eligible for benefits described under subdivision (f) of Section 31486.1 may, with the approval of the board, elect to have the retirement pension increased prior to the eligible age and reduced after that age by amounts which have equivalent actuarial values. This modification is for the purpose of coordinating a member's retirement pension with that received from the federal system.

#### § 31486.6. Death benefits; election for lower pension to obtain different survivor allowance

(a) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (c), shall be continued during and throughout the life of his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including stepchild or adopted child, attains the age of 18 years, then the allowance that the surviving spouse would have received had she or he lived, shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, the allowance shall be divided among the children in equal amounts. However, the right of any child to share in the allowance shall cease upon the death or marriage of the child or upon the child attaining the age of 18 years.

Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21 years, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) If, upon the death of a retired member, there is no surviving spouse or child entitled to the allowance under this section, and the total retirement allowance income received by the member during his or her lifetime did not exceed his or her accumulated normal contributions, if any, the member's designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

(c) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone, may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and thereafter to have a survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement.

(d) Designations pursuant to subdivision (c) shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.



#### § 31486.7. Death benefits; death of member before retirement while in service

Notwithstanding any other provisions, upon the death of a member before retirement while in service, the designated beneficiary shall receive a death benefit equal to one month's final compensation as defined in subdivision (d) of Section 31486.1 for each year of service completed up to a maximum of six months.

#### § 31486.8. Employment subsequent to effective date of article; certification of election of plan

Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until that person certifies to the board an election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article.

As a condition of continued employment, the certification shall be made within 60 days of employment. The employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting the election.

#### § 31486.9. Transfer to Plan 2 by general members

(a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. The transfer is voluntary and shall be irrevocable.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, a transferring member may elect to receive credit and a retirement benefit as determined by the former retirement system for public service credit received by leaving contributions on deposit or a refund of contributions and relinquish public service credit.

#### § 31486.10. Election to transfer to contributory retirement plan

A member upon becoming vested under this article may elect to terminate and defer accrued benefits for the purpose of future service retirement benefits only, and enter membership of the contributory retirement provisions in effect for new members at the time of transfer. Notwithstanding any other provisions, the rate of contributions shall be based on age nearest birthday at the time of election to transfer.

#### § 31486.11. Employer contribution

Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be



established by the board, upon the recommendation of the actuary.

#### § 31486.12. Severability

If any provision of this article, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the article which can be given effect without the invalid provisions or application and, to this end the provisions of this article are severable.

## **Article 2   Establishment of System   §§31500-31509**

SBCERS WAS ESTABLISHED 1/1/44 BY BOS ORD. 553, (SEPTEMBER 27, 1943), PRIOR TO THE ENACTMENT OF THIS ARTICLE.

### **§ 31500. Procedure**

A retirement system is established in any county for eligible officers and employees by the adoption of an ordinance, accepting this chapter, by:

- (a) A majority vote of the electors voting on the proposition at a special or general election; or
- (b) A four-fifths vote of the board of supervisors.

### **§ 31501. Operative date**

This chapter becomes operative in any county on either January 1st or July 1st following the adoption of the ordinance, as specified in the ordinance, but not sooner than 60 days after its adoption.

### **§ 31502. Adoption by institution operated by 2 or more counties or by a district; effect; contributions**

This chapter may be made effective by a resolution adopted by a majority of the governing board or committee of any institution operated by two or more counties, or by a majority of the governing board or committee of any district as defined in subdivision (c) of Section 31468, if one of the counties involved in the operation of the institution has adopted its provisions, or, in the case of a district as defined in subdivision (c) of Section 31468, if one of the counties comprising the organization or association has adopted its provisions. Upon the adoption of the resolution the employees of the institution shall become members of the retirement system of the county designated by the governing board or committee of the institution, and all contributions made by the employees and by the institution shall be paid into the county retirement system of the county selected. The governing board or committee shall cause to be paid to the county operating the retirement system, the institution's proportionate share of the cost of operation of the system.

### **§ 31503. Previous systems superseded**

A retirement system established pursuant to this chapter shall supersede any previously established county pension system.

### **§ 31505. Sufficient assets to remain with superseded system to pay persons retired**

The assets and records of a superseded system shall become the assets and records of this retirement system, but there shall be left to the superseded system not established pursuant to either Chapter 4 or Chapter 5, sufficient assets, according to tables adopted by the board of supervisors, to pay all retirement payments or annuities to persons who have been retired under the superseded retirement system.

#### § 31506. Retired members of superseded systems to be paid

All previously retired members of the superseded system shall be paid for their respective lives the full amount of the retirement payments or annuities to which they are entitled.

#### § 31507. Appropriation to meet obligations of superseded systems

The retirement board created by this chapter shall determine the amount and kind of assets necessary to meet the requirements of Section 31506, and if the amount so determined proves insufficient, the county shall annually appropriate the sum necessary to fulfill the requirements.

#### § 31508. Administration of assets; transfer of superseded system's assets

The assets shall be administered solely by the board subject to the provisions of this chapter as to the custody, investment, and disbursement of the retirement fund. If there are assets of the superseded system remaining after the termination of all liabilities of the superseded system, the remaining assets shall be transferred to and become part of the retirement fund.

#### § 31509. Withdrawal of special contributions to superseded system

A member who has made special contributions to a superseded system shall have the option of withdrawing such special contributions together with interest thereon, following the transfer of contributions to this system, or of permitting the contributions to remain as additional contributions to this system. Any member electing to make such withdrawal shall do so by written notice addressed to the board within 90 days after the effective date of this system.

## **Article 2.7     General Limitations     §§ 31515-31517**

### **§ 31515. County Employees Retirement Law of 1937; legislative intent; cite**

It is the intent of the Legislature to specifically include in the County Employees Retirement Law of 1937 provisions of law that limit public retirement benefits, other than health benefits, for the members of the legislative bodies of counties and districts and provisions respecting the impact of salary and benefit increases upon the funding status of county retirement systems.

This chapter shall be known and may be cited as the Responsibility in Pensions Act of 1995.

### **§ 31515.5. Salary and benefit increases; agenda item at public meeting of board of supervisors; notice; estimate of actuarial impact; construction**

The board of supervisors, in compliance with Section 23026, shall make public, at a regularly scheduled meeting of the board, all salary and benefit increases that affect either or both represented employees and nonrepresented employees. Notice of any salary or benefit increase shall be included on the agenda for the meeting as an item of business in compliance with the requirements of Section 54954.2. Notice shall occur prior to the adoption of the salary or benefit increase, and shall include an explanation of the financial impact that the proposed benefit change or salary increase will have on the funding status of the county employees' retirement system.

The board of retirement, or board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized, consistent with its fiduciary duties, to have an enrolled actuary prepare an estimate of the actuarial impact of the salary or benefit increase. The actuarial data shall be reported to the board of supervisors.

Nothing in this section shall be construed to limit or lessen the requirement imposed by Section 7507 that the costs associated with increases in benefits be determined by an enrolled actuary and publicly disclosed two weeks prior to an adoption of the increase in benefits.

### **§ 31516. Enrolled actuary; statement of actuarial impact; release at public meeting**

The board of supervisors, in compliance with Section 7507, shall secure the services of an enrolled actuary to provide a statement of the actuarial impact upon future annual costs before authorizing increases in benefits. An "enrolled actuary" means an actuary enrolled under Sections 1241 and 1242 of Title 29 of the United States Code and "future annual costs" shall include, but not be limited to, annual dollar increases or the total dollar increases involved when available.

The future annual costs as determined by the actuary shall be made public at a public meeting at least two weeks prior to the adoption of any increases in benefits.

§ 31517. Member of legislative body of county or district; limitations on benefits; application of section

(a) Notwithstanding any other provision of this chapter, as provided in Section 53060.1, the benefits of any member of a legislative body of any county or district shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.

(b) Notwithstanding any other provision of this chapter, members of the legislative body of a county or district shall not be eligible to accrue multiple benefits greater than the most generous schedule of benefits being received by any category of nonsafety employees from two or more public agencies for concurrent service except in the case of a member who serves as a regular full-time employee in a separate public agency.

(c) This section shall be applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

### **Article 3     Retirement Board     §§31520-31539**

#### **§ 31520.1. Membership in certain counties; qualifications; term; alternate seventh member**

(a) In any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement shall consist of nine members and one alternate, one of whom shall be the county treasurer. The second and third members of the board shall be members of the association, other than safety members, elected by those members within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth, fifth, sixth, and ninth members shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors. A supervisor appointed as a member of the retirement board may not serve beyond his or her term of office as supervisor. The seventh member shall be a safety member of the association elected by the safety members. The eighth member shall be a retired member elected by the retired members of the association in a manner to be determined by the board of supervisors. The alternate member shall be that candidate, if any, for the seventh member from the group under Section 31470.2 or 31470.4, or any other eligible safety member in a county if there is no eligible candidate from the groups under Sections 31470.2 and 31470.4, which is not represented by a board member who received the highest number of votes of all candidates in that group. If there is no eligible candidate there may not be an alternate member. The first person chosen as the second and fourth members shall serve for a term of two years beginning with the date the system becomes operative, the third and fifth members shall serve for a term of three years beginning with that date, and the sixth, seventh and alternate members shall serve for a term of two years beginning on the date on which a retirement system established by this chapter becomes operative. The eighth and ninth members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member. Thereafter, the terms of office of the elected, appointed, and alternate seventh members are three years, except as provided in Section 31523.

(b) The alternate seventh member provided for by this section shall vote as a member of the board only if the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate member shall fill the vacancy until a successor qualifies. The alternate seventh member shall sit on the board in place of the seventh member if a member of the same service is before the board for determination of his or her retirement.

(c) The alternate seventh member shall be entitled to both of the following:

(1) The alternate seventh member shall have the same rights, privileges, responsibilities, and access to closed sessions as the second, third, seventh, and eighth member.

(2) The alternate seventh member may hold positions on committees of the board independent of the second, third, seventh, or eighth member and may participate in the deliberations of the board or any of its committees to which the alternate seventh member has been appointed whether or not the second, third, seventh, or eighth member is present.

(Amended by Stats.2011, c.124 (SB 203), Sec. 1.)

§ 31520.3. Counties of the 16th class; appointment of alternate retired member; term; rights, privileges, responsibilities, and access; compensation

(a) Notwithstanding Section 31520.1, the board of retirement of a county of the 16th class, as defined by Sections 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, may, by majority vote, appoint, from a list of nominees submitted by an organization consisting solely of retired members, an alternate retired member to the office of the eighth member, who shall serve until the expiration of the current term of the current eighth member and thereafter the alternate retired member shall be elected by the retired members of the association in the same manner and at the same time as the eighth member is elected.

(b) The term of office of the alternate retired member shall run concurrently with the term of office of the eighth member. The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any cause. If there is a vacancy with respect to the eighth member, the alternate retired member shall fill that vacancy for the remainder of the eighth member's term of office.

(c) Except as provided in subdivision (b), the alternate retired member shall be entitled to the same rights and privileges and shall have the same responsibilities and access to closed sessions as the eighth member. The alternate retired member may hold positions on committees of the board independent of the eighth member and may participate in the deliberations of the board or any of its committees to which the alternate retired member has been appointed whether or not the eighth member is present.

(d) The alternate retired member shall be entitled to the same compensation as the eighth member for attending a meeting, pursuant to Section 31521, whether or not the eighth member is in attendance at those meetings.

(e)(1) In the event that this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate seventh member shall not sit and act for the retired member, except as described in paragraph (2).

(2) If both the eighth member and the alternate retired member are not attending a meeting, the alternate seventh member may sit and act for the eighth member as described in Section 31520.1.

(Amended by Stats. 2011, c.124 (SB 203), Sec. 3.)

§ 31520.6. Voting by a retired member

Notwithstanding any provision to the contrary in Section 31520.3 or Section 31520.5, in any county in which there is an alternate retired member, if the eighth member is present, the alternate retired member may also vote as a member of the board in the event both the second and third, or both the second and seventh, or both the third and seventh members are absent for any cause.

(Added by Stats. 2016, c. 134 (AB 2376), Sec. 4.)

### § 31521. Compensation of members; expenses

The board of supervisors may provide that the fourth and fifth members, and in counties having a board consisting of nine members, the fourth, fifth, sixth, eighth, and ninth members, and in counties having a board of investments under Section 31520.2, the fifth, sixth, seventh, eighth, and ninth members of the board of investment, shall receive compensation at a rate of not more than one hundred dollars. (\$100) a meeting or meeting of a committee authorized by the entire board, for not more than five meetings per month, together with actual and necessary expenses for all members of the board.

ADOPTED BY BOS RESOLUTION 92-527, (SEPTEMBER 22, 1992).

### § 31522. Duties of board members; additional compensation

The official duties of elected board members who are employees of the county or a district shall be included as part of their county or district employment and their board duties shall normally take precedence over any other duties. The elected board members who are county or district employees shall not receive any additional compensation by virtue of their election to the board.

#### § 31522.1. Appointment of staff personnel; civil service or merit system; compensation

The board of retirement and both the board of retirement and the board of investment may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards. The appointments shall be made from eligible lists created in accordance with the civil service or merit system rules of the county in which the retirement system governed by the boards is situated. The personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees.

#### § 31522.2. Administrator

In a county in which the board of retirement or both the board of retirement and the board of investment have appointed personnel pursuant to Section 31522.1, the respective board or boards may elect to appoint an administrator as provided for in this Section. The position of the administrator shall not be subject to county civil service or merit system rules. The person so appointed shall be a county employee and the position of administrator shall be included in the salary ordinance or salary resolution adopted by the board of supervisors for the compensation of county officers and employees. The administrator so appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the administrator by the appointing board or boards.

This section shall not be operative in any county unless the board of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

ADOPTED BY BOS RESOLUTION 02-236, (JUNE 25, 2002).



§ 31522.6. Contract with third parties to assume temporary administration of system; catastrophic events; costs

The board may contract with a third party to temporarily assume administration of the system if a catastrophic event destroys or severely damages the system's administrative facilities or otherwise prevents or significantly hinders continued local administration of the system. Local administration of the system shall resume as soon as practicable.

The costs of contracting with the third party for temporary administration of the system shall be a charge against the investment earnings of the retirement fund.

§ 31522.8. Board Member education policy

A board of retirement and a board of investments subject to this article shall adopt a policy for providing education to board members. The policy, at a minimum, shall do the following:

(a) Identify appropriate topics for board member education, which may include, but is not limited to, the following:

- (1) Fiduciary responsibilities.
- (2) Ethics.
- (3) Pension fund investments and investment program management.
- (4) Actuarial matters.
- (5) Pension funding.
- (6) Benefits administration.
- (7) Disability evaluation.
- (8) Fair hearings.
- (9) Pension fund governance.
- (10) New board member orientation.

(b) Establish a means for determining the programs, training, and educational sessions that qualify as board member education. Educational seminars sponsored by the state or national public pension fund organizations and seminars sponsored by accredited academic institutions shall be deemed to meet board member education requirements.

(c) Require that all board members receive a minimum of 24 hours of board member education within the first two years of assuming office and for every subsequent two-year period the board member continues to hold membership on the board.

(d) Require each board to maintain a record of board member compliance with the policy. The policy and an annual report on board member compliance shall be placed on the Internet Web site of the retirement system.

(Added by Stats.2012, c. 15 (A.B.1519), Sec. 1.)

SEE BOARD EDUCATION POLICY ON SBCERS WEBSITE FOR IMPLEMENTATION OF THIS STATUTE.

### § 31523. Filling vacancy in the second, third, seventh, eighth, or alternate seventh member position on the board of retirement; election

(a) In the event of a vacancy in the second, third, seventh, eighth, or alternate seventh member position on the board of retirement, the board shall cause an election to fill the vacancy to be held at the earliest possible date, except as provided in Sections 31520.3 and 31520.5. The vacancy in the second, third, or eighth member position on the board of retirement shall be filled for the duration of the current term except that, if the remaining portion of the current term is six months or less on the date of the election, a single election may be held to fill the vacancy for the remainder of the current term and to fill the position for the succeeding term. With respect to a vacancy in the seventh member position, candidates shall be a safety member from a group which is not represented by an incumbent alternate seventh member. With respect to the alternate seventh member position, the candidates shall be limited to the group under Section 31470.2 or 31470.4, or any other eligible safety member in a county if there is no eligible candidate from the groups under Sections 31470.2 and 31470.4 that is not represented by an incumbent seventh board member. The successful candidate shall serve for the duration of the current term.

(b) If there is a vacancy with respect to the alternate retired member, the board of retirement shall, by majority vote, appoint a replacement alternate member in the same manner as prescribed in Sections 31520.3 and 31520.5 for the initial appointment of an alternate retired member, who shall serve until the expiration of the current term of the current eighth member.

(c) If an election has been called on the expiration of the term of office of any member or alternate member, or to fill a vacancy for the second, third, seventh, eighth, or alternate seventh member of a board of retirement, and only one candidate has been duly nominated in accordance with the rules established for the holding of that election, the board of supervisors shall order that no election be held and shall direct the clerk to cast a unanimous ballot in favor of the candidate.

(Added by Stats.2011, c. 124 (S.B.203), Sec. 7.)

### § 31524. Separation from service

Separation from the service of the county of a member of the board vacates his office.

### § 31525. Regulations, approval

The board may make regulations not inconsistent with this chapter. The regulations become effective when approved by the board of supervisors.

### § 31526. Requisites of regulations

The regulations shall include provisions:

(a) For the election of officers, their terms, meetings, and all other matters relating to the administrative procedure of the board.

(b) For one of the following:

(1) The filing of a sworn statement by every person who is or becomes a member, showing date of birth, nature and duration of employment with the county, compensation received, and such other information as is required by the board.

(2) In lieu of a sworn statement, the submission by the member's employer to the retirement association of the information otherwise required in paragraph (1), in a form determined by the retirement association.

(c) For forms of annuity certificates and for other forms as are required.

(Amended by Stats. 2016, c. 134 (AB 2376), Sec. 5.)

#### § 31527. Permissible provisions in regulations

In its regulations, the board may include the following provisions:

(a) From what warrants deductions of members' contributions shall be made.

(b) For a period of time longer than one year during which a member may redeposit in the retirement fund an amount equal to all of the accumulated normal contributions that he or she has withdrawn, plus regular interest thereon from the date of return to service.

(c) For a period of time longer than one year during which a member brought within the field of membership may pay into the retirement fund the amount equal to the contributions he or she would have made plus interest, if he or she had been a member from the date of its organization, or from the date of his or her entrance into county service, whichever is later.

(d) For a withdrawal charge against a member who withdraws his or her accumulated contributions. The withdrawal charge shall not exceed the interest credited to the member subsequent to the effective date of the regulation.

(e) For the exemption or exclusion from membership as a peace officer member or as a safety member or from membership altogether, in the discretion of the board, of persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose compensation is fixed at a rate by the day or hour.

(f) For the periodic physical examination, at county expense of safety members.

(g) The amount of additional deductions from the salaries or wages of members pursuant to Article 15.5 (commencing with Section 31841) or Article 16 commencing with Section 31861). Such a provision may be adopted in anticipation of, and prior to Article 15.5 (commencing with Section 31841) or Article 16 (commencing with Section 31861) becoming operative in the particular county.

(h) The day upon which each person becomes a member of the association if it is to be other than the first day of the calendar month after his or her entrance into service. However, that day shall be no later than 12 weeks after his or her entrance into service, or the day upon which the member terminates service credited by the association, and that the day shall be no earlier than 12 weeks prior to the member's termination from employment.

(i) Notwithstanding any other law, for the use and acceptance of a document requiring a signature that is submitted by a member using an electronic signature, if the document and electronic signature are submitted using technology the board deems sufficient to ensure its integrity, security, and authenticity. A document submitted pursuant to the regulation shall be given the same force as a signed, valid original document.

(j) For the use of recorded telephone communications for the processing of authorized transactions affecting a member's account, if the board approves procedures adequate to protect the member and the system. These procedures shall include adequate validation and authentication of member identity and permanent retention of recorded communication.

(Amended by Stats. 2010, c. 158 (S.B. 1479), § 1; Stats. 2012, c. 59 (A.B. 2664), § 1.)

(Amended by Stats. 2013, c. 778 (SB 215) Sec. 11.)

## § 31528. Personal interest of member in investments of board prohibited; sale of investment products; post-employment restrictions

(a) Unless permitted by this chapter, a member or employee of the board shall not become an endorser, surety, or obligor on, or have any personal interest, direct or indirect, in the making of any investment for the board, or in the gains or profits accruing from those investments. A member or employee of the board shall not directly or indirectly, for himself or herself, or as an agent or partner of others, borrow or use any of the funds or deposits of the retirement system, except to make current and necessary payments authorized by the board.

(b) A member or employee of the board shall not, directly or indirectly, by himself or herself, or as an agent or partner or employee of others, sell or provide any investment product that would be considered an asset of the fund, to any retirement system established pursuant to this chapter.

(c) An individual who held a position designated in Section 31522.3, 31522.4, or 31522.5, or was a member of the board or an administrator, shall not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person except the county, by making any formal or informal appearance before, or any oral or written communication to, the retirement system, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

(Added by Stats.2009, c. 301 (A.B.1584), Sec. 8.)

## § 31529. Attorney for board

The district attorney, or the county counsel if there is one, is the attorney for the board.

### § 31529.5. Legal services of attorney in private practice; compensation resolution

Notwithstanding Section 31529, the board may contract for the legal services of an attorney in private practice when the board determines, after consultation with the county counsel, that the county counsel cannot provide the board with legal services due to a conflict of interest or other compelling reason. The compensation of such attorney shall be paid from the portion of reserves created by Section 31592 which exceed one percent of the total assets of the fund, or in the absence of such excess reserves, from the county general fund.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS RESOLUTION 93-42, (JANUARY 19, 1993).

### § 31529.9. Contracts for legal services; compensation; application of section

(a) In addition to the powers granted by Sections 31522.5, 31522.9, 31529, 31529.5, 31614, and 31732, the board of retirement and the board of investment may contract with the county counsel or with attorneys in private practice or employ staff attorneys for legal services.

(b) Notwithstanding Sections 31522.5, 31522.7, 31529.5 and 31580, the board shall

pay, from system assets, reasonable compensation for the legal services.

(c) This section applies to any county of the 2nd class, 7th class, 14th class, 15th class, or the 16th class as described by Sections 28020, 28023, 28028, 28030, 28035, 28036, and 28037.

(d) This section shall also apply to any other county if the board of retirement, by resolution adopted by majority vote, makes this section applicable in the county.

(Amended by Stats.2008, c. 164 (A.B.3044), § 5; Stats.2009, c. 393 (A.B.1406), § 2; Stats.2014, c. 244 (S.B.673), § 3, eff. Jan. 1, 2015.)

#### § 31530. County health officer

The county health officer, either directly or through a duly authorized representative, shall advise the board on medical matters and, if requested by the board, shall attend its meetings.

(Added by Stats. 1957, Ch. 424, Sec. 1)

(Amended by Stats. 2021, Ch. 186 (SB 634), Sec. 12)

#### § 31531. Estimate of member's service or age

If it is impracticable for the board to determine from the records the length of service or the age of any member, or if the member refuses or fails to give the board a statement of his service or age, it may estimate his length of service or age for the purposes of this chapter.

#### § 31532. Confidential statements and records

Sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter or upon order of a court of competent jurisdiction, or upon written authorization by the member.

#### § 31533. Referee; appointment; hearing; findings and recommendations

Whenever, in order to make a determination, it is necessary to hold a hearing the board may appoint either one of its members or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the board his proposed findings of fact and recommended decision.

#### § 31534. Service of findings and recommendations; objections; proceedings on referee's report

The proposed findings of fact and recommendations of the referee shall be served on the parties who shall have 10 days to submit written objections thereto which shall be incorporated in the record to be considered by the board.

Upon receiving the proposed findings of fact and the recommendations of the referee, the board may:

(a) Approve and adopt the proposed findings and the recommendations of the referee, or

(b) Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon the receipt thereof the board shall take such action as in its opinion is

indicated by such evidence, or

(c) Refer the matter back with or without instructions to the referee for further proceedings, or

(d) Set the matter for hearing before itself. At such hearing the board shall hear and decide the matter as if it had not been referred to the referee.

#### § 31535. Issuance of subpoenas; taking of depositions

The board may issue subpoenas and subpoenas duces tecum, and compensate persons subpoenaed. This power shall be exercised and enforced in the same manner as the similar power granted the board of supervisors in Article 9 (commencing with Section 25170) of Chapter 1, Part 2, Division 2; except that the power shall extend only to matters within the retirement board's jurisdiction, and committees of the board shall not have this power. Reasonable fees and expenses may be provided for by board regulation for any or all of such witnesses regardless of which party subpoenaed them.

Subpoenas shall be signed by the chairman or secretary of the retirement board, except that the board may by regulation provide for express written delegation of its subpoena power to any referee it appoints pursuant to this chapter or to any administrator appointed pursuant to Section 31522.2.

Any member of the board, the referee, or any person otherwise empowered to issue subpoenas may administer oaths to, or take depositions from, witnesses before the board or referee.

#### § 31536. Denial of benefit or allowance; appeal; attorney fees

If a superior court reverses the denial by the board of an application for a retirement allowance, or for a survivor's allowance based on such allowance, or for a claim based on a claimed pension right or benefit, the superior court in its discretion may award reasonable attorney's fees as costs to the member or beneficiary of the member who successfully appealed the denial of such application. Such costs shall be assessed against the board, shall be considered a cost of administration, and shall in no event become a personal liability of any member of the board.

#### § 31537. Records management procedures

The board may establish efficient records management procedures, which may include, but need not be limited to, maintenance and, when determined by the board to be necessary, disposal of records in its jurisdiction.

#### § 31538. Adjustments on payment of benefits; maximum amount payable in any limitation year; continuation of cost-of-living adjustments

(a) The board shall adjust the payment of benefits payable pursuant to this part, as necessary, in order to maximize the benefits available to members who are subject to the limits of Section 415 of the Internal Revenue Code. Those adjustments shall include, but are not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits,

or any combinations thereof.

(b) The amount payable to a member in any limitation year, including cost-of-living adjustments, shall not exceed the limit established under Section 415(b) of the Internal Revenue Code at the annuity starting date, and as may be increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and applicable regulations.

(c) The cost-of-living adjustments made pursuant to Section 415(d) of the Internal Revenue Code to the limit established under Section 415(b) of the Internal Revenue Code continue to apply after a member's severance from employment or annuity starting date.

(Amended by Stats.2010, c. 188 (A.B.1354), § 2.)

### § 31539. Correction of error made in calculation of retired member's monthly allowance; prospective and retroactive adjustment; limitation of actions

(a) The board of retirement may, in its discretion, correct any error made in the calculation of a retired member's monthly allowance or any other benefits under this chapter, if either of the following exist:

(1) The error in the calculation of the member's monthly allowance or other benefits under this chapter was made as a result of fraudulent reports for compensation made, or caused to be made, by the member for his or her own benefit.

(2) The member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement and the system applied that overstated amount as the basis for calculating the member's monthly retirement allowance or other benefits under this chapter.

(b) The retirement allowance or other benefits under this chapter with respect to a retired member described in subdivision (a) shall be adjusted prospectively to the amount that would have been payable if the overstatement of the member's final compensation had not occurred.

(c) Adjustment of the member's retirement allowance or other benefits may also be implemented retroactively and include the collection or return of the overpayment of benefits. The board of retirement may direct staff to correct the overpayment of benefits by offsetting the amount to be recovered against future benefits. Adjustments to correct the overpayment of benefits may also be made by adjusting the allowance so that the retired member or the retired member and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies any party may have at law or in equity. Nothing in this section shall preclude any party from instituting an action for declaratory or other relief in lieu of proceeding under this section.

(e) The period of limitation of actions under this section shall be 10 years and that period shall commence either from the date of payment or upon discovery of the facts described in subdivision (a), whichever date is later. The board shall determine the applicability of the period of limitation in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error.



#### §31542. Compensation paid to enhance member's retirement benefit; procedure for assessment

(a) The board shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. If the board determines that compensation was paid to enhance 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 to enhance a member's retirement benefits.

(b) Upon a final determination by the board that compensation was paid to enhance 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.

(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 to enhance a member's retirement benefit.

(Added by Stats. 2012, Ch. 296 (AB 340), Sec. 29.)

#### §31542.5. Pay period for compensation reported to board; failure of county or district to report compensation

(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).

(Added by Stats. 2012, Ch. 296 (AB 340), Sec. 30.)

#### §31543. Audit of county or district by board

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.  
(Added by Stats. 2012, Ch. 296 (AB 340), Sec. 31.)

## **Article 4      Membership §§31550-31567**

### **§ 31550. Retirement Association**

Whenever this chapter becomes operative in any county a retirement association shall be organized.

### **§ 31551. Eligibility to membership; exclusion**

The persons expressly declared to be ineligible to membership by this article shall not become members of the retirement association, and, except as expressly excluded, the persons enumerated in this article or the California Public Employees' Pension Reform Act of 2013 shall become members of the association. Persons employed as participants in a program of, and whose wages are paid in whole or in part by federal funds in accordance with, the Comprehensive Employment and Training Act of 1973 (Public Law 93-203), as amended, are excluded from membership. This exclusion shall not apply to active fire suppression personnel who are safety members pursuant to Sections 31469.3 and 31470.4.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 15.)

### **§ 31552. Automatic membership; waiver of membership**

All existing officers and employees of the county become members of the association on the day the retirement system becomes operative, and thereafter each person entering the county employ becomes a member on the first day of the calendar month after his entrance into the service, unless otherwise provided by regulations adopted by the board. Such regulations may provide for waiver of membership by the prospective employee in the case of newly hired employees who have attained the age of 60. In all cases where there is such a waiver, said employee upon attaining the age of 70 shall thereafter be employed from year to year at the discretion of the county.

SEE BOR BYLAW 401 WHICH PROVIDES THAT INDIVIDUALS BECOME MEMBERS ON DATE OF ENTRANCE INTO SERVICE AND THAT NEWLY HIRED MEMBERS WHO HAVE ATTAINED 60 YEARS OF AGE MAY ELECT TO WAIVE MEMBERSHIP UPON WRITTEN NOTICE TO THE BOARD.

### **§ 31552.1. Membership of existing officers and employees not members because of statute**

On the first day of the calendar month after this section takes effect all existing officers and employees of the county, who, because of the provisions of Section 31552 prior to its amendment in 1953, were not members, become members on that day.

§ 31552.2. Officers and employees who became members on first day of calendar month following expiration of 180 days after entry into service; prior service credit; contributions

All existing officers and employees of the county, now members of the retirement system, and who became employed by the county during that interim period when the law did not allow membership into the retirement system until the first day of the calendar month following the expiration of 180 days after his entrance into service, shall be allowed to make contributions and receive credit for that period of time as prior county service. The contribution rate shall be as prescribed in Section 31641.5 and election to receive credit for such service shall be available until time of filing of notice of retirement from county service.

§ 31553. Elective officers; filing declaration to become member; withdrawal

Elective officers become members of the retirement association on the first day of the calendar month following the filing of a declaration with the board to become a member, provided, however, that any such elective officer may, within 60 days after the expiration of the officer's term of office or within 60 days after the officer ceases to hold the office, rescind the declaration and withdraw from the retirement association. In such cases, all contributions paid by the member shall be refunded in the same manner as applicable to members terminating service.

§ 31554. Officers and attaches of superior court; persons included

All officers and attaches of the superior court established within the county, except judges and participants in any other pension system, become members of the association on the first day of the calendar month after the board of supervisors adopts by four-fifths vote a resolution providing for their inclusion. Hereafter each person entering such employ becomes a member on first day of the calendar month following his entrance into the service of the court.

In this section "officer or attaches of the superior court" includes all commissioners, phonographic reporters who are paid salaries or per diems by the county and whose contributions are based upon such salaries or per diems, secretaries, stenographers, investigators, messengers, or other employees of the court.

ADOPTED BY BOS RESOLUTION 7739, (DECEMBER 22, 1947), FOR SECRETARIES OF JUDGES AND BOS RESOLUTION 6433, (MARCH 18, 1946), FOR PHONOGRAPHIC REPORTERS; EMPLOYEES OF THE SUPERIOR COURT ARE NOW MEMBERS OF THE SYSTEM THROUGH THEIR EMPLOYMENT BY THE SUPERIOR COURT AS AN INDEPENDENT PARTICIPATING EMPLOYER PURSUANT TO GOV. CODE SECTION 31557.

§ 31556. Appropriations and deductions for court officers and attaches

The board of supervisors and all other county officers shall make the appropriations and perform the duties specified in this chapter with reference to court officers and attaches in the same manner as specified for county or district officers or employees. The deductions provided for in this chapter shall be made from the salaries of such officers or attaches in the same manner as for officers or employees of the county or districts.

THIS PROVISION HAS BEEN SUPERSEDED BY THE SUPERIOR COURT BECOMING AN INDEPENDENT PARTICIPATING EMPLOYER PURSUANT TO GOV. CODE SECTION 31557.

#### § 31557 Officers and employees of districts; inclusion in membership

All officers and employees of any district become members of the association on the first day of the calendar month after:

(a) In the case of districts for which the board of supervisors is the governing body, such body adopts by four-fifths vote a resolution providing for the inclusion of the district in the retirement association.

(b) In the case of districts for which the board of supervisors is not the governing body, the governing body adopts by a two-thirds vote, a resolution providing for the inclusion of the district in the retirement association and the board, by majority vote, consents thereto. Thereafter, each person entering such employment becomes a member on the first day of the calendar month following his entrance into the service. However, if prior to January 1, 1976, the governing body and the board of retirement have executed an agreement providing for the purchase of prior service, the agreement may be amended to provide that the date of membership in the retirement association for any officer or employee shall be the first day of the calendar month following the officer's or employee's entrance into district service.

Members may be withdrawn from the association in the manner provided in Section 31564.

#### § 31557.2. Validation of action taken by governing body under section 31557; validation of membership

Any action heretofore taken by the governing body of a district under Section 31557, or under color of that section, is hereby confirmed and validated and made fully effective. Membership in the association of any officers and employees of any district who were included in the association by such action of the governing body, is hereby validated and confirmed and made fully effective as of the time of such inclusion.

#### § 31558. Time of becoming safety members; eligibility

All existing members of a pension system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200) of this part and all employees eligible as safety members who at the time of entering service elected to become safety members, or who subsequently became members, shall become safety members and thereafter each person employed in a position, the principal duties of which consist of active law enforcement or active fire suppression or juvenile hall group counseling and group supervision, as defined in Sections 31469.3, 31469.4, 31470.2 and 31470.4, shall become a "safety member on the first day of the calendar month following his or her entrance into the service. The sheriff and undersheriff shall become safety members on the first day of the calendar month following their entrance into the service. The marshal and assistant marshal shall become safety members on the first day of the calendar month following their appointment.

#### § 31558.6. Time of becoming safety members; juvenile hall group counselors and group supervisors

Notwithstanding any of the provisions of Section 31558 to the contrary, each person who is employed in a position, the principal duties of which consist of juvenile hall group counseling and group supervision as defined in Section 31469.4, on the date the provisions of Section 31469.4 are made applicable in a county by the board of supervisors and who files with the board written election to become a safety member on or prior to one year after the date the provisions of Section 31469.4 are made applicable in a county by the board of supervisors, shall become a safety member.

Thereafter each person when employed in such position shall become a safety member on the first day of the calendar month following his or her entrance into the service.

#### § 31559. County or district assuming functions of public agency; effect on employees

Whenever a county or district subject to the provisions of this chapter takes over and assumes any of the functions of any other public agency, and because of such assumption all or any employees of such other public agency become employees of such county or district, any such employee whose principal duties consist of active law enforcement or active fire suppression, as defined in Sections 31469.3, 31470.2 and 31470.4, who, because of such transfer of functions, is employed in such a position in such county or district, shall become a safety member on the first day of the Calendar month following his entrance into service.

#### § 31560. Persons remaining safety members

A safety member shall remain a safety member only while the principal duties of his position consist of active law enforcement, active fire suppression or active lifeguard service as defined in Section 31469.3. While holding any other position in county service he shall remain a member but not a safety member.

#### § 31561. Temporary technical or professional employees ineligible

Any person employed under contract for temporary services requiring professional or highly technical skill is ineligible for membership.

#### § 31562. Elective officer not declaring intention to become member

Any elective officer who does not declare his intention to become a member of the retirement association as required by this chapter is ineligible to membership.

### § 31563. Termination of membership if service as public officer or employee is forfeited upon conviction of certain felonies

Notwithstanding any other provision of law, a person ceases to be a member for any portion of his or her service as an elected public officer that is forfeited pursuant to Sections 7522.70, 7522.72, and 7522.74.

(Amended by Stats. 2014, c. 741 (AB 2474), Sec. 3.)

### § 31564. Withdrawal of district employees; petition; fund disposition; effective date

(a) All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association.

(b) Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

(c) Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be transferred to another public retirement system that meets the requirement of a tax-qualified retirement plan under Section 401(a) of Title 26 of the United States Code.

(d) A refund, distribution, or transfer of contributions or other funds shall not be made to any employee or any district unless that action complies with the requirements of Section 401(a) of Title 26 of the United States Code.

(e) In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

(f) The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

(Amended by Stats. 2014, c. 740 (AB 2473), Sec. 5.)

### § 31564.2. Liability of district upon termination of participation

(a) If a district's participation in the retirement system is terminated pursuant to the provisions of Section 31564, the district shall remain liable to the retirement system for the district's share of any unfunded actuarial liability of the system which is attributable to the officers and employees of the district who either have retired or will retire under the retirement system.

(b) Unless otherwise developed by an actuarial source and approved by the board of retirement, the amount of the district's liability shall be the unfunded actuarial liability of the entire system, computed as described below, multiplied by a fraction:

(1) The numerator of which is the total amount required to be contributed to the plan by the withdrawing district for the last five years ending prior to the withdrawal date.

(2) The denominator of which is the total amount required to be contributed to the plan by all participating employers for the last five years.

The plan's total unfunded actuarial liability for this purpose shall be calculated on the basis of the actuarial assumptions used in the plan's most recent actuarial valuation, except that all district members shall be assumed to terminate as of the date of withdrawal.

(c) The district's liability shall be paid in accordance with a schedule determined by the retirement board over a period no longer than the period over which the plan's remaining unfunded actuarial liability is being amortized.

(d) The funding of the retirement benefits for the employees of a withdrawing agency is solely the responsibility of the withdrawing agency or the board of supervisors. Notwithstanding any other provision of law, no contracting agency shall fail or refuse to pay the employer's contribution required by this chapter or to pay the employer's contribution required by this chapter within the applicable time limitations. In dealing with a withdrawing district, the board of retirement shall take whatever action needed to ensure the actuarial soundness of the retirement system.

(e) The Legislature finds and declares that this section is declaratory of existing law, to the extent this section provides that upon withdrawal from the retirement system, a district shall remain liable for its share of the unfunded actuarial liability of the system. This section is intended to define the method of calculating the district's share of that unfunded actuarial liability.

#### § 31564.5. Contract by governing body of district for additional appropriation to pay costs of system

Whenever the governing body of a district for which the board of supervisors is not the governing body adopts a resolution for the inclusion of such district in the retirement association, if, in the opinion of the board because of conditions peculiar to such district the contributions required from such district by this chapter are insufficient to pay the same proportion of the costs of the system as will be paid by the county, the board may require that such district contract with the board to appropriate additional sums. If, because of conditions peculiar to such district the contributions required from such district by this chapter are greater than necessary to pay the same proportion of the costs of the system as will be paid by the county, the board and such district may contract for lesser sums. Either of such contracts may provide, among other things, that whenever the board of supervisors makes an additional appropriation pursuant to Section 31454.5, the district also will make an additional appropriation calculated by a formula specified in such contract. All such districts are hereby authorized to enter into and perform such contracts.

#### § 31565. Transfer of membership to state teachers' retirement system; withdrawal of contributions

Any member of a system established under this chapter who is employed in a status requisite for membership in the State Teachers' Retirement System, may elect to transfer his membership to that system. Any member who elects to transfer his membership pursuant to this



section may also elect in writing to withdraw his accumulated contributions, and in such event he shall be paid all of his accumulated contributions in the county retirement system.

#### § 31565.5. Election of employees of county superintendent of schools to remain members of county system

Any member of a system established under this chapter who ceases to be an employee of the county under the provisions of Section 1312 of the Education Code may elect as authorized in Section 1312 of the Education Code to remain a member of such system.

(added by Stats. 1965, Ch. 717, Sec. 6, Effective June 18, 1965)

(Amended by Stats. 2021, Ch. 186 (SB 634), Sec. 13)

#### § 31567. Member employed in active law enforcement or fire suppression position, election to become safety member; credit for service

Any member of a retirement system established under this chapter who is employed in a position, the principal duties of which consist of active law enforcement or active fire suppression as defined under Sections 31469.3, 31470.2 and 31470.4, and who, prior to 1955, had the right to elect to become a safety member of such system shall again have the right to elect to become a safety member.

Notice of such election shall be given in writing to the board of retirement administering the system.

The member's status as a safety member shall be effective on the first day of the second month following that in which the notice of election is received by the board of retirement.

Such a member may elect to receive credit for service rendered as a member of such system, as if he had been a safety member commencing in 1955. Notice of such election shall be given in writing to the board of retirement no less than 30 days prior to the member's retirement. The member shall receive credit for such service, as a safety member, if he contributes the difference between the member contributions actually made for that period of service and the contributions that he would have been required to make if he had been a safety member during that period. The member shall also contribute interest on the difference at the rates at which interest was credited on member contributions for each year of the period for which credit is sought.

An election under this section shall be irrevocable, and the additional contribution payments hereunder required, if not completed as specified, shall be forfeited to the retirement fund, and a forfeiting member shall then receive only general membership benefits. Additional contributions shall be made by lump sum payment or in such monthly payroll deduction amounts as determined by the board, but must be made prior to the member's retirement.

### **Article 5      Financial Provisions      §§31580-31607**

#### § 31580.1. Contribution from districts; costs of administering retirement system; penalty assessments for delinquencies

The board may include each year in the contribution required of a district a reasonable amount, which may differ from district to district, to cover the costs of administering its

retirement system as such costs affect the active and retired employees of that district. The board may also assess a district a reasonable amount to cover costs incurred because of the district's failure to submit reports and forward contributions on a timely basis.

**§ 31580.2. Annual budget; expenses of administration; charges against earnings of fund; expenses for computer products and support services not considered costs of administration**

(a) In counties in which the board of retirement, or the board of retirement and the board of investment, have appointed personnel pursuant to Section 31522.1, 31522.5, 31522.7, 31522.9, 31522.10, or 31522.11, the respective board or boards shall annually adopt a budget covering the entire expense of administration of the retirement system which expense shall be charged against the earnings of the retirement fund. The expense incurred in any year may not exceed the greater of either of the following:

(1) Twenty-one hundredths of 1 percent of the accrued actuarial liability of the retirement system.

(2) Two million dollars (\$2,000,000), as adjusted annually by the amount of the annual cost-of-living adjustment computed in accordance with Article 16.5 (commencing with Section 31870).

(b) Expenditures for computer software, computer hardware, and computer technology consulting services in support of these computer products shall not be considered a cost of administration of the retirement system for purposes of this section.

(Amended by Stats. 2010, c. 663 (AB 609), Sec. 1.)

(Amended by Stats. 2014, c. 244 (SB 673), Sec. 5.)

(Amended by Stats. 2015, c. 223 (AB 1291), Sec. 4.)

(Amended by Stats. 2021, Ch. 26 (AB 761), Sec. 3)

**§ 31581.1. Election to pay up to one-half of contributions normally required of members; resolution by board of supervisors**

(a) The board of supervisors may elect to pay up to one-half of the contributions normally required of members for any period of time designated in the resolution providing for such payment. The payments shall not become part of the accumulated contributions of the member. These payments may be made with respect to employees in one or more bargaining units irrespective of whether they are made with respect to other employees.

(b) This section shall not apply to members who are subject to Section 7522.30.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 16.)

**§ 31582. Transfer from appropriation to retirement fund; amount; advance payment**

(a) The county auditor shall certify to the board at the end of each month or at the end of each pay period the compensation earnable, as defined in Section 31461, and the pensionable compensation, as defined in Section 7522.34, paid to all members of the retirement association and the auditor shall thereupon transfer from the appropriation to the retirement fund the

applicable percentage of this amount determined pursuant to Sections 31453, 31453.5, and 31454. Until that determination, the amount of the transfer shall be 23.77 percent of the compensation earnable, as defined in Section 31461, and the pensionable compensation, as defined in section 7522.34, paid to all safety members and 8.85 percent of the compensation, earnable, as defined in Section 31461, and the pensionable compensation, as defined in Section 7522.34, paid to all other members.

(b) The board of supervisors may authorize the county auditor to make an advance payment of all or part of the county's estimated annual contribution to the retirement fund, provided that the payment is made no later than 30 days after the commencement of the county's fiscal year. This subdivision does not prevent the board of supervisors from authorizing the county auditor to make an advance payment for the estimated annual county contributions for an additional year or partial year if the advance payment is made no later than 30 days after the commencement of the county fiscal year for which the advance payment is made. If the advance is only a partial payment of the county's estimated annual contribution, remaining transfers to the retirement fund shall be made at the end of each month or at the end of each pay period until the total amount required for the year is contributed. Transfers shall be adjusted at the end of the fiscal year to reflect the actual contributions required for that year.

(c) A district subject to Section 31585 may also authorize an advance payment of all or part of the district's estimated annual contribution to the retirement fund, provided that the payment is made no later than 30 days after the commencement of the district's fiscal year. This subdivision does not prevent the governing body of a district from authorizing the district to make an advance payment for the estimated annual district contributions for an additional year or partial year if the advance payment is made no later than 30 days after the commencement of the district fiscal year for which the advance payment is made. If the advance is only a partial payment of the district's estimated annual contribution, payments to the retirement fund shall be made at the end of each month or at the end of each pay period until the total amount required for the year is contributed. This amount shall be adjusted at the end of the fiscal year to reflect the actual contributions required for that year.

(Amended by Stat. 2017, Ch. 76 (SB 671), Sec. 1)

#### § 31582.1. Certification requirements of Section 31582; provisions to forego

In any county in which the board of retirement so provides, the county auditor shall not be required to make the certifications required by Section 31582.

#### § 31584. Failure of board to make appropriations or transfers

The board of supervisors shall make the appropriations, and if it fails or neglects to make the appropriations, the county auditor shall transfer from any money available in any fund in the county treasury the sums specified by this chapter and this transfer shall have the same force and effect as it would have had if the required appropriation had been made by the board of supervisors.

## § 31585. Contributions by districts

When any district becomes a part of the retirement system, the same appropriations and transfers of funds shall be made as those required of the county in this article, and such charges are legal charges against the funds of the district.

### § 31585.1. Election of employee paid from county school service fund to remain member of county system

When an employee paid from the county school service fund elects to remain a member of this retirement system as authorized by Section 1313 of the Education Code, the same appropriations, transfers, and disposition of funds shall be made as those required of the county by this article, and those charges are legal charges against the funds of the county school service fund.

## § 31586. Payments into fund as obligations of county or district

All payments of the county or of any district into the retirement fund, whether made pursuant to this article or made pursuant to law, are obligations of the county or district.

## § 31587. Application of contributions

The board shall apply the contributions of the county or district to its obligations under the system in the order and amounts as follows:

First, in an amount equal during each fiscal year to the liability accruing to the county or district because of service rendered during such year and on account of service and disability pensions, in an amount determined by the actuarial valuation as interpreted by the actuary.

Second, in an amount equal during each fiscal year to the payments made from contributions by the county or district during the year for death benefits.

Third, the balance of such contributions on the liabilities accrued on account of prior service benefits.

## § 31588. "Employees retirement fund"

A trust fund account to be designated as "employees retirement fund" shall be opened upon the books of the retirement board, or treasurer and auditor if authorized by the board, of any county adopting this retirement system.

The "employees retirement fund" shall be a trust fund created or continued and administered in accordance with this chapter, solely for the benefit of the members and retired members of the system and their survivors and beneficiaries.

Nothing in this section shall be construed to prohibit the retirement board paying administrative costs, already authorized or to be authorized, or to prohibit the transfer of surplus funds to county advance reserves.

#### § 31588.1. Deferred yield adjustment account

There is hereby established in the County Employees' Retirement System a deferred yield adjustment account which shall be increased by the sale or disposition of any debt securities at less than book value and shall be decreased by the sale or disposition of debt securities at more than book value. At the end of each year, a portion of the balance of this account shall be offset against the investment income for that year. The annual portion of the balance to be offset shall be proportional to the reciprocal of the average remaining life of the bonds sold. The amount of this account shall be included in any accounting or actuarial computations or listing of assets. In any year in which the gains on the sales of debt securities exceed the discounts realized on the sales of such securities, the excess shall be used to reduce the balance of the account.

This section shall not be operative in any county until such time as the board shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOR RESOLUTION 80-1, (March 19, 1980).

#### § 31588.2. Expending of funds; limitation to administration of system, investments, benefits to members

Notwithstanding any other provision of law, no funds in the retirement fund shall be expended for any purpose other than the expense of administration of the system, investments for the benefit of the system, and the provision of benefits to the members and retired members of the system and their survivors and beneficiaries.

#### § 31589. Accounting as to transfers or payments to system

All transfers or payments to the retirement system and all withdrawals and other cash transactions, shall be accounted upon the books of the retirement board, or treasurer and auditor, if authorized by the board, in and out of the retirement fund, in the same manner as county transactions.

#### § 31589.1. Trade of bonds for similar bonds

There is hereby established for accounting purposes in the County Employees Retirement Law of 1937 the following procedure for treating a trade of bonds for similar bonds. Any loss or gain attributable to a trade of a like bond in the portfolio of any retirement system adopted pursuant to this chapter may be amortized over the life of the bond traded out by adding to or subtracting from the discount or premium attributable to the bond traded in. Like bonds for purposes of this section are considered to be bonds which will mature within seven years of the life of the bond traded out. Bonds to be traded must be of the first four grades. The fact that one bond may be a debenture and another a mortgage bond, or that the bonds may have different rates of return, shall not keep them from being like bonds.

This section shall not be operative in any county until such time as the board shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOR RESOLUTION 80-1, (MARCH 19, 1980).

§ 31590. Warrants, checks, and electronic fund transfers; signature and authorization; validity; direct deposit of electronic fund transfers; authorization of benefit payments issuance by banks

(a) All warrants, checks, and electronic fund transfers drawn on the retirement fund shall be signed or authorized by at least two board officers or employees, designated by the board or by the treasurer if designated by the board. If the treasurer is designated by the board, the board shall also designate the auditor to sign or authorize warrants, checks, and electronic fund transfers.

The authorization may be by blanket authorization of all warrants, checks, or electronic fund transfers appearing on a list or register, or may be by a standing order to draw warrants, checks, or electronic fund transfers, which shall be good until revoked. If the treasurer and auditor are designated by the board, a warrant, check, or electronic fund transfer is not valid until it is signed or authorized, numbered, and recorded by the county auditor, except as provided in subdivision (c).

(b) Any person entitled to the receipt of benefits may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of the person's choice under a program for direct deposit by electronic transfer established by the board or treasurer if authorized by the board. The direct deposit shall discharge the system's obligation in respect to that payment.

(c) The board may, or, if authorized by the board, the treasurer shall, authorize a trust company or trust department of any state or national bank authorized to conduct the business of a trust company in this state or the Federal Reserve Bank of San Francisco or any branch thereof within this state, to process and issue payments by check or electronic fund transfer.

§ 31591. Interest credits; rate; termination of interest on cessation of membership

(a) Regular interest shall be credited semiannually on June 30th and December 31st to all contributions in the retirement fund which have been on deposit for six months immediately prior to that date. Interest at the rate of 2 1/2 percent per annum, until otherwise determined by the board, compounded semiannually, shall be used in the calculation of benefits under any mortality table adopted by the board of supervisors.

(b) No interest shall be credited to a member's account after the membership of the member in the retirement association has ceased, except under any of the following circumstances:

(1) The former member has left his or her accumulated contributions in the retirement fund and has either elected, in writing, a deferred retirement allowance, or is eligible to so elect under Section 31700 but has failed to do so.

(2) The surviving spouse of a deceased member or the legally appointed guardian of the member's unmarried children under age 18 has elected to leave a death benefit on deposit as provided for in Section 31781.2.

(3) The former member, regardless of service, has left his or her accumulated contributions in the retirement fund and has not terminated employment.

## § 31592. Excess interest as reserve against contingencies

Earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments and other contingencies, except as provided in Sections 31529.5 and 31592.2.

### § 31592.2. Excess interest; disposition

(a) In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the Board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter.

(b) Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this subdivision from the county advance reserves. This payment shall comply with the requirements of Section 401 of Title 26 of the United States Code. Payment may be made directly from the county advance reserves for the benefits described in Section 31691.1.

(Amended by Stats.2014, c. 740 (A.B.2473), § 6, eff. Jan. 1, 2015.)

### § 31592.5. Proposed changes to retirement benefits; notice to recognized retiree organization

The board shall provide to any recognized retiree organization reasonable advance notice of any proposed changes to the retirement benefits offered by the system or the use or uses of excess funds of the retirement system. The organization shall have a reasonable opportunity to comment prior to any formal action by the board on the proposed changes.

(Amended by Stats.2012, c. 178 (SB1382), Sec. 4.)

### § 31592.6. Board assistance in distributing communications to members; reasonable fee for mailings

In order for a recognized retiree organization to fulfill its obligations to the retired members of the system and to communicate with them, upon the organization's request the board shall cooperate with and assist the organization in distributing communications regarding membership in and retiree benefit programs available through the organization to all or a portion of those retired members. The content of those communications shall be wholly the responsibility of the recognized retiree organization, and the board shall not have any liability for the content of those communications. Cooperation and assistance in distribution may consist of



combined or separate mailings. The board may charge a reasonable fee for those mailings, which may not exceed the actual costs to the system, including staff time for preparation of the mailings.

(Added by Stats. 2012, Ch. 178 (SB 1382), Sec. 5.)

### § 31593. Audit and report

The retirement board shall conduct an audit of the retirement system at least once every 12 months and report upon its financial condition. The retirement board may retain the services of a certified public accountant to perform the annual audit. That audit shall be performed in accordance with generally accepted auditing standards. The cost of the audit shall be considered a cost of the administration of the retirement system. The audit report shall address the financial condition of the retirement system, internal accounting controls, and compliance with applicable laws and regulations. A copy of the audit report shall be filed with the board of supervisors.

Nothing in this section shall preclude the retirement board from selecting the county auditor to perform the annual audit, and if so done, the cost of that audit shall be considered a cost of the administration of the retirement system.

At the request of the county board of supervisors, the county auditor may audit the accounts of the retirement system. The expense of that audit shall not be a cost chargeable by the county to the retirement system.

### § 31594. Investment of Funds

It is the intent of the Legislature, consistent with the mandate of the voters in passing Proposition 21 at the June 5, 1984, Primary Election, to allow the board of any retirement system governed by this chapter to invest in any form or type of investment deemed prudent by the board pursuant to the requirements of Section 31595. It is also the intent of the Legislature to repeal, or amend as appropriate, certain statutory provisions, whether substantive or procedural in nature, that restrict the form, type, or amount of investments that would otherwise be considered prudent under the terms of that section. This will increase the flexibility and range of investment choice available to these retirement systems, while ensuring protection of the interests of their beneficiaries.

### § 31595. Control of investments; authority to invest assets; discharge of duties

The board has exclusive control of the investment of the employees retirement fund. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system. Except as otherwise expressly restricted by the California Constitution and by law, the board may, in its discretion, invest, or delegate the authority to invest, the assets of the fund through the purchase, holding, or sale of any form or type of investment, financial instrument, or financial transaction when prudent in the informed opinion of the board.

The board and its officers and employees shall discharge their duties with respect to the system:



(a) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system.

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

(c) Shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

#### § 31595.1. County treasurer; control of retirement system funds

(a) The board may authorize the treasurer to control and safely keep some or all of the moneys of the retirement system. If authorized, the treasurer may invest and reinvest the moneys, and may from time to time sell any securities belonging to the system and may invest and reinvest the proceeds therefrom. An investment in or sale of securities shall not be made except upon the authorization of the board.

(b) The board, in lieu of acting pursuant to subdivision (a), may delegate to another entity some or all of the powers prescribed in that subdivision.

#### § 31595.9. Investments in repurchase agreements or reverse repurchase agreements

Notwithstanding the provisions of Section 31595, in addition to other investments authorized by this article, funds received by the county treasurer not required for current disbursements may be invested in repurchase agreements or reverse repurchase agreements of any securities authorized by this article.

For purposes of this section, "repurchase agreement" means a purchase of securities by the board pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount.

For purposes of this section, "reverse repurchase agreement" means a sale of securities by the board pursuant to an agreement by which the board will repurchase the securities on or before a specified date and for a specified amount.

#### § 31596. Sale of securities; treasurer's duties and liabilities; custodian of securities

(a) When securities belonging to or held for the retirement association are sold, the county treasurer shall deliver the securities to the purchaser upon receiving the proceeds, and may execute any and all documents necessary to transfer title. The duties imposed upon the county treasurer by this article are a part of his or her official duties, for the faithful performance of which he or she is liable on his or her official bond.

(b) The board may, or if authorized by the board, the treasurer shall authorize a state or federally chartered depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or any trust company licensed under state or federal law to conduct the business of a trust company or any Federal Reserve Bank, to act as custodian of any securities owned by the retirement association. In that case, the duties imposed by subdivision (a) upon the county treasurer shall instead be performed by the board and shall be included in any agreement for custodial services. Any of these banks or trust companies may be authorized to collect the

income from the securities and deposit the proceeds in an account established by the board for the retirement association.

THE BOARD OF RETIREMENT IMPLEMENTED SUBSECTION (b) BY BOARD OF RESOLUTION 2004/2005 01.

#### § 31596.1. Expenses of investing moneys

The expenses of investing its moneys shall be borne solely by the system. The following types of expenses shall not be considered a cost of administration of the retirement system, but shall be considered as a reduction in earnings from those investments or a charge against the assets of the retirement system as determined by the board:

(a) The costs, as approved by the board, of actuarial valuations and services rendered pursuant to Section 31453.

(b) The compensation of any bank or trust company performing custodial services.

(c) When an investment is made in deeds of trust and mortgages, the fees stipulated in any agreement entered into with a bank or mortgage service company to service such deeds of trust and mortgages.

(d) Any fees stipulated in an agreement entered into with investment counsel for consulting or management services in connection with the administration of the board's investment program, including the system's participation in any form of investment pools managed by a third party or parties.

(e) The compensation to an attorney for services rendered pursuant to Section 31607 or legal representation rendered pursuant to Section 31529.1.

#### § 31597.1. Alternative financial statement; applicability

Before December 31 of each year, the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding June 30th and its financial transactions for the fiscal year ending that day.

This section is not operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county. After the filing of the first fiscal year accounting under this section, the provisions of Section 31597 do not apply in the county.

ADOPTED BY BOS RESOLUTION 85-143, (APRIL 8, 1985).

#### § 31598. Preparation of annual statement

The annual statement shall be prepared in accordance with generally accepted accounting principles on the basis of pronouncements of the Government Accounting Standards Board or its successor organization.

#### § 31599. Records of contributions

In addition to other records and accounts, the retirement board, or the treasurer if authorized by the board, shall keep records and accounts as are necessary to show at any time:

- (a) The total accumulated contributions of members.
- (b) The total accumulated contributions of retired members less the annuity payments made to the members.
- (c) The accumulated contributions of the county or district held for the benefit of members on account of service rendered as members of the retirement system.
- (d) All other accumulated contributions of the county or district, including the amounts available to meet the obligation of the county or district on account of benefits granted to retired employees and on account of prior service of members.

#### § 31600. Benefits payable monthly; exception

A pension, annuity, or retirement allowance is payable in equal monthly installments, but a smaller pro rata amount may be paid for part of a month when the pension, annuity, or retirement allowance begins after the first day of the month or ends before the last day of the month.

#### § 31602. Home loan program; investment of funds

Notwithstanding any other provision of law, the board of retirement, or, in counties that have established a board of investments, the board of investments, may establish a program utilizing the retirement fund to assist system members and annuitants, through financing, to obtain homes in this state.

The board shall adopt regulations governing the program which shall, among other things, provide:

- (a) That home loans be made available to currently employed members and annuitants for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.
- (b) That private lending institutions in this state shall originate and service its home loans pursuant to agreements entered into between those institutions and the board.
- (c) That the recipients of the loans occupy the homes as their permanent residences in accordance with the rules and regulations established by the board.
- (d) That its home loans shall be available only for the purchase or refinancing of homes in this state and that under no condition shall a member or annuitant have more than one outstanding loan.
- (e) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board which shall provide a loan to value ratio of: (1) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (2) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (3) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.
- (f) That there may be prepayment penalties assessed on its loan in accordance with the rules and regulations established by the board.

(g) That the criteria and terms for its loans shall provide the greatest benefit to members and annuitants consistent with the financial integrity of the program and the sound investment of the retirement fund.

(h) Any other terms and conditions as the board shall deem appropriate.  
NOT IMPLEMENTED.

#### § 31603. Loans

The board of retirement or the board of investments, as applicable, may obtain a loan and pledge a portion of the assets of the retirement fund as security for the repayment of the loan if the board finds all of the following:

- (a) An emergency exists affecting the national banking system or financial markets.
- (b) The emergency prevents the association from readily accessing its funds.
- (c) The loan is necessary to promptly deliver benefits when due.

The assets of the retirement fund pledged as security for the loan shall be subject to execution and other processes of the court only in connection with a proceeding to enforce the loan. The costs associated with securing and repaying the loan, including interest, shall be a charge against investment earnings of the fund.

#### § 31607. Employment of attorney

To assist in carrying out its investment powers and duties the board may employ an attorney in private practice.

## **Article 6     Members' Contributions     §§31620-31631.5**

### **§ 31620. Age basis; sex bias for rates of contributions, allowances or benefits; prohibition**

The normal rates of contribution of members shall be based on age at the nearest birthday at the time of entrance into the retirement system.

Notwithstanding any provisions of this chapter to the contrary, separate rates of contribution, allowances, or benefits for male and female members shall not be maintained or established.

### **§ 31620.5. Normal rates of contributions of general and safety members subject to California Public Employees' Pension Reform Act of 2013; determination of amount; exceptions**

The normal rates of contribution of general and safety members subject to the California Public Employees' Pension Reform Act of 2013 shall be determined pursuant to Section 7522.30 subject to the following exceptions:

(a) The board may, but is not required to, apply the provisions of subdivision (c) of Section 7522.30 that require the initial contribution rate to be rounded to the nearest quarter of 1 percent.

(b) Subdivision (d) of Section 7522.30 shall not apply to the contribution rates of members of retirement systems established pursuant to this chapter.

(Added by Stats. 2013, c. 247 (AB 1380), Sec. 18.)

### **§ 31621. Normal rates of contribution**

The normal rates of contribution except for members covered by Article 6.8 shall be such as will provide an average annuity at age 60 equal to one one-hundred-twentieth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

APPLICABLE TO CERTAIN LEGACY PLANS; NOT APPLICABLE TO CURRENTLY ACTIVE PLANS.

### **§ 31621.2. Contribution to provide average annuity at age 60**

In counties adopting Section 31676.12, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter, shall be such as will provide an average annuity at age 60 equal to one one-hundredth of the final compensation of members not covered by Article 6.8 according to tables adopted by the board of supervisors, for each year of service rendered after entering the system.

APPLICABLE TO CERTAIN LEGACY PLANS AND TO CERTAIN MEMBERS OF PLAN 5 DEPENDING ON DATE OF MEMBERSHIP, JOB CLASSIFICATION AND BARGAINING UNIT.

#### § 31621.4. Normal rates of contribution; average annuity at age 60

The normal rates of contribution except for members covered by Article 6.8 shall be such as will provide an average annuity at age 60 equal to one two-hundred-fortieth of the final compensation of members not covered by Article 6.8 (commencing with Section 31639) of this chapter, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in such counties on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county.

APPLICABLE TO CERTAIN LEGACY PLANS AND APPLICABLE TO PLAN 7 MEMBERS FIRST HIRED AFTER JUNE 25, 2012. (BOS RESOLUTION 12-126, (May 15, 2012)).

#### § 31621.5. Counties adopting Section 31676.12; normal rates of contribution; average annuity at age 60

In counties adopting Section 31676.12, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter, shall be such as will provide an annual annuity at age 60 equal to one two-hundredth of the final compensation of members not covered by Article 6.8, according to tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in such counties, on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county.

APPLICABLE TO CERTAIN LEGACY PLANS AND TO CERTAIN MEMBERS OF PLAN 5 DEPENDING ON DATE OF MEMBERSHIP, JOB CLASSIFICATION AND BARGAINING UNIT.

#### § 31621.6. Counties adopting Section 31676.15; normal rates of contributions; average annuity age at 55

In counties adopting Section 31676.15, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter, shall be such as to provide an average annuity at age 55 equal to one one-hundredth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

APPLICABLE TO APCD ONLY.

#### § 31623. Rate of contribution for members over 59 and aged 16

The normal rate of contribution established for age 59 is the rate for any member not covered by Article 6.8 who has attained a greater age before entrance into the retirement system, and that established for age 16 is the rate for any member not covered by Article 6.8 who enters the retirement system at a lesser age.

## § 31625. Deduction from first salary or wage warrant

Except as provided in Section 31625.1, unless otherwise provided by the regulations of the board the contribution shall be deducted by the county auditor or other officer charged with the duty of drawing salary or wage warrants from the first salary or wage warrant drawn in each month in favor of each member and shall be paid to the county treasurer and placed to the credit of each individual member's account.

SOME DISTRICTS ON MONTHLY PAYROLL.

### § 31625.1. Deductions from salaries or wage warrants drawn semimonthly

In those counties in which salary or wage warrants are drawn semimonthly, not to exceed one-half the contribution shall be deducted by the county auditor or other officer charged with the duty of drawing salary or wage warrants from the first salary or wage warrant drawn in each month in favor of each member, and not to exceed one-half of such deduction shall be deducted from the second salary or wage warrant drawn in each month in favor of each member. Such deductions shall be paid to the county treasurer and placed to the credit of each individual member's account.

SOME DISTRICTS ON SEMI-MONTHLY PAYROLL.

### § 31625.2. Members having credit for 30 years' service; non-deduction of contributions

(a) Notwithstanding any other provisions of this chapter, contributions shall not be deducted from the salary of any member having credit for 30 years' service providing the member was a member on March 7, 1973, and remained in membership continuously until credited with 30 years' service.

(Subsection (b) not applicable.)

## § 31626. Discharge of obligation by payment of salary less deduction

Payment of salaries and wages less the contribution is full and complete discharge and acquittance of all claims and demands whatsoever for service rendered by members during the period covered by such payment, except the benefits afforded by this chapter.

## § 31627. Additional contributions by member

Subject to the regulations prescribed by the board, any member may elect to make additional contributions at rates in excess of his or her normal contributions, for the purpose of providing additional benefits. The exercise of this privilege by a member does not require the county or district to make any additional contributions. Upon application, the board shall furnish to the member information concerning the nature and amount of additional benefits to be obtained by the additional contributions.

[The Board of Retirement has not adopted regulations allowing additional contributions.]



#### § 31627.1. Return of additional contributions to member; calculation of annuity

A member who has additional contributions under Section 31627 may, within 30 days prior to retirement, elect in writing to have all or any part of the member's accumulated additional contributions returned to the member. The portion returned shall not be included in the calculation of the member's annuity.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 31)

[Not implemented - See comment to section 31627.]

#### § 31627.2. Return of contributions to member; effect

In any county in which the provisions of Section 31676.1 apply, any member who has additional contributions under Section 31627 may elect in writing to have all or any part of the member's accumulated additional contributions returned to the member. The portion returned shall not be included in the calculation of the member's annuity. The board may order payment in whole or in part withheld for a period not to exceed 90 days after receipt of such written election.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 32)

[Not implemented - See comment to section 31627.]

#### § 31627.6. Additional appropriation by district upon receipt by member of credit for prior service

Whenever any member elects to receive credit for any time during which he was employed by a district and was not a member, under any provision of this chapter, such district shall make an additional appropriation equal to the amount which it would have appropriated had such member been a member during the time for which he has elected to obtain credit.

#### § 31628. Return of contributions on termination; payment orders; service of notice of credit

If the service of a member is discontinued other than by death or retirement, upon proper application submitted to the retirement board, he or she shall be paid all of his or her accumulated contributions, in accordance with this chapter, minus a withdrawal charge, if a withdrawal charge has been provided for by the regulations of the board. The board may order payment in whole or in part withheld for a period not to exceed six months after date of separation. If a member does not file the proper application, the board shall send to the member, not more than 90 days after termination of service, at his or her last known address, a registered or certified letter, return receipt requested, stating that he or she has money to his or her credit on the books of the retirement system and that if he or she does not claim the money within 10 years after date of notice, in the case of persons first employed before January 1, 1976, or within five years in the case of persons first employed on and after January 1, 1976, the money will be deposited in and become a part of the current pension reserve fund.



§ 31629. Deposit of contributions on failure of withdrawing member to claim; extended time; return by mail

If a former member does not file proper application for the return of his accumulated contributions within five years after date of such notice to him, such accumulated contributions shall be deposited in and become a part of the current pension reserve fund, and thereafter the fund shall not be liable to such member for any portion of his accumulated contributions.

However, notwithstanding the fact that such an application has not been filed, the board of retirement may, in its sound discretion authorize the return of any deposit account 90 days after the 90-day notice referred to in Section 31628, provided that the former employee had less than five years' service credit with the county.

No return of any deposit account may be made by mail pursuant to this section unless the letter provided for in Section 31628 was receipted for by the former member and the signed receipt is in the possession of the board of retirement or the county treasurer.

The amendment of this section enacted during the 1975-76 Regular Session shall be effective with respect to persons first becoming members of a retirement system on and after January 1, 1976.

§ 31629.5. Right to elect to leave accumulated contributions on deposit in retirement fund; revocation of election; service credited as employee of reciprocal system

(a) Notwithstanding Sections 31628 and 31629, on and after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

(b) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time except: (1) while the member is employed in county service in a position in which the member is not excluded from membership in this system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service, entered within six months after discontinuing county service, as a member of a reciprocal retirement system. All accumulated contributions contributed up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements that apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and Service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose

combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) Notwithstanding Section 31467, for purposes of this section, "accumulated contributions" means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

#### § 31630. Members' normal contributions; payment by and rights of district and certain counties

(a) Notwithstanding any other provisions in this chapter, the South Coast Air Quality Management District and in any county which has adopted Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, 31676.15, or 31751, the board of supervisors or district board, as the case may be, may agree to pay any portion of the members' normal contributions to the system. All the contributions paid by the county or district, as the case may be, shall remain its contributions, and no right therein shall accrue to any employee prior to the employee's election to take a regular, deferred, or disability retirement.

(b) Any contributions paid by the board of supervisors or the district board on behalf of the members shall be as determined by upon actuarial advice, and approved by the board of retirement.

(c) This section shall not apply to members who are subject to Section 7522.30.  
(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 21.)

#### § 31631. Member payment of contributions for retirement benefits

(a) Notwithstanding any other law, a board of supervisors or the governing body of a district may, by resolution, ordinance, contract, or contract amendment under this chapter, without a change in benefits, require that members pay all or part of the contributions of a member or employer, or both, for any retirement benefits provided under this chapter. All of those payments are hereby designated as employee contributions. For members who are represented in a bargaining unit, the payment requirement shall be approved in a memorandum of understanding executed by the board of supervisors or the governing body of a district and the employee collective bargaining representative. The contributions shall be uniform either (1) with respect to all members of a recognized bargaining unit or (2) all members within each of the following categories: nonsafety subject to Section 7522.20 or safety subject to Section 7522.25.

(b) Nothing in this section shall modify a board of supervisors' or the governing body of a district's authority under law as it existed on December 31, 2012, including any restrictions on that authority, to change the amount of member contributions.

(Added by Stats. 2012, c. 296 (A.B. 340), § 32. Amended by Stats. 2014, c. 741 (A.B. 2474), § 4, eff. Jan. 1, 2015.)

§ 31631.5. Board of Supervisors or governing body of a district may require members to pay 50 percent of normal cost of benefits; bargaining process (effective January 1, 2018); authority to change contribution amount

(a) (1) Notwithstanding any other provision of this chapter, a board of supervisors or the governing body of a district may require that members pay 50 percent of the normal cost of benefits. However, that contribution shall be no more than 14 percent above the applicable normal rate of contribution of members established pursuant to this article for local general members, no more than 33 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 31639) for local police officers, local firefighters, county peace officers, and no more than 37 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 31639) for all local safety members other than police officers, firefighters, and county peace officers.

(2) Before implementing any change pursuant to this subdivision for any represented employees, the public employer shall complete the good faith bargaining process as required by law, including any impasse procedures requiring mediation and fact finding. This subdivision shall become operative on January 1, 2018. This subdivision shall not apply to any bargaining unit when the members of that unit are paying at least 50 percent of the normal cost of their pension benefit or are subject to an agreement reached pursuant to paragraph (1). Applicable normal rate of contribution of members means the statutorily authorized rate applicable to the member group as the statutes read on December 31, 2012.

(b) Nothing in this section shall modify a board of supervisors' or the governing body of a district's authority under law as it existed on December 31, 2012, including any restrictions on that authority, to change the amount of member contributions.

(Added by Stats. 2012, Ch. 296 (AB 340), Sec. 33)

(Amended by Stats. 2020, Ch. 370 (SB 1371), Sec. 156)

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 33)

## **Article 6.8 Safety Members' Contributions §§31639-31639.85**

### **§ 31639. Application**

This article shall apply in a county subject to the provisions of Sections 31676.1 and 31695.1.

### **§ 31639.1. Age as basis; sex bias for rates of contributions, allowances or benefits; prohibition**

The normal rates of contribution of safety members shall be based on age at the nearest birthday at the time of entrance into the retirement system.

Notwithstanding any other provision of this chapter to the contrary, separate rates of contribution for male and female safety members shall not be maintained or established, nor shall different allowances or benefits be established for male and female members.

### **§ 31639.25. Rates of contribution**

The normal rates of contributions shall be such as will provide an average annuity at age 50 equal to one one-hundredth of the final compensation of safety members, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

The provisions of this section shall supersede the provisions of Section 31639.2.

APPLICABLE TO CERTAIN SAFETY MEMBERS DEPENDING ON JOB CLASSIFICATION AND BARGAINING UNIT AS FORMULA MODIFIED PURSUANT TO SETTLEMENT OF LITIGATION AND ADOPTION OF NEW SAFETY PLAN APPROVED BY BOS RESOLUTION 01-270, (August 28, 2001), PURSUANT TO GOVERNMENT CODE SECTION 31678.2(b).

### **§ 31639.4. Rate for age 35**

The normal rate of contribution established for age 35 is the rate for any safety member who has attained a greater age before entrance into the retirement system, and that established for age 21 is the rate for any safety member who enters the retirement system at a lesser age.

(Repealed by Stats.2008, c. 164 (A.B. 3044), § 6.)

### **§ 31639.5. Normal rate of contribution; reduction**

The normal rate of contribution shall be such as will provide an average annuity at age 50 equal to one two-hundredth of the final compensation of safety members according to the table adopted by the board of supervisors for each year's service rendered after entering the system.

This section shall become operative in any county on the first day of the calendar month after the board of supervisors adopts a resolution making it operative in the county.

APPLICABLE TO CERTAIN SAFETY MEMBERS DEPENDING ON JOB CLASSIFICATION AND BARGAINING UNIT AS FORMULA MODIFIED PURSUANT TO SETTLEMENT OF LITIGATION AND ADOPTION OF NEW SAFETY PLAN APPROVED BY BOS RESOLUTION 01-270, (AUGUST 28, 2001), PURSUANT TO GOVERNMENT CODE SECTION 31678.2(b).

ADOPTED BY BOS RESOLUTION 89-532, (SEPTEMBER 5, 1998).

§ 31639.7. Persons entitled to membership by amendment of chapter; credit as safety member; election to make payments; certain Los Angeles County employees

(a) If a member not previously within the field of membership as a safety member is brought within such field of safety membership by amendment to this chapter, he may receive credit as a safety member for all or any part of the time during which his or her duties would have made him or her eligible to become a safety member if the amendment had then been in effect by filing with the board at the time he or she elects to become a safety member his or her election to pay into the retirement fund an amount equal to the difference between the contributions actually made during the time for which he or she claims credit and the contributions he or she would have made during that time, including all additional contributions, if any, required by Article 7.5 of this chapter, had he or she been a safety member, together with regular interest on the amount required to be deposited.

SUBSECTION (a) ONLY

(Amended by Stats.2010, c. 118 (AB 1658), Sec. 1.)

§ 31639.8. Additional contributions of persons entitled to membership by amendment of chapter

The additional contributions of such members shall be paid by regular monthly salary deductions in the amount specified by the member, but in no case less than six dollars (\$6) per month. The total amount due shall be paid prior to the effective date of his death or retirement, except that his spouse, or his minor children if no spouse survives him, may elect to pay any balance due within 90 days after the death of a member. If the total amount due is not paid the member, his spouse or his minor children shall receive credit for service as a safety member for only the time for which such additional contributions are made. Any member who has elected to make such additional payments in installments by salary deductions may complete payment thereof by a single lump-sum payment at any time prior to the effective date of his retirement.

§ 31639.85. Safety members' normal contributions; payment by county; right to contributions

(a) Notwithstanding any other provisions in this chapter, in any county which has adopted Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, or 31676.15 the board of supervisors may agree to pay any portion of the safety members' normal contributions to the system. All contributions paid by the county shall remain county contributions, and no right therein shall accrue to any employee prior to the employee's election to take a regular, deferred or disability retirement.

(b) Any contributions paid by the board of supervisors on behalf of the safety members shall be as determined upon actuarial advice, and approved by the board of retirement.

(c) This section shall not apply to members who are subject to Section 7522.30.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 22.)

§ 31640. "County service" defined

"County service" means the employment of a person by a county, district, municipal court, or superior court.

§ 31640.5. Computing credit for temporary, seasonal, intermittent or part time service; "year of service" defined

Where service for which a member receives credit, either prior to or during membership, is on a tenure which is temporary, seasonal, intermittent, or part time only, the member shall receive credit as continuous service for that proportion of the time he or *she* held the position as the time he or she actually was engaged in the performance of the duties of the position bears to the time required to perform the same duties in a full-time position.

A "year of service" in the position shall be construed to mean the time during which the member has earned one full year of credit, calculated as provided in this section.

§ 31640.7 Prohibitions against credit for service or contributions for credit for service for members of a retirement system.

(a) A member of a retirement system shall not receive credit for service or contributions for credit for service in violation of the prohibitions provided in Section 23007.5 or 50033.

(b) Nothing in this section shall prohibit an elective officer from purchasing service credit pursuant to Section 31658.

§ 31641. "Service" defined

"Service" means uninterrupted employment of any person appointed or elected for that period of time:

(a) For which deductions are made from his earnable compensation from the county or district for such service while he is a member of the retirement association.

(b) In military service for which the county or district or member is authorized by other provisions of this chapter to make, and does make, contributions.

(c) For which he receives credit for county service or for public service or for both pursuant to the provisions of this article.

(d) Allowed for prior service.

§ 31641.03. Credit for accumulated sick leave; ordinance or resolution; necessity

In any county the board of supervisors may provide by ordinance that members specified in the ordinance shall be credited, for up to 100 percent of sick leave accumulated as of the date of their retirement, and that sick leave credit shall be in addition to service credit. The additional cost to the retirement system shall be borne by the county or district.

This section shall not apply to members who are employed by a district unless the governing board of the district provides by resolution for its application to such members.

ADOPTED BY BOS ORDINANCE 3784, (NOVEMBER 28, 1989), (LIMITED TO 2088 HOURS) AND VARIOUS DISTRICT RESOLUTIONS.

§ 31641.04. Additional service credit; retirement pursuant to resolution; conditions; applicability

(a) When the board of supervisors, by resolution, determines that because of an impending curtailment of service or change in the manner of performing service, savings of money, or other economic benefit resulting to the county, the best interests of the county would be served, a member shall be eligible to receive additional service credit if the following conditions exist:

(1) The member is employed in a job classification, county department, or other county organizational unit included in the resolution adopted by the board of supervisors.

(2) The member retires on or between dates specified by the board of supervisors in its resolution. In no event shall the specified period exceed 180 days.

(3) The county transmits to the retirement fund an amount determined by the board of retirement which is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount he would have received without such service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the county and the board of retirement.

(b) The amount of service credit shall be that amount as the board of supervisors determines but shall not be more than two years regardless of credited service and shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age.

(c) A county which elects to make the payment prescribed by subdivision (a) shall make such payment with respect to all eligible employees who retire during the period specified by the board of supervisors.

(d) This section shall not be applicable to any member otherwise eligible if such member receives any unemployment insurance payments during the period six months prior to the period specified pursuant to subdivision (a). This section shall not be applicable to any member if the member is not eligible to retire without the additional credit available under this section.

(e) This section shall not be applicable in any county until it is adopted by ordinance of the board of supervisors. Any county may adopt or readopt this section from time to time as conditions may warrant. This section shall not be applicable in any district whose employees are members of the system pursuant to Section 31557 until it is adopted by ordinance by the governing body of the district. Any district whose employees are members of the system pursuant to Section 31557 may adopt or readopt this section from time to time as conditions warrant.

(f) Any member who qualifies under this section upon subsequent reentry to county employment shall forfeit the service credit acquired under this section, unless the reentry is a result of a temporary callback limited to a maximum of 720 hours of service in any one year.

(g) This section shall not be subject to the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1. (Explanatory note on next page)

BOS ORDINANCE 3829, APPROVED 2/27/90 AND EFFECTIVE 3/29/90. BOS RESOLUTION 93-119 APPLIED TO DEPUTY FIRE CHIEF AND SOME MEMBERS OF SHERIFF AND PROVIDED TWO YEARS OF SERVICE; BOS RESOLUTION 96-116



APPLIED TO FIRE EMPLOYEES AND PROVIDED TWO YEARS OF SERVICE; BOS RESOLUTION 90-173 APPLIED TO ACCOUNTING DIVISION CHIEF/TREASURER TAX COLLECTOR AND PROVIDED TWO YEARS OF SERVICE. BOS RESOLUTIONS 09-253 and 09-254, (SEPTEMBER 15, 2009), APPLICABLE TO CERTAIN GENERAL MEMBERS AND PROVIDED TWO YEARS OF SERVICE.

#### § 31641.1. Contributions and credit for prior public service

A member who was in public service before becoming a member may elect by written notice filed with the board to make contributions pursuant to Section 31641.2 and to receive credit in the retirement system for all allowed public service time. Credit for part-time service shall be calculated as provided in Section 31641.5.

ADOPTED BY BOS RESOLUTION 24579, (MARCH 15, 1965), HOWEVER PER BOS RESOLUTION 77-325, (JULY 5, 1977), THIS STATUTE, AND RELATED STATUTES, ARE INAPPLICABLE TO EMPLOYEES HIRED AFTER JULY 15, 1977.

#### § 31641.2. Amount of contributions by member previously in public service

Any member of the retirement system who elects pursuant to Section 31641.1 to make contributions and receive credit as service for time for which he or she claims credit because of public service shall contribute to the retirement fund, prior to the effective date of his or her retirement, by lump sum payment or by installment payments over a period not to exceed five years, an amount equal to the sum of:

(a) Twice the contributions he or she would have made to the retirement fund if he or she had been a member during the same length of time as that for which he or she has elected to receive credit as service, computed by applying the rate of contribution first applicable to him or her upon commencement of his or her membership in this system to the monthly compensation first earnable by him or her at the time as provided in Section 31641.3, multiplied by the number of months for which he or she has elected to receive credit for county service, including time, if any, prior to the establishment of the system, and which will constitute current service under this system.

(b) The "regular interest" that would have accrued to the member contributions if they had been made on the date used to determine on what earnable compensation contributions pursuant to this section shall be based, from that date until the completion of payment of those contributions, computed at the current interest rate.

(c) Except as prohibited by Section 31640.7, the governing body by a four-fifths vote may provide that it shall make on behalf of officers and employees eligible to receive credit for prior service under this chapter, and who so elect prior to filing an application for retirement, part of the contributions specified in paragraphs (a) and (b) of this section. The contributions made by a governmental agency pursuant to this section shall be available only for purposes of retirement for service or for disability and a member resigning from county service shall be entitled to withdraw only that portion of his or her accumulated contributions made by him or her.

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.21. "Regular interest" defined for purpose of § 31641.2

Regular interest computed at the current interest rate as used in subdivision (b) of Section 31641.2 shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contribution required by that section had been on deposit from the date used to determine the earnable compensation on which such contributions are based until the amount required to be deposited has been paid.

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.3. Compensation first earnable

In Section 31641.2 compensation first earnable shall be that earnable by the member at the time of the commencement of his membership in the retirement system, except that if a member who, prior to January 1, 1952, was a member of any retirement system in the same county which was superseded by a system established under this act, if such member so requests, the compensation first earnable by him at the later of the following times shall be used:

- (a) The commencement of his membership in such superseded retirement system.
- (b) The date on which this retirement system first became operative.

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.4. Public service credits; certification; prior employment credits of safety members

(a)(1) Except as provided in paragraph (2), a member shall receive credit for employment in public service only for such service as the member is not entitled to receive a pension or retirement allowance from such public agency. The service for which the member elects to contribute and the fact that no pension or retirement allowance will accrue to such member by virtue of the member's employment in the public agency shall be certified to by an officer of the public agency where he rendered such public service or must be established to the satisfaction of the board.

(2) Nothing in this subdivision prohibits a member from receiving credit for a period of federal public service if federal law expressly permits the credit even though the member is already entitled to receive a pension or retirement allowance from that service. It is intended that this section be consistent with the holdings in *Cantwell v. San Mateo* (1980) 931 F.2d 631.

(b) Notwithstanding any other provision of law, a safety member who receives credit for prior employment in public service, the principal duties of which consisted of active law enforcement or active fire suppression, or active service in the armed services of the United States during time of war or national emergency, shall have his pension or retirement allowance for such service calculated on the same basis as the calculation of the retirement allowance such member would receive as a safety member under Section 31664.

(c) A safety member who entered the service as a peace officer prior to the establishment of the safety membership provisions in the member's county shall be considered a safety

member from the member's initial hiring date, for the purposes of this section, notwithstanding any other provision of law.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 9)

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.45. Refund of amount deposited plus interest; no credit received for public service

Whenever a member is entitled to redeposit funds previously withdrawn from a retirement system and thereby becomes eligible to receive a pension or retirement allowance for the service for which the member was granted public service credit as authorized in Section 31641.1, regardless of whether or not the member elects to exercise such entitlement, the member shall be refunded the amount deposited by the member in accordance with Section 31641.2 plus interest which has been credited to such amount and shall receive no credit in the system for such service.

This section applies only to a member who would be eligible to receive the benefit of Section 31835 or 20638 on making the redeposit.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 34)

#### § 31641.5. Credit for prior nonmembership service; election; payment of additional contributions; lump sum payment

A member who prior to his entrance into the retirement system held a position in the county service the tenure of which was such as to exclude him from membership, or a coroner, public administrator or coroner-public administrator who was excluded because of the means by which he was compensated, shall have the right to receive credit in the retirement association for all or any part of the county service he rendered, whether interrupted or not, during the time he was in county service before becoming a member if he elects to pay, and thereafter pays, in accordance with such election, and prior to retirement, into the retirement fund an amount equal to the contributions he would have made to the retirement fund if he had been a member during the time for which he has elected to receive credit, computed by applying the contribution rate first applicable to him upon becoming a member to the aggregate compensation he actually received during the time he was in county service and for which he has elected to receive credit, together with interest at the current rate on that amount from the time he became a member until completion of payment. Such payment may be made by lump sum or by installment payments over a period not to exceed the length of time for which the member has elected to receive credit, in such manner and at such times as the board may by rule prescribe. No member shall receive credit under this section for any service for which he has not completed payment pursuant to this section before the effective date of his retirement. A member who has elected to make such payment in installments may complete payment thereof by lump sum at any time prior to the effective date of his retirement. Any sums paid by a member pursuant to this section shall be considered to be and administered as normal contributions by the member.

Where county service prior to membership was rendered on a part-time basis, the member may receive credit for such proportion of the time he held the part-time position as the time he was actually engaged in the performance of the duties of such position bears to the time required to perform the same duties in a full-time position.

A member who elects to receive credit for only a part of such county service shall elect that county service latest in time and may not receive credit for any portion of such county service prior in time to any county service for which he does not elect to receive credit.

#### § 31641.51. "Interest at the current rate" defined

"Interest at the current rate" means that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contribution required by that section had been on deposit from the time he became a member of the system until the amount required to be deposited has been paid.

#### § 31641.7. Rate of compensation to be used by member unable to furnish information required for purposes of Section 31641.5

If the member is unable to furnish the information necessary to establish his aggregate compensation for the period of service for which he seeks credit pursuant to Section 31641.5, then the rate of compensation applicable to him at the time he first became a member of this system after the period to be credited shall be used in making the computation required by Section 31641.5.

#### § 31641.8. Installment payments; lump sum payment

Any member who has elected to make contributions pursuant to this chapter by installment payments may, at any time prior to the effective date of his retirement, complete payment thereof by lump sum.

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.9. Treatment of contributions; matching by county

All contributions made by a member, pursuant to Sections 31641.1, 31641.2, 31641.3 and 31641.4 shall be considered to be, and shall be administered as, normal contributions but shall not be matched by the county upon retirement of the member.

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.95. Applicability of certain sections

Sections 31470.7, 31478, 31479, 31480, 31641.1, 31641.2, 31641.3, 31641.4, 31641.8, and 31641.9 may only be applicable in any county or district on the first day of the month after the governing board of such county or district adopts, by majority vote, a resolution providing that those sections shall become applicable in such county or district. Such resolution may limit the applicability of such sections to any one or more of the public agencies as defined by Section 31478.

At any time after such a resolution has been adopted, the governing board of the county or district, by majority vote, may adopt a further resolution declaring that from and after a future date stated further in the resolution, the benefits of the resolution described in the first paragraph

of this section shall not be available to any employees who are hired by the county or district after that date.

[SEE COMMENT TO SECTION 31641.1.]

#### § 31641.96. Prior service contributions in counties with specified retirement formulas

Notwithstanding any other provisions of this chapter, Section 31641.9 shall not be applicable to any county subject to the provisions of Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, or 31676.15.

#### § 31642. Continuity of service; designation of matters not breaking continuity

The following shall not be considered as breaking the continuity of service:

(a) A temporary layoff because of illness or for purposes of economy, suspension, or dismissal, followed by reinstatement or re-employment within one year.

(b) A leave of absence followed by reinstatement or re-employment within one year after the termination of the leave of absence.

(c) A resignation to enter, followed by entrance into, the armed forces of the United States, followed by re-employment by the county or district within six months after the termination of such service.

(d) Resignation of a member who has elected in writing to come within the provisions of Article 9 followed by re-employment before withdrawal of any accumulated contributions.

The withdrawal of accumulated contributions followed by the redeposit of the contributions upon re-entrance into service does not constitute a break in the continuity of service.

#### § 31643. "Prior service" defined

Unless otherwise provided in the regulations of the board, "prior service" means service prior to the date of entry of a member into the retirement system.

#### § 31644. Prior service; regulations

In its regulations the board may provide what service shall constitute prior service. Such service may include employment which is not service as defined in Sections 31641 and 31642.

#### § 31646. Credit for uncompensated leave of absence for illness; conditions

(a) A member who returns to active service following an uncompensated leave of absence on account of illness may receive service credit for the period of the absence upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(b) (1) A member who returns to active service following an uncompensated leave of absence on account of parental leave may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subdivision, parental leave is defined as any time, up to one year, during which a member is granted an approved maternity or paternity leave and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to parental leave that commences after the adoption by the board of supervisors.

(c) (1) A member who returns to active service following an uncompensated leave of absence under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) or the Moore-Brown-Roberti Family Rights Act, commonly referred to as the California Family Rights Act, as described in Section 12945, may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had the contributions been on deposit, if the member was not absent. For purposes of this subdivision, "leave of absence on account of illness of a family member" means any time, up to one year, during which a member is granted approved leave to care for a seriously ill family member and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions required to receive the service credit may be paid in a lump sum or may be paid monthly basis for a period of not more than the length of the period for which the credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to leave that commences after the adoption by the board of supervisors.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 35)

subsection (b) ADOPTED BY BOS RESOLUTION 22-153 on June 28, 2022.

subsection (c) ADOPTED BY BOS RESOLUTION 23-72 on April 4, 2023.

## § 31646.2. Service credit; temporary mandatory furlough

(a) The board may grant a member who is subject to a temporary mandatory furlough the same service credit and compensation earnable or pensionable compensation to which the member would have been entitled in the absence of the temporary mandatory furlough. The board may condition this grant on the receipt of additional member or employer contributions, or both as applicable that the board determines are necessary to fund any benefits granted under this section on an actuarially sound basis.



(b) For purposes of this section, “temporary mandatory furlough” means the time during which a member is directed to be absent from work without pay for up to one quarter of the member’s normal working hours, provided that these reduced hours shall not be in place for longer than two years.

(Added by Stats. 2022, Ch. 524 (AB 1971), Sec. 2)

#### § 31647. Time not in service not credited

A person is not entitled to credit as prior service for time during which he was not in service as defined in this chapter.

#### § 31648. Conditions for prior service credit of persons subsequently electing membership

If any officer or employee not previously included within the field of membership of the association is brought within the field of membership or if any elected official chooses to come within the field of membership subsequent to the establishment of the association, he shall not receive credit for service or for prior service unless either (1) he elects to and does pay into the association within one year thereafter, or within such longer time as is provided in the regulations of the board, and before an application for retirement is filed, an amount equal to the contributions he would have made if he had been a member of the association from the date of its organization, or from the date of his entry into county service, whichever is the later, together with regular interest thereon or (2) the governing body, by a four-fifths vote, provides that it shall make, on behalf of all such officers or employees eligible to receive credit for prior service under this section and who so elect subsequent to the effective date of the amendment to this section at the 1963 Session of the Legislature, all or a part of the contributions to the association that the officer or employee would be required to make for his prior service, except that the contributions made by the governmental agency pursuant to this section shall be available only for the purpose of retirement for service or for disability and a member resigning from county service shall be entitled to withdraw only that portion of his accumulated contributions made by him.

#### § 31648.2. Transfer of firefighting services to district participating in county retirement system; apportionment of liability between two retirement systems

In any county in which the board of supervisors has entered into an agreement as permitted by Section 20569.1, the governing body of the contracting agency from which the firemen were transferred or the governing body of the district to which the firemen were transferred may pay all or part of the cost, as determined by the board, of the liabilities which were assumed by the county system under Section 20569 and which exceed the value of the cash or securities or both transferred by the Public Employees Retirement System to the county system. The governing bodies of the contracting agency and of the district may determine the proportion of the liabilities each pays.



### § 31648.3. Full-time employee returned to work after lay-off; service credit for period of absence; operative provisions of section

A member who is a full-time employee and returns within 12 months of the date of layoff to full-time service following a period of layoff commencing on or after January 1, 1981, but not to exceed 12 months, may receive service credit for the period of the absence, but not to exceed one year, upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. The service credit provided by this section shall be provided only to persons who have returned to employment under the procedures of the employer for returning laid-off employees to work and shall not exceed one year of service credit for each layoff period. The decision of the member to redeposit withdrawn contributions shall be made within five years from the date the member is rehired or the effective date of the adoption by the county board of supervisors of this section. Upon completion of the redeposit with interest, the entry age of the member shall be adjusted to the original age of entry and membership is reestablished to that date.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

ADOPTED BY BOS RESOLUTION 03-226.

### § 31648.4. Cost of liabilities assumed by county after termination; payment

In any county in which the board of supervisors has entered into an agreement as permitted by Section 20569.2, the governing body of the contracting agency from which the employees were transferred or the governing body of the district or the county service area to which the employees were transferred may pay all or part of the cost, as determined by the board, of the liabilities which were assumed by the county system under Section 20569 and which exceed the value of the cash or securities of both transferred by the Public Employees' Retirement System to the county system. The governing bodies of the contracting agency and of the district or the county service area may determine the proportion of the liabilities each pays.

### § 31648.5. Conditions for prior service credit of elective officers

Any elective officer (a) who has filed a declaration of election to become a member of a county retirement association established pursuant to this chapter and (b) who rendered any county service after the effective date of the system so established and prior to the effective date of his membership in the association and (c) who would not otherwise be entitled to credit for such service, shall be entitled to credit for such service as current service if he contributes to the retirement association the contributions which he would have made if he had been a member of the association during the time such service was rendered, together with regular interest thereon.

#### § 31648.6. Fractional month

Any elective officer whose term of office expires at a time when the total period of his incumbency divided into months results in a fractional month greater than 20 days shall be deemed to have rendered service sufficient to receive credit for a full month provided that such officer contributes to the retirement association prior to the receipt of the first payment of his retirement allowance the contributions required for that month.

#### § 31649. Military service; compliance with USERRA; credit for service

(a) This chapter shall comply with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as amended from time to time. Any member who was absent from county or district employment for military service and is eligible for reemployment benefits pursuant to USERRA, may, as provided in USERRA, make contributions and receive service credit for the time absent.

(b) Any member who does not qualify for reemployment benefits under subdivision (a) due to the length of the military service, and who returns to county or district employment within one year of being honorably discharged from the Armed Forces of the United States, shall receive credit for service for all or any part of the member's military service, if, before retirement from the county or district, the member contributes what they would have paid to the fund for that period based on the member's compensation earnable, as defined by Section 31461, or pensionable compensation, as defined in Section 7522.34, whichever is applicable, at the time of the beginning of the absence together with applicable interest on that amount.

(c) Nothing in this section shall affect any arrangement to pay contributions pursuant to Section 31653.

(Amended by Stats. 2014, Ch. 741 (AB 2474), Sec. 5)

(Repealed by Stats. 2020, Ch. 275 (AB 2101), Sec. 36)

(Added by Stats. 2020, Ch. 275 (AB 2101), Sec. 37)

#### § 31649.1. Reemployment of member; notification to system; notification of right to purchase service credit

Any employer who reemploys a member who is subject to the provisions of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall, within 30 days after the date of that reemployment, provide information in writing as required by the board notifying the system of that reemployment, and shall provide the returning employee written notification of the right to purchase that service credit.

Sections 31649.5, 31649.6, 31650 and 31651 were repealed by Stats. 2020, ch. 275, Secs. 38-41.

#### § 31652. Eligibility for benefits on repayment of amounts withdrawn or fulfilling other conditions on re-entry into retirement system

(a) Any member may redeposit in the retirement fund, prior to filing an application for retirement, by lump sum payment or by installment payments over a period of one year or for a longer time upon approval of the board, an amount equal to all of the accumulated normal

contributions which he has withdrawn, plus regular interest thereon from the date of separation from the retirement system, and his membership is the same as if unbroken by such termination. Except as provided in this section his rate of contribution shall be based on age at the nearest birthday at time of reentrance into the system. If he does not redeposit all of the accumulated normal contributions previously withdrawn he shall be considered as a new member without credit for any previous service.

"Regular interest" as used in this section shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contributions required by this section had been on deposit from the date of separation from the retirement system until the amount required to be deposited has been paid.

(b) Any member who left county service on or before December 31, 1971, and thereafter again became a member of the county system which he left and (1) who did not withdraw his accumulated normal contributions, or (2) who elected to leave his accumulated normal contributions on deposit pursuant to Article 9 (commencing with Section 31700), or (3) who redeposited or redeposits withdrawn accumulated normal contributions plus interest as authorized in this section, shall be eligible for all benefits granted a member entering a reciprocal retirement system under Article 15 (commencing with Section 31830), including the benefits granted to members who left their accumulated contributions on deposit or who redeposited their accumulated contributions pursuant to Section 31831.1. This paragraph shall not be applicable to any member entering service after December 31, 1977.

(c) Any member who left county service on or after January 1, 1972, and who within 90 days thereafter again became a member of the county system which he left and (1) who did not withdraw his accumulated normal contributions, or (2) who elected to leave his accumulated normal contributions on deposit pursuant to Article 9 (commencing with Section 31700), or (3) who redeposits or redeposited his withdrawn accumulated normal contributions plus interest as authorized by Section 31652 within 180 days after leaving county service, shall be eligible for all benefits granted a member entering a reciprocal retirement system under Article 15 (commencing with Section 31830), except that Section 31831.1 shall not apply to such members.

(d) This section shall not apply to members who are retired or who are not in service of an employer making him a member of this system.

#### **§ 31653. Contributions by governing board for member reentering public service after absence in military service; credit for military service time**

Notwithstanding the provisions of this article, the governing board of the county or district may elect to contribute for any member of this system who is absent from and reenters the service of the county or district pursuant to Section 31649 amounts equal to the contributions which would have been made by the member and the member's employer to the system on the basis of the member's compensation earnable at the commencement of the absence, if the member had not been so absent.

If the governing board elects to make any member's contributions pursuant to this section:

(a) Any such member who exercises or did exercise the right to contribute to the system during the period of military service shall have those contributions refunded or credited to that member's account.

(b) Any such member who withdraws or has withdrawn accumulated contributions during military service and who does not or did not redeposit the amount withdrawn upon return to employment with the county or district is entitled to be credited with any contribution the governing board elects to make, and to receive credit for service during the period of absence for military service, the same as if the member had not withdrawn accumulated contributions, and the rate for future contributions shall be based upon the member's age at the commencement of the absence for military service.

(c) The contributions made by the governing board pursuant to this section shall be available only for the purpose of retirement for service or for disability, and shall be made available only for the purpose of retirement, and a member resigning from the service of the county or district after reinstatement from military service shall be entitled to withdraw only that portion of accumulated contributions personally made by the member.

(d) This section shall be retroactively applied to extend its benefits to such members of this system as the governing board may determine whose absence from county service on military service commenced on or after September 16, 1940, and who return or have returned to this service upon the termination of their military service.

(e) This section shall not apply to a member who is subject to the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing Section 7522) of Chapter 21 of Division 7 of Title 1).

(Amended by Stats. 2017, Ch. 561 (AB 1516), Sec. 89)

#### § 31654. Persons reemployed by county after resumption of aid to needy and blind; credit for state service

Whenever, as a result of the resumption by the counties pursuant to Article XXVII of the Constitution of functions relating to the administration of aid to the aged and aid to the needy blind theretofore performed by the State, any person ceases to be employed by the state and is employed by a county in which this chapter has become operative, the person shall become a member of the retirement association of the county immediately upon his entrance into the county service.

Any such member of a county retirement system shall be entitled to credit in the county retirement system for service for which he was entitled to credit in the Public Employees' Retirement System at the time of cessation of his employment by the state, without the necessity of payment of any additional contributions in respect to that service, when and if (a) the board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the state service with which the person was entitled to be credited by the public Employees' Retirement System at the time of cessation of his state employment; and (b) there is paid into the employees' retirement fund of the county an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with the interest credited thereto, which amount shall be credited to the individual account of the member in the county employee's retirement system, and shall thereafter for all purposes be deemed to be the member's contribution to the county retirement system in respect to the service

so certified; and (c) there is paid into the employees' retirement fund of the county an additional amount equal to the amount of such normal contributions, together with the interest credited thereto, which additional amount shall thereafter for all purposes be deemed to be the contributions of the employer county to the county retirement system in respect to the service so certified.

**§ 31658. Election to make contributions pursuant to this section; receipt of service credit for additional retirement credit; limitations**

(a) An active member may elect, by written notice filed with the board, to make contributions pursuant to this section and to receive up to five years of service credit in the retirement system for additional retirement credit, if the member has completed at least five years of credited service with that retirement system.

(b) As used in this section, "additional retirement credit" means time that does not otherwise qualify as county service, public service, military service, medical leave of absence, or any other time recognized for service credit by the retirement system.

(c) Notwithstanding any other provision of this chapter, service credit for additional retirement credit may not be counted to meet the minimum qualifications for service or disability retirement or for purposes of establishing eligibility for any benefits based on 30 years of service, additional ad hoc cost-of-living benefits based on service credit, health care benefits, or any other benefits based upon service credit.

(d) Any member who elects to make contributions and receive service credit for additional retirement credit shall contribute to the retirement fund, prior to the effective date of his or her retirement, by lump-sum payment or by installment payments over a period not to exceed 10 years, an amount that, at the time of commencement of purchase, in the opinion of the board and the actuary, is sufficient to not place any additional financial burden upon the retirement system.

(e) No member may receive service credit under this section for any additional retirement credit for which he or she has not completed payment pursuant to subdivision (d) before the effective date of his or her retirement. Subject to the limitations of United States Internal Revenue Service regulations, a member who has elected to make payment in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

(f) Any sums paid by a member pursuant to this section shall be considered to be and administered as contributions by the member.

(g) This section is not operative in any county until the board of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

(h) Pursuant to Section 7522.46, this section shall apply only to an application to purchase additional retirement credit that was received by the retirement system prior to January 1, 2013, that is subsequently approved by the system.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 23.)

ADOPTED BY BOS RESOLUTION 04-074, (MARCH 23, 2004).

## **Article 7.5 Retirement of Safety Members for Service §§31662-31664.65**

### **§ 31662. Application**

This article shall apply in a county subject to the provisions of Sections 31676.1 and 31695.1.

### **§ 31662.2. Retirement of safety member**

(a) Retirement of a safety member in a county subject to the provisions of Section 31676.1, or of Section 31695.1, if applicable, who has met the requirements for age and service shall be made by the board pursuant to this article or pursuant to the California Public Employees' Pension Reform Act of 2013, whichever is applicable.

(b) The board may authorize the system administrator or other personnel to exercise the board's power and perform its duty to retire members under this section. The system administrator or other personnel shall report service retirements to the board at the next public meeting of the board after the retirement.

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 24)

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 42)

### **§ 31663.25. Application for retirement**

(a) Except as provided in Section 31663.26, a safety member who has reached the applicable compulsory age of retirement, if any, or a safety member who has completed 10 years of continuous service and who has reached the age of 50, or a safety member who has completed 20 years of service regardless of age, may be retired upon filing with the board a written application setting forth the date upon which the member desires his or her retirement to become effective. The effective retirement date shall not be either of the following:

(1) Earlier than the date the application is filed with the board.

(2) More than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

(b) This section shall not apply to a member who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1) for all or any portion of that member's membership in the county retirement system.

(Amended by Stats. 2008, Ch. 164 (AB 3044), Sec. 7)

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 25)

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 10)

### **§ 31664. Current service and prior service pensions; additional pension to safety members**

Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for safety members purchased by the contributions of the county or district sufficient when added to the service retirement annuity to equal the fraction of one-fiftieth of the member's final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year in the following table, multiplied by the number of years of current service or years

of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the limitation of the safety member's final compensation as set forth in Section 31676.1 as it now reads or may hereafter be amended to read:

Age at retirement	Fraction
41 .....	.6258
41 1/4 .....	.6350
41 1/2 .....	.6442
41 3/4 .....	.6533
42 .....	.6625
42 1/4 .....	.6720
42 1/2 .....	.6814
42 3/4 .....	.6909
43 .....	.7004
43 1/4 .....	.7102
43 1/2 .....	.7200
43 3/4 .....	.7299
44 .....	.7397
44 1/4 .....	.7499
44 1/2 .....	.7601
44 3/4 .....	.7703
45 .....	.7805
45 1/4 .....	.7910
45 1/2 .....	.8016
45 3/4 .....	.8121
46 .....	.8226
46 1/4 .....	.8339
46 1/2 .....	.8452
46 3/4 .....	.8566
47 .....	.8678
47 1/4 .....	.8780
47 1/2 .....	.8882
47 3/4 .....	.8983
48 .....	.9085
48 1/4 .....	.9194
48 1/2 .....	.9304
48 3/4 .....	.9413
49 .....	.9522
49 1/4 .....	.9641
49 1/2 .....	.9761
49 3/4 .....	.9880
50 .....	1.0000
50 1/4 .....	1.0130
50 1/2 .....	1.0259
50 3/4 .....	1.0387
51 .....	1.0516



51 1/4 .....	1.0656
51 1/2 .....	1.0796
51 3/4 .....	1.0937
52 .....	1.1078
52 1/4 .....	1.1231
52 1/2 .....	1.1384
52 3/4 .....	1.1538
53 .....	1.1692
53 1/4 .....	1.1859
53 1/2 .....	1.2028
53 3/4 .....	1.2195
54 .....	1.2366
54 1/4 .....	1.2547
54 1/2 .....	1.2730
54 3/4 .....	1.2915
55 and over .....	1.3099

The fraction herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by that board.

Contributions shall not be made by safety members having credit for 30 years of continuous service.

#### APPLICABLE TO RETIREES UNDER CERTAIN LEGACY PLANS.

#### § 31664.1. Additional service pension

(a) This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county.

(b) Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for safety members purchased by the contributions of the county of district sufficient when added to the service retirement annuity to equal 3 percent of the member's final compensation set forth opposite his or her age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement. In no event shall the total retirement allowance exceed the limited of the safety member's final compensation as set forth in Section 31676.1, as it now reads or may hereafter be amended to read.

Age at Retirement	Fraction
41 .....	.6258
41 1/4 .....	.6350
41 1/2 .....	.6442
41 3/4 .....	.6533
42 .....	.6625
42 1/4 .....	.6720

42 1/2 .....	.6814
42 3/4 .....	.6909
43 .....	.7004
43 1/4.....	.7102
43 1/2.....	.7200
43 3/4 .....	.7299
44 .....	.7397
44 1/4.....	.7499
44 1/2 .....	.7601
44 3/4.....	.7703
45.....	.7805
45 1/4.....	.7910
45 1/2.....	.8016
45 3/4.....	.8121
46 .....	.8226
46 1/4.....	.8339
46 1/2.....	.8452
46 3/4.....	.8586
47 .....	.8678
47 1/4.....	.8780
47 1/2.....	.8882
47 3/4.....	.8983
48 .....	.9085
48 1/4.....	.9194
48 1/2.....	.9304
48 3/4 .....	.9413
49 .....	.9522
49 1/4.....	.9641
49 1/2 .....	.9761
49 3/4 .....	.9880
50 and over .....	1.0000

(c) Contributions shall not be made by safety members having credit for 30 years of continuous service.

ADOPTED BY BOS RESOLUTION 06-173, (JUNE 30, 2006), OPERATIVE FEBRUARY 25, 2008; APPLICABLE TO SAFETY PLAN 6, DEPUTY SHERIFFS; MODIFIED EFFECTIVE JANUARY 1, 2013 TO LIMIT ITS APPLICATION TO MEMBERS WHO ARE NOT "NEW MEMBERS" AS DEFINED BY GOVERNMENT CODE SECTION 7522.04(f). ADOPTED BY BOS RESOLUTION 13-2, (JANUARY 8, 2013).

#### § 31664.15. Half pay adjustment

Notwithstanding any other provisions of this chapter, a safety member who enters the system with credit for prior service and retires upon completion of 20 years of continuous service and a total of 25 years of service after attaining age 50 whose retirement allowance is less than one-half of his or her final compensation, his or her prior service pension shall be

increased so as to cause his or her total retirement allowance to amount to one-half of that final compensation.

(Amended by Stats.2008, c. 164 (AB 3044), Sec. 9.)

#### § 31664.2. Additional service pension

(a) This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county.

(b) Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for safety members purchased by the contributions of the county or district sufficient when added to the service retirement annuity to equal 3 percent of the member's final compensation set forth opposite his or her age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement. In no event shall the total retirement allowance exceed the limitation of the safety member's final compensation as set forth in Section 31676.1, as it now reads or may hereafter be amended to read

Age at Retirement	Fraction
41 .....	.4777
41 1/4 .....	.4848
41 1/2 .....	.4918
41 3/4 .....	.4987
42 .....	.5058
42 1/4 .....	.5130
42 1/2 .....	.5202
42 3/4 .....	.5274
43 .....	.5347
43 1/4 .....	.5422
43 1/2 .....	.5497
43 3/4 .....	.5572
44 .....	.5647
44 1/4 .....	.5725
44 1/2 .....	.5803
44 3/4 .....	.5881
45 .....	.5958
45 1/4 .....	.6039
45 1/2 .....	.6120
45 3/4 .....	.6200
46 .....	.6280
46 1/4 .....	.6366
46 1/2 .....	.6452
46 3/4 .....	.6555

47 .....	.6625
47 1/4 .....	.6703
47 1/2 .....	.6781
47 3/4 .....	.6858
48 .....	.6936
48 1/4 .....	.7019
48 1/2 .....	.7103
48 3/4 .....	.7186
49 .....	.7269
49 1/4 .....	.7360
49 1/2 .....	.7452
49 3/4 .....	.7543
50 .....	.7634
50 1/4 .....	.7733
50 1/2 .....	.7832
50 3/4 .....	.7930
51 .....	.8028
51 1/4 .....	.8135
51 1/2 .....	.8242
51 3/4 .....	.8349
52 .....	.8457
52 1/4 .....	.8574
52 1/2 .....	.8691
52 3/4 .....	.8808
53 .....	.8926
53 1/4 .....	.9053
53 1/2 .....	.9182
53 3/4 .....	.9310
54 .....	.9418
54 1/4 .....	.9579
54 1/2 .....	.9718
54 3/4 .....	.9860
55 and over .....	1.0000

(c) Contributions shall not be made by safety members having credit for 30 years of continuous service.

ADOPTED BY BOS RESOLUTION 01-270, (AUGUST 28, 2001); APPLICABLE TO ALL SAFETY PLANS AS OF 2001 UNTIL ADOPTION OF 31664.1 FOR DEPUTY SHERIFFS EFFECTIVE FEBRUARY 25, 2008; REMAINS APPLICABLE TO SAFETY PLAN 4, FIRE AND PROBATION; MODIFIED EFFECTIVE JANUARY 1, 2013 TO LIMIT ITS APPLICATION TO MEMBERS WHO ARE NOT "NEW MEMBERS" AS DEFINED BY GOVERNMENT CODE SECTION 7522.04(f). BOS RES. 13-2 (JANUARY 8, 2013).

§ 31664.5. Retirement upon completion of twenty-five years of service; option; minimum allowance

(a) Notwithstanding any other provisions of this chapter, a safety member may exercise the option of retiring upon completion of 25 years of service, and if such option is exercised, the safety member shall receive a retirement allowance equal to no less than 30 percent of his final compensation.

(b) This section shall not apply to a member who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 27.)

§ 31664.65. Allowance of member having credit for time not safety member or member of established system

If a member retires with credit for time during which he or she was not a safety member or a member of a system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200), he or she shall receive for that time:

(a) A retirement allowance calculated pursuant to Section 31664 for time during which he or she was employed principally in active law enforcement or active fire suppression as described in Section 31470.2 or Section 31470.4 by a county, or by a district or court organized or existing within such county, or was a member of a system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200), plus a retirement allowance calculated under either subdivision (b) or (c), whichever is applicable.

(c) A retirement allowance calculated pursuant to Article 8 (commencing with Section 31670) for time during which he or she was not engaged principally in active law enforcement or active fire suppression as described in Section 31470.2 or Section 31470.4, nor a member of a system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200).

This subdivision shall apply to any member to whom subdivision (b) is not applicable.

The provisions of this section shall be applicable irrespective of whether a member is, at the time of retirement, a safety member or a general member.

SUBSECTION (b) DOES NOT APPLY.

(Amended by Stats. 2008, c. 164 (AB 3044), Sec. 10.)

## **Article 8      Retirement for Service      §§31670-31683**

### **§ 31670. Retirement for age and service**

(a) Retirement of a member who has met the requirements for age and service shall be made by the board pursuant to this article or pursuant to the California Public Employees' Pension Reform Act of 2013, whichever is applicable.

(b) The board may authorize the system administrator or other personnel to exercise the board's power and perform its duty to retire members under this section. The system administrator or other personnel shall report service retirements to the board at the next public meeting of the board after the retirement.

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 28)

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 43)

### **§ 31671. Benefits computation; amount of compensation considered in determination; limitations**

(a) The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of the retirement system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

(b) The compensation limitations specified in Section 7522.10 shall also apply to a member who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 for all or any portion of his or her membership in the county retirement system.

(Amended by Stats. 2013, c. 247 (AB 1380), Sec. 29; Stats.2014, c. 740 (AB 2473), Sec. 10.)

### **§ 31672. Voluntary retirement; application; conditions**

(a) A member who has reached 70 years of age or a member who has completed 10 years of service and who has reached 55 years of age, or a member who has completed 30 years of service regardless of age, may be retired upon filing with the board a written application, setting forth the date upon which the member desires the member's retirement to become effective. Fifty-five years of age in the preceding sentence may be reduced to 50 years of age in a county by resolution of the board of supervisors. The effective retirement date shall not be either of the following:

(1) Earlier than the date the application is filed with the board.

(2) More than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

(b) This section shall not apply to any member who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section

7522) of Chapter 21 of Division 7 of Title 1) for all or any portion of that member's membership in the county retirement system.

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 30)

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 44)

BOS RESOLUTION 72-1156, (NOVEMBER 6, 1972), REDUCED THE AGE OF 55 TO 50.

#### § 31672.1. Voluntary retirement; application; age 55, 10 years of service, 5 full years of credit

(a) An employee who has reached 55 years of age has held a position in the county service for 10 years, and on the date of retirement is employed in a temporary, seasonal, intermittent, or part-time position in which the employee has received credit for five full years of service, may be retired upon filing with the board a written application, setting forth the date upon which the employee desires the employee's retirement to become effective. Fifty- five years of age in the preceding sentence may be reduced to 50 years of age in any county

by resolution of the board of supervisors if such reduction has also been made under

Section 31672. The effective retirement date shall not be either of the following:

(1) Earlier than the date the application is filed with the board.

(2) More than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

(b) This section shall not apply to a member who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 for all or any portion of their membership in the county retirement system.

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 31)

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 45)

#### § 31672.2. Elective officers; voluntary retirement; application; conditions; operative effect and application of section (Santa Barbara)

(a) An elective officer who filed a declaration with the board to become a member, pursuant to Section 31553, who has served two complete consecutive terms in an elective office, and who has reached the minimum age for retirement provided in Section 31672, may be retired upon filing with the board a written application setting forth the date upon which the member desires the member's retirement to become effective. The effective retirement date shall not be either of the following:

(1) Earlier than the date the application is filed with the board.

(2) More than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

(b) This section shall become operative only in any county of the 16th class, as defined by Section 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, and on the first day of the calendar month after the board of supervisors adopts a resolution making it operative in the county.

(c) This section shall not apply to an elective officer who is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 for all or any portion of the elective officer's membership in the county retirement system.

(Added by Stats. 1988, Ch. 1235, Sec. 5, Operative on date prescribed by its own provisions)

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 32)



(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 46)  
ADOPTED BY BOS RESOLUTION 88-677, (DECEMBER 5, 1988).

### § 31672.3. Member of county retirement system; retirement criteria

A member of a county retirement system who is subject to the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1) for all or a portion of the member's membership in the county retirement system who has completed five years of service and has reached the minimum retirement age applicable to that member under the act, or has reached 70 years of age, may be retired upon filing with the board a written application, setting forth the date upon which the member desires the member's retirement to become effective. The effective retirement date shall not be either of the following:

- (1) Earlier than the date the application is filed with the board.
- (2) More than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

(Added by Stats. 2013, Ch. 247 (AB 1380), Sec. 33)

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 46)

### § 31672.5. Member of retirement system of other public agency becoming member of county retirement association; eligibility for retirement

Notwithstanding any other provision of this chapter, when any member of a retirement system of any other public agency becomes a member of a county retirement association, established pursuant to this chapter, as a result of the transfer to and assumption by the county of any function of the other public agency, and the member retains rights in the retirement system of the other public agency in respect to service theretofore rendered to that agency, such member shall be eligible for retirement under the county retirement system at any time at which he would have been eligible for such retirement if the service rendered to the other public agency had been rendered instead to the county. A certificate of any officer of the other public agency authorized to determine service rendered to that agency that certain service was rendered to such agency shall be accepted by the retirement board of the county retirement association as prima facie evidence of service so rendered.

This section shall be applied only to enable such members of county retirement systems to qualify for retirement. Nothing in this section entitles any member of a county retirement system to any pension or other benefit based upon service rendered to any other public agency, but such a member upon his retirement shall be entitled to a retirement allowance under the county retirement system, calculated according to the formula applicable under such system, and on the basis of his county service even though such service be less than the minimum county service required for retirement under such system. The provisions in this chapter for minimum retirement allowances, shall not apply to any retired person who would not have qualified for retirement without including under this section service rendered to such public agency, nor shall such provisions apply unless the sum of the retirement allowances to which such person is entitled under the county retirement system and the retirement system of the other public agency, is less than the otherwise applicable minimum allowance under such provisions.

This section shall become operative in any county on the first day of the calendar month after the board of supervisors adopts by four-fifths vote a resolution making it operative in the county.

ADOPTED BY BOS RESOLUTION 21431, (JUNE 12, 1961).

#### § 31673. Retirement allowances

Upon retirement for service a member is entitled to receive a retirement allowance which shall consist of:

- (a) His service retirement annuity.
- (b) His current service pension.
- (c) His prior service pension.

#### § 31674. Service retirement annuity

The service retirement annuity is an annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement.

#### § 31675. Current service pension

The current service pension is a pension, purchased by the contributions of the county or district, equal to that portion of the annuity purchased by the accumulated normal contributions of the member.

#### § 31676.1. Application of section to counties; computation of total retirement allowance

This section may be made applicable in any county on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county. Notwithstanding any other provisions of this chapter the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-sixtieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age of Retirement	Fraction
50 .....	.7091
50 1/4 .....	.7183
50 1/2 .....	.7274
50 3/4 .....	.7366
51 .....	.7457
51 1/4 .....	.7547
51 1/2 .....	.7637

51 3/4.....	.7726
52.....	.7816
52 1/4.....	.7907
52 1/2.....	.7999
52 3/4.....	.8090
53.....	.8181
53 1/4.....	.8275
53 1/2.....	.8369
53 3/4.....	.8462
54.....	.8556
54 1/4.....	.8656
54 1/2.....	.8755
54 3/4.....	.8855
55.....	.8954
55 1/4.....	.9061
55 1/2.....	.9168
55 3/4.....	.9275
56.....	.9382
56 1/4.....	.9498
56 1/2.....	.9614
56 3/4.....	.9730
57.....	.9846
57 1/4.....	.9972
57 1/2.....	1.0098
57 3/4.....	1.0224
58.....	1.0350
58 1/4.....	1.0487
58 1/2.....	1.0625
58 3/4.....	1.0762
59.....	1.0899
59 1/4.....	1.1049
59 1/2.....	1.1199
59 3/4.....	1.1349
60.....	1.1500
60 1/4.....	1.1611
60 1/2.....	1.1723
60 3/4.....	1.1835
61.....	1.1947
61 1/4.....	1.2097
61 1/2.....	1.2247
61 3/4.....	1.2398
62.....	1.2548
62 1/4.....	1.2707
62 1/2.....	1.2867
62 3/4.....	1.3026

63 .....	1.3186
63 1/4 .....	1.3355
63 1/2 .....	1.3525
63 3/4 .....	1.3695
64 .....	1.3865
64 1/4 .....	1.4047
64 1/2 .....	1.4229
64 3/4 .....	1.4411
65 and older .....	1.4593

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each such board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

BOS RESOLUTION 21031 (DECEMBER 27, 1960); DISCONTINUED FOR NEW MEMBERS AND CERTAIN ACTIVE MEMBERS BY BOS RESOLUTIONS 99-10, (JANUARY 12, 1999); BOS 12-126, (May 15, 2012), MADE THIS PROVISION AGAIN APPLICABLE TO PLAN 7 MEMBERS EMPLOYED AFTER JUNE 25, 2012; AS OF JANUARY 1, 2013 THIS PROVISION DOES NOT APPLY TO "NEW MEMBERS" AS DEFINED BY GOVERNMENT CODE SECTION 7522.04(f). BOS RESOLUTION 13-2, (JANUARY 8, 2013).

#### § 31676.12. Adoption of section by resolution; additional benefits; limitation; computation

This section may be made applicable in any county on the first day of the month after the board of supervisors of such county adopts by majority vote, a resolution providing that this section shall become applicable in such county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement .....	Fraction
50 .....	.6681
50 1/4 .....	.6775
50 1/2 .....	.6869
50 3/4 .....	.6962
51 .....	.7056
51 1/4 .....	.7156
51 1/2 .....	.7255

51.3/4.....	.7355
52.....	.7454
52 1/4.....	.7561
52 1/2.....	.7668
52 3/4.....	.7775
53.....	.7882
53 1/4.....	.7998
53 1/2.....	.8114
53 3/4.....	.8230
54.....	.8346
54 1/4.....	.8472
54 1/2.....	.8598
54 3/4.....	.8724
55.....	.8850
55 1/4.....	.8987
55 1/2.....	.9125
55 3/4.....	.9262
56.....	.9399
56 1/4.....	.9549
56 1/2.....	.9699
56 3/4.....	.9849
57.....	1.0000
57 1/4.....	1.0111
57 1/2.....	1.0223
57 3/4.....	1.0335
58.....	1.0447
58 1/4.....	1.0597
58 1/2.....	1.0747
58 3/4.....	1.0898
59.....	1.1048
59 1/4.....	1.1207
59 1/2.....	1.1367
59 3/4.....	1.1526
60.....	1.1686
60 1/4.....	1.1855
60 1/2.....	1.2025
60 3/4.....	1.2195
61.....	1.2365
61 1/4.....	1.2547
61 1/2.....	1.2729
61 3/4.....	1.2911
62 and over .....	1.3093

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Whenever in this chapter reference is made to survivorship and other benefits and rights under Section 31676.1, the same shall apply to this section.

BOS RESOLUTION 99-10, (JANUARY 12, 1999), APPLICABLE TO GENERAL PLAN 5; PLAN 5 CLOSED TO NEW COUNTY EMPLOYEES HIRED AFTER JUNE 25, 2012. BOS 12-126, (MAY 15, 2012). PLAN 5 STILL OPEN AS TO CERTAIN NEW DISTRICT EMPLOYEES NOT MEETING THE DEFINITION OF A "NEW MEMBER" AS DEFINED BY GOVERNMENT CODE SECTION 7522.04(f).

§ 31676.15. Counties with alternative to survivorship benefit under social security; adoption of section; current service pension by itself or combined with prior service pension as additional pension; applicability of section in counties of the 12th Class

(a) Except as provided in subdivision (d), this section may be made applicable in any county which has implemented the provisions of Article 15.6 (commencing with Section 31855). This section shall be applicable if a majority of all the members of the board of supervisors vote to adopt a resolution so to do and a majority of the members of the affected class or classes voting at an election held during 1974, with more than 50 percent of the members participating, favor the termination of retirement benefits under social security. The resolution may specify a date subsequent to the date of adoption of the resolution as the operative date for this section.

(b)(1) Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement .....	Fraction
50 .....	.7454
50 1/4 .....	.7561
50 1/2 .....	.7668
50 3/4 .....	.7775
51 .....	.7882
51 1/4 .....	.7998
51 1/2 .....	.8114
51 3/4 .....	.8230
52 .....	.8346
52 1/4 .....	.8472
52 1/2 .....	.8598
52 3/4 .....	.8724
53 .....	.8850

53 1/4.....	.8987
53 1/2.....	.9125
53 3/4.....	.9262
54.....	.9399
54 1/4.....	.9549
54 1/2.....	.9699
54 3/4.....	.9849
55.....	1.0000
55 1/4.....	1.0111
55 1/2.....	1.0223
55 3/4.....	1.0335
56.....	1.0447
56 1/4.....	1.0597
56 1/2.....	1.0747
56 3/4.....	1.0898
57.....	1.1048
57 1/4.....	1.1207
57 1/2.....	1.1367
57 3/4.....	1.1526
58.....	1.1686
58 1/4.....	1.1855
58 1/2.....	1.2025
58 3/4.....	1.2195
59.....	1.2365
59 1/4.....	1.2547
59 1/2.....	1.2729
59 3/4.....	1.2911
60.....	1.3093
60 1/4.....	1.3221
60 1/2.....	1.3350
60 3/4.....	1.3479
61.....	1.3608
61 1/4.....	1.3736
61 1/2.....	1.3865
61 3/4.....	1.3994
62.....	1.4123
62 1/4.....	1.4251
62 1/2.....	1.4380
62 3/4.....	1.4509
63.....	1.4638
63 1/4.....	1.4766
63 1/2.....	1.4895
63 3/4.....	1.5024
64.....	1.5153
64 1/4.....	1.5281



64 1/2.....	1.5410
64 3/4.....	1.5539
65.....	1.5668

(2) In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

(c) Whenever in this chapter reference is made to survivorship and other benefits and, rights under Section 31676.1, the same shall apply to this section.

(Subdivisions (a) - (c) Only)

APCD ONLY, APCD RESOLUTION 95-9

#### **§ 31678. Retirement association members; calculation of retirement allowances under §§ 31676.12 to 31676.15**

Notwithstanding any other provision of this chapter, any member of a retirement association established in any county pursuant to this chapter, who upon retirement receives a retirement allowance calculated in accordance with Sections 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, and 31676.15, shall have his or her retirement allowance calculated under each such section only for the period of time that the section was effective in the county.

The Legislature recognizes that counties subject to this chapter may adopt two or more of the enumerated retirement allowance calculation sections when changing from a section providing a lesser allowance to a section providing a larger allowance and thereby creates a windfall for a person who retires immediately after the adoption of a section providing the larger allowance because the retirement allowance is calculated as if the section had been in effect during the entire career of the member. The purpose of this section is to prevent this practice. This section shall apply only to persons who become members of the retirement system after January 1, 1981.

#### **§ 31678.2. Application of retirement benefits; service credits; date specified in resolution**

(a) Notwithstanding Section 31678 or any other provision of this chapter, a board of supervisors or a governing body of a district may, by resolution adopted by majority vote, make any section of this chapter prescribing a formula for calculation of retirement benefits applicable to service credit earned on and after the date specified in the resolution, which date may be earlier than the date the resolution is adopted.

(b) A resolution adopted pursuant to this section may, if approved in a memorandum of understanding executed by the board of supervisors and the employee representatives, require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (a), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution. The payment by a member shall become part of the accumulated contributions of the member.

(c) This section shall only be applicable to members who retire on or after the effective date of the resolution described in subdivision (a).

(d) On or after January 1, 2013, this section is inoperative pursuant to Section 7522.44. (Amended by Stats.2013, c. 247 (AB 1380), Sec. 34.)

## § 31680. Payment for service after retirement prohibited; exceptions; independent contractors

(a) a member retired for service or disability shall not be paid for any service rendered by him or her to the county or district after the date of his or her retirement, except:

(1) As specifically provided in this chapter.

(2) Pursuant to Section 31733.

(3) The county or district may pay and the retired member may receive:

(A) Rewards for ideas or suggestions made by the retired member for the improvement of county or district activities.

(B) Compensation for his or her services on the board.

(4) If the member is subsequently elected to county office after retirement.

(b) As herein used the term "services rendered" shall refer to service rendered as an officer or employee of the county or district and shall not refer to services performed by a retired officer or employee as an independent contractor engaged by a county or district under a bona fide contract for services within the purview of Section 31000 of this code.

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(Subsections (a) and (b) were inadvertently not included in prior plan document.

Subsection (c) added by 2013 Amendment.)

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 37.)

### § 31680.01. Service as member of governing board of joint agency

As used in Section 31680 service rendered as a member of a governing board of a joint agency created by two or more counties, under the authority of Chapter 5 (commencing with Section 6500) of Division 7, Title 1 of this code, shall not be deemed service rendered a county or district, provided that the county from whose service the employee was retired is a party to the agreement creating the joint agency.

### § 31680.1. Post-retirement service

(a) Any person who has retired under this chapter may, without reinstatement from retirement or loss or interruption of benefits under this chapter, serve as a juror, election officer, field deputy for registration of voters, member of the board of the association or temporarily as a judge when assigned by the Chairman of the Judicial Council and receive any fees payable for that service.

(b) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 38.)

**§ 31680.2. Post-retirement service in positions requiring special skills or knowledge; retired persons who have received unemployment compensation in prior 12-month period**

(a) Any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing them, for a period of time not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

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

(3) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail, except that the limit on postretirement employment provided in subdivision (a) to the greater of 90 working days or 720 hours shall remain effective.

(Subsections (a) and (b) (1) (2) were inadvertently omitted from the prior plan document. Subsection (b) (3) was added by 2013 Amendment.)

(Amended by Stats. 2013, Ch. 247 (AB 1380), Sec. 39.)

(Amended by Stats. 2021, Ch. 186 (SB 634), Sec. 14)

APPLICABLE AS MODIFIED BY § 31680.6 ADOPTED BY SANTA BARBARA COUNTY IN 1997, BOS RES. 97-482, (NOVEMBER 4, 1997).

**§ 31680.6. Extension of time for which retired persons may be employed in special skill or knowledge positions; retired persons who have received unemployment compensation in prior 12-month period**

(a) Notwithstanding Section 31680.2, any county subject to Section 31680.2 may, upon adoption of a resolution by a majority vote by the board of supervisors, extend the period of time provided for in Section 31680.2 for which a person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing him or her, to not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b)(1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described

in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

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

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 41.)

PERIOD EXTENDED TO 960 HOURS BY BOS RESOLUTION 97-482,  
(NOVEMBER 4, 1997); SUBJECT TO FURTHER LIMITATIONS IMPOSED BY PEPRA,  
GOV. CODE SECTION 7522.56.

§ 31680.7. Reemployment after retirement; discontinuance of allowance; reinstatement; determination of benefits; survivor's allowance; inapplicability to early retiree; operative on adoption by county

(a) Notwithstanding any other provision of law, any person who has been retired for service may be reemployed by the county or district from which he or she has been retired. Upon reemployment, the member's retirement allowance shall be discontinued. The retirement allowance may be reinstated upon the discontinuance of reemployment, as specified in this section.

(b)(1) For purposes of this section, "original period of employment" means the period of service with the county or district upon which the member's original retirement allowance was based.

(2) For purposes of this section, "period of reemployment" means the service subsequently rendered by the member after he or she has been reemployed by the county or district.

(c) During the period of reemployment, the member shall accrue retirement service credit at the same tier or benefit level which was applicable to the member during his or her original period of employment. The member's contribution rate shall be based on the same age at entry, and the same statutory formula, which was used in calculating the member's contribution rate during his or her original period of employment.

(d) Upon termination of the member's period of reemployment for other than death or disability, the member shall begin receiving a monthly service retirement allowance which is the sum of all of the following:

(1) The monthly retirement allowance the member had been receiving immediately prior to the time the member was reemployed by the county or district.

(2) Any cost-of-living increases that would have been added to the monthly retirement allowance if the member's allowance had not been discontinued by reason of reemployment.

(A) A retirement allowance based on the amount of service credit the member accrued during the period of reemployment. This additional retirement allowance shall be calculated using the same benefit formula and tier upon which the member's original retirement allowance

was calculated, but shall be based on the member's age upon termination of the period of reemployment and the member's final compensation during that period.

(B) The retirement allowance otherwise payable under this section to a member whose allowance prior to reinstatement was paid pursuant to an election under Section 31810 shall be reduced as provided in that section. However, for a member reinstated pursuant to Section 31680.4 prior to attaining age 62, the reduction required by Section 31810 shall be the amount that is the actuarial value of the increase in the allowance from the date of retirement to the date of reinstatement.

(e) If, after reemployment pursuant to this section, the member becomes disabled and is granted a service-connected or non-service-connected disability retirement by the board, the member's disability retirement allowance shall be the greater of either of the following:

(1) The disability retirement allowance the member would have been entitled to receive if all of the member's service during his or her original period of employment and subsequent period of reemployment had been continuous.

(2) The service retirement allowance the member would have been entitled to receive if the member had not become disabled and had voluntarily terminated his or her period of reemployment.

(f) (1) If the member dies during his or her period of reemployment, and leaves an eligible survivor or survivors entitled to receive a survivor's allowance, the allowance shall be the same amount that it would have been if all of the member's service during his or her original period of employment and subsequent period of reemployment had been continuous. If a lump sum death benefit is payable to the member's designated beneficiary instead of a survivor's allowance, the member's accumulated retirement contributions for purposes of computing the death benefit shall be the sum of the contributions made by the member during the period of reemployment, plus interest credited thereon, and the excess, if any, of the member's total contributions during the original period of employment, including interest credited thereon, over the total amount of retirement benefits paid to the member between the member's original retirement from the county or district and the member's reemployment pursuant to this section.

(2) Upon or after service retirement, the continuance shall be paid upon the member's death to the respective elected beneficiaries from each of the separate retirement period elections.

(g) This section shall not apply to an employee who receives an additional retirement benefit as an inducement to retire early.

(h) This section shall not be operative in any county until the board of supervisors of that county, by resolution adopted by a majority vote, makes this section applicable in that county.

ADOPTED BY BOS RESOLUTION 99-38, (FEBRUARY 2, 1999).

#### **§ 31680.10. Reinstatement after involuntary termination; repayment to retirement system; "administrative proceeding"**

(a) A person who has been retired under this chapter for service following an involuntary termination of their employment, and who is subsequently reinstated to that employment pursuant to an administrative or judicial proceeding that is final and not subject to appeal, shall be reinstated from retirement as if there were no intervening period of retirement. Except as provided in subdivision (b), the requirements of Sections 31680.4, 31680.5, and 31680.7 shall not apply to that reinstatement.

(b) The allowance received by the person during retirement shall be repaid by the person to the retirement system from which they retired in accordance with the retirement system's repayment policy.

(1) Member contributions shall be made for any period for which salary is awarded in the administrative or judicial proceedings in the amount that would have been contributed had the member's employment not been terminated, and the person shall receive credit for the period for which salary is awarded. If the person fails to repay the allowance received during retirement, then the person's contributions and allowance upon retirement subsequent to reinstatement shall be calculated under Sections 31680.5 or 31680.7, as applicable.

(2) The retirement system shall have discretion regarding the timing of repayment of employer contributions for the period described in paragraph (1).

(c) As used in this section, "administrative proceeding" means the process for appeal of an involuntary termination established by county or district ordinance or charter.

(d) This section shall only apply to persons reinstated to employment by final action as described in subdivision (a), on or after the effective date of this section, pursuant to an administrative or judicial proceeding.

(Added by Stats. 2020, Ch. 275 (AB 2101), Sec. 48)

#### § 31680.15. Service without reinstatement

(a) On or after January 1, 2018, a person who has retired under this chapter may serve without reinstatement from retirement or loss of interruption of benefits under this chapter, as an elective officer.

(b) If a retired person serves without reinstatement from retirement in an elective office and part or all of his or her retirement allowance is based on service in that elective office, the portion of the allowance based on service in that elective office shall be suspended during incumbency in that elective office. The entire retirement allowance shall be paid for time on and after the person vacates the elective office in the monthly amount payable had the allowance not been suspended.

(Added by stats. 2017, Ch. 363 (SB 112), Sec. 6)

#### § 31680.16 Service as a nonsalaried member of board or commission without reinstatement or loss or interruption of benefits

(a) Notwithstanding Section 31680, this section shall apply to a retired person who is receiving a retirement benefit from a county retirement system and is appointed or elected to either of the following:

(1) A county board or commission of the county that is a covered employer of the retirement system.

(2) A board or commission operating under a participating agency of the county that is a covered employer of the retirement system.

(b) A person who is retired under this chapter may serve as a nonsalaried member of a board or commission without reinstatement from retirement or loss or interruption of benefits under this chapter or the California Public Employees' Pension Reform Act of 203 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1), provided the



appointment or election is to a part-time board or commission. A retired person whose service without reinstatement is authorized by this subdivision shall not acquire benefits, service credit, or retirement rights with respect to the appointment or election, but may receive any per diem that is authorized to all members of the board or commission.

(Added by Stats. 2022, Ch. 524 (AB 1971), Sec. 3)

#### § 31681.51. Increase in retirement and optional death allowances; adoption of section by ordinance

Every retirement allowance or optional death allowance (including an allowance payable to a survivor of a member) payable to or on account of any member of this system or of a superseded system who has been or was retired for service is hereby increased as follows:

Period during which Retirement became Effective	Percentage of increase in monthly retirement allowance
On or prior to June 30, 1962 .....	10%
12 months ended June 30, 1963 .....	8%
12 months ended June 30, 1964 .....	6%
12 months ended June 30, 1965 .....	4%
12 months ended June 30, 1966 .....	2%

In no event shall any allowance be increased by an amount greater than fifty dollars (\$50) a month nor less than ten dollars (\$10) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county. ADOPTED BY BOS ORDINANCE 1985 (APRIL 7, 1969).

#### § 31681.52. Increase in retirement and optional death allowances; adoption of section by ordinance

Every retirement allowance or optional death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system or of a superseded system. Who has been or was retired for service is hereby increased as follows:

Period during which Retirement became Effective	Percentage of increase in monthly retirement allowance
On or prior to June 30, 1967 .....	10%
12 months ended June 30, 1968 .....	8%
12 months ended June 30, 1969 .....	6%
12 months ended June 30, 1970 .....	4%
12 months ended June 30, 1971 .....	2%



In no event shall any allowance be increased by an amount greater than seventy-five dollars (\$75) a month. A member with credit for 10 or more years of service in the system shall receive not less than twenty—five dollars (\$25) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by a majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS RESOLUTION 87-471 (SEPTEMBER 24, 1987).

**§ 31681.54. Retirement or optional death allowance; increase; limitation; adoption by board of supervisors**

(a) Except as provided in subdivision (b) of this section, a retirement allowance or optional death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system, or of a superseded system, who retired for service on or before December 31, 1971, is hereby increased as follows:

Number of Years of County or District Service	Percentage of Increase in Monthly Retirement Allowance
25 or more years .....	10%
20-25 years .....	8%
15-20 years .....	6%
10-15 years .....	4%

(b) No allowance shall be increased to more than five hundred dollars (\$500) per month pursuant to subdivision (a) of this section.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS RESOLUTION 87-471 (SEPTEMBER 24, 1987).

## Article 8.4 Community Property

§§31685-31685.96

ARTICLE ADOPTED BY BOS RESOLUTION 96-513 (DECEMBER 17, 1996).

### § 31685. Legal separation or marriage dissolution; date of separation; separation of member and nonmember accounts; nonmember's rights

(a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
- (2) The right to a refund of accumulated retirement contributions.
- (3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.
- (4) The right to purchase service credit that is eligible for purchase by the member.
- (5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.
- (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death)

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

#### § 31685.01 Benefit determination

Benefits enumerated in this article shall be determined in accordance with the provisions of this chapter or the California Public Employees' Pension Reform Act of 2013, whichever is applicable.

(Added by Stats.2013, c. 247 (AB 1380), Sec. 42.)

#### § 31685.1. Nonmember

"Nonmember," as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

**§ 31685.2. Nonmember awarded separation account; right to refund; application; effective date; waiver)**

(a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(e) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective. The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

**§ 31685.3. Nonmember's redeposit of accumulated contributions and interest previously refunded to member; court determination; member's rights**

(a) The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.

(b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed.

However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

(a) § 31685.4. Service credit; nonmember's right to purchase community property share; court determination; member's rights The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 31685.

(b) The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

#### § 31685.5. Nonmember's retirement; conditions

A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

#### § 31685.6. Effective date of retirement; accrual of retirement allowance

Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

#### § 31685.7. Final compensation; retirement dates of nonmember and member

(a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

#### § 31685.8. Service retirement formula; service credited to nonmember

A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

#### § 31685.9. Disability of member

If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

#### § 31685.95. Retirement plan payments resulting in increased benefits; actuarial economic and demographic assumptions and values

(a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.

(b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

#### § 31685.96. Age factors

(a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.

(b) The board shall adopt age factors as recommended by the actuary.

#### § 31685.96. Operation of this article; resolution by county

This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

ADOPTED BY BOS RESOLUTION 96-513 (DECEMBER 17, 1996).

## **Article 8.5 Group Insurance §§31691-31693**

### **§ 31691. Ordinance or resolution for contribution toward premiums**

(b) The benefits provided by this section are in addition to any other benefits provided by this chapter.

(c) The board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member for one year prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for the hospital and medical benefits enumerated (in subdivision (a) from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board may provide for the benefits enumerated from like sources when the board of supervisors or the governing body of a district has elected to provide these benefits to its active employees, even though the benefits are not provided to those who have retired from the service of the county or district. Hospital and medical benefits provided under this section shall be provided in compliance with Section 401(h) of Title 26 of the United States Code. They may also be provided in compliance with Section 31592.2.

(d) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, that has adopted Article 5.5 (commencing with Section 31610), the Supplemental Retiree Benefits Reserve established pursuant to Section 31618 shall be substituted for the excess earnings described in subdivision (c).

SUBSECTION (a) NOT OPERATIVE.

CERTAIN BENEFITS PROVIDED PURSUANT TO THIS STATUTE WERE REPEALED IN 2008 AND REPLACED WITH BENEFITS PROVIDED PURSUANT TO ARTICLE 8.6.

(Amended by Stats.2014, c. 740 (AB 2473), Sec. 11.)

### **§ 31691.1. Increase in allowance from excess earnings in lieu of contributions for premiums**

(a) In lieu of the benefits prescribed by Section 31691, the board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for an equivalent increase in allowance from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. Any benefit provided by this section shall be subject to Section 31692.

(b) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section that has adopted Article 5.5 (commencing with Section 31610), the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

(Amended by Stats.2014, c. 740 (AB 2473), Sec. 12.)

## § 31692. Amendment or repeal of ordinance or resolution

The adoption of an ordinance or resolution pursuant to Section 31691 shall give no vested right to any member or retired member, and the board of supervisors or the governing body of the district may amend or repeal the ordinance or resolution at any time except that as to any member who is retired at the time of such an amendment or repeal, the amendment or repeal shall not be operative until ninety (90) days after the board or governing body notifies the member in writing of the amendment or repeal. In counties with a population of 5,000,000 or more, the adoption of an ordinance or resolution pursuant to Section 31691 shall remain in effect for any member heretofore or hereafter retired for as long as the board of supervisors or governing body provides similar types of benefits to any active member in current county service.

## § 31693. Proposed changes in employee health care benefits affecting retired employees; notice and comment

In any county, district, or county retirement system providing benefits under this article, the county, district, or county retirement system shall provide any organization that is recognized by the retirement system of the county or district as representing the retired employees of that county or district reasonable advance notice of any proposed changes in employee health care benefits affecting those retired employees and the organization shall have a reasonable opportunity to comment prior to any formal action by the county, district, or county retirement system on the proposed changes. As used in this section, "proposed changes" means significant changes affecting health care benefits, including, but not limited to, changes in health care carriers, plan design, and premiums.



## **Article 8.6 Post-Employment Benefits**

## **§§31694 - 31694.6**

### **§ 31694. Post-Employment Benefits Trust Account; establishment; purpose; contributions; use of funds**

(a) The board of supervisors of a county or the governing body of a district or other public entity may, by ordinance or resolution and with the agreement of the board of retirement, provide for the contribution of funds by the county, a district, or other public entity into a Post-Employment Benefits Trust Account. The retirement system may establish the Post-Employment Benefits Trust Account as a part of the retirement fund. The Post-Employment Benefits Trust Account shall be established for the sole purpose of funding the benefits provided under a post-employment group health, life, welfare, or other supplemental benefits plan or plans established and maintained by the county or district, which plan or plans may provide for self-insured coverage or the payment of all or a portion of the premiums on one or more insurance contracts or health care service plan contracts for retired employees of the participating county, district, or other public entity, and their qualified spouses, dependents and beneficiaries.

(b) Contributions to the Post-Employment Benefits Trust Account may include the proceeds of debt issued by the county, a district, or other public entity solely for the purpose of funding post-employment health, life, welfare, or other supplemental benefits.

(c) The post-employment benefits provided with the funds contributed to the Post-Employment Benefits Trust Account are in addition to any other benefits provided under this chapter.

(d)(1) Except as described in subdivision (b) of Section 31694.1, the assets of the retirement fund may not be used, directly or indirectly, to pay the cost of any benefits provided through the Post-Employment Benefits Trust Account or, except to the extent allowed by federal tax law, to pay any direct or indirect cost of administering the Post-Employment Benefits Trust Fund.

(2) Except as described in subdivision (c) of Section 31694.1, funds in the Post-Employment Benefits Trust Account may not be used, directly or indirectly, to pay the cost of any other benefits provided under this chapter.

THIS ARTICLE ADOPTED BY BOS RES 08-322 (SEPTEMBER 16, 2008); BOR RES 08-04 (SEPTEMBER 19, 2008).

### **§ 31694.1. Post-Employment Benefits Trust Account; accounting; authority, roles, and responsibilities of board of retirement, or board of investments, and participating employers; agreement between employer and board; termination of participation or account;**

(a) The retirement system shall separately account for the funds contributed to the Post-Employment Benefits Trust Account by each participating employer and the earnings and expenses related to the investment and administration of those funds.

(b) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole, exclusive, and plenary authority and fiduciary responsibility over the investment of the funds in the Post-Employment Benefits Trust Account, consistent with Sections 31594 and 31595, and as provided

for in Section 17 of Article XVI of the California Constitution. The board of retirement or board of investments may invest funds in the Post-Employment Benefits Trust Account with those of the retirement system, to the extent allowed by federal tax laws. The investment earnings and investment expenses attributable to the investment activity of the Post-Employment Benefits Trust Account shall be accounted for separately from the investment earnings and expenses of the retirement fund.

(c) The funds in and investment earnings of the Post-Employment Benefits Trust Account shall be used to pay the reasonable costs related to investment expenses and administration of the Post-Employment Benefits Trust Account to the extent allowed by federal tax law. Those expenses shall not be deemed to be an investment or administrative expense of a retirement system under this chapter.

(d) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, may establish rules and procedures governing the investments and administration of the Post-Employment Benefits Trust Account. The board of retirement or the board of investments shall determine the rate of interest to credit the funds in the Post-Employment Benefits Trust Account.

(e) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized to take any and all actions necessary to establish and administer the Post-Employment Benefits Trust Account in compliance with applicable federal tax laws or other legal requirements.

(f) The board of retirement, or the board of retirement acting jointly with a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, and a participating employer in the Post-Employment Benefits Trust Account shall establish, by written agreement, the respective roles and responsibilities of the retirement system and the participating employer with respect to the administration and investment of the Post-Employment Benefits Trust Account, consistent with Section 17 of Article XVI of the California Constitution. That agreement shall include, but is not limited to, funding, distribution, expenditure, actuarial, accounting, and reporting considerations, and any applicable investment parameters. The board may, in its discretion, authorize an employer to transfer assets into or out of the Post-Employment Retirement Account, however, any transfer of assets shall comply with the terms of the contract between the employer and the board, satisfy requirements under applicable rules of the Governmental Accounting Standards Board, and satisfy the requirements of federal tax law. Once the investment parameters are established, the board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole control over the investment activity of the Post-Employment Benefits Trust Account as described in subdivision (b). Upon agreement and authorization of the board of retirement and the governing body of a participating employer, the retirement system may administer a post-employment health, life, welfare, or other supplemental benefit plan sponsored by the participating employer and funded through the Post-Employment Benefits Trust Account.

(g) In accordance with procedures established in the written agreement described in subdivision (f), the participating employer may elect to terminate participation in the Post-Employment Benefits Trust and instruct the retirement system to either (1) transfer the funds held in the Post-Employment Benefits Trust Account to a successor trustee named by the employer, or (2) disburse the trust assets in accordance with subdivision (i). In addition, the

board of retirement may terminate the participation of a participating employer in the Post-Employment Benefits Trust Account if either:

(1) The board of retirement finds that the participating employer is unable to satisfy the terms and conditions required by this article, the rules and procedures established by the board, or the participation agreement between the participating employer and the board of retirement.

(2) The board of retirement elects to terminate the Post-Employment Benefits Trust Account.

(h) If the board of retirement terminates the participation of an employer in the Post-Employment Benefits Trust Account, as described in paragraph (1) or (2) of subdivision (g), the funds attributable to that employer shall remain in the Post-Employment Benefits Trust Account, for the continued payment of post-employment benefits for current and future participants and the costs of administration and investment.

(i) If the board of retirement elects to terminate the Post-Employment Benefits Trust Account, the retirement system shall disburse the funds in Post-Employment Benefits Trust Account in the following order and manner:

(1) The retirement system shall retain an amount sufficient to pay for the post-employment benefits for participants in the post-employment benefits plan or plans provided by the former participating employer.

(2) The retirement system shall retain an amount sufficient to pay reasonable administrative and investment costs described in this section.

(3) After the amounts in paragraphs (1) and (2) have been retained or disbursed, the retirement system shall pay any remaining funds to the former participating employer or employers.

#### § 31694.2. Employers electing to participate in Post-Employment Benefits Trust Account; responsibilities; delegation of responsibilities

An employer who elects to participate in the Post-Employment Benefits Trust Account shall be required to establish, fund, and apply distributions from the Post-Employment Benefits Trust Account, and administer a post-employment health, life, welfare, or other supplemental benefit plan or plans funded through the Post-Employment Benefits Trust Account, pursuant to applicable federal tax requirements or other legal provisions. An employer may expressly delegate its responsibilities under this section to the retirement system as described in subdivision (f) of Section 31694.1, to the extent allowed by federal tax laws.

§ 31694.3. Establishment of trust by county board of supervisors or district governing body for funding post-employment benefits; role of board; trust agreement establishing rules and responsibilities and providing manner and method of payment of investment and administrative expenses; contracting for outside trustee, third-party administrator, or investment manager

(a) The board of supervisors of a county, or the governing body of a district, may establish, by resolution or ordinance, its own trust for the sole purpose of funding any post-employment benefits provided under a group health, life, or other welfare benefits plan or plans established and maintained by that county or district.

(b) The board of retirement and, if applicable, the board of investments, may, with the agreement of the county or district, act as one or more of the following for that employer-established trust: trustee, third-party administrator, or investment manager. The board of retirement and, if applicable, the board of investments, may enter a trust agreement, third-party administrative services agreement, investment manager agreement, or other appropriate agreement with the county or district, which shall establish the respective roles and responsibilities of the parties with respect to the administration and investment of the employer-established trust. That agreement shall provide for the manner and method of payment for the reasonable costs related to investment expenses for, and administration of, the employer-established trust. Those expenses shall not be deemed to be an investment or administrative expense of a retirement system under this chapter.

(c) The county or district may contract with an entity other than the board of retirement or board of investments to act as trustee, third-party administrator, or investment manager for the trust.

(d) Contributions to the employer-established trust may include the proceeds of debt issued by the county or district solely for the purpose of funding post-employment health, life, or other welfare benefits.

#### § 31694.5 Obligation created under other contracts

A contract entered into between a public employer and a board of retirement or board of investments as described in Section 31694.1 shall not change the obligations of a public employer, board of retirement, or board of investments that are created under other contracts, laws, ordinances, regulations, or similar actions to provide benefits for employees or retired employees of a participating county, district, or other public entity, or their qualified spouses, dependents, and beneficiaries.

#### § 31694.6 Establishment of Post-Employment Benefits Trust Account as part of retirement fund; purpose; compliance with federal and state income tax laws

(a) Notwithstanding any provision to the contrary in this article, if the Post-Employment Benefits Trust Account established under Section 31694 is established as a part of the retirement fund, then that account shall be established for the sole purpose of providing health benefits for retired members, their spouses, and dependents, and shall comply with all requirements,

including the limitations on contributions, of Section 401(h) of Title 26 of the United States Code, as applicable.

(b) The board of supervisors or the board of retirement shall take any actions necessary or appropriate to ensure that the program provided by this section complies with all applicable federal and state income tax laws, including, but not limited to, establishing rules and procedures for establishing and maintaining an account under Section 401(h) of Title 26 of the United States Code.

(c) If the Post-Employment Benefits Trust Account is established under Section 31694, assets shall not be transferred or otherwise paid from the funds held by the retirement system for retirement benefits to a medical benefits account. Assets shall not be transferred or otherwise paid from a medical benefits account to the funds held by the retirement system for retirement benefits.

(Added by Stats.2014, c. 740 (AB 2473), Sec. 13.)

## **Article 8.8 Long-Term Care Group Insurance**

## **§§31696.1-31696.5**

### **§ 31696.1. Program offered by board of retirement; persons who may be covered; enrollment; award of contracts; eligibility criteria**

(a) The board of retirement may provide a long-term care insurance program for retired members and their spouses, their parents, and their spouses parents.

(b) Subject to Section 31696.5, the board may permit active members and their spouses, their parents, and their spouses' parents to enroll in the long-term care insurance program.

(c) The long-term care insurance plan shall be made available periodically during open enrollment periods determined by the board.

(d) The board shall award contracts to carriers who are qualified to provide long-term care benefits.

(e) The long-term care insurance plan shall include home, community, and institutional care and shall provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code and shall meet those requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). However, the Department of Managed Health Care shall have no jurisdiction over the insurance plan authorized by this article.

(f) Notwithstanding subdivision (a), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria approved by the board.

(g) The board shall approve eligibility criteria for enrollment, approve appropriate underwriting criteria for potential enrollees, approve the scope of covered benefits, approve the criteria to receive benefits, and approve any other standards as needed.

NOT IMPLEMENTED.

### **§ 31696.2. Payment of cost by enrollees; separation from retirement or health benefits programs administered by system**

(a) The full cost of enrollment in a long-term care insurance plan shall be paid by the enrollees.

(b) The long-term care insurance plan shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

NOT IMPLEMENTED.

### **§ 31696.3. Long-Term Care Fund; administration and investment; disposition of income**

(a) The board shall establish a trust fund designated as the Long-Term Care Fund for the purpose of the payment of the costs and administration of the long-term care plan. The Long-Term Care Fund shall be held for the exclusive benefit of enrollees and the payment of the costs and administration of the program.

(b) The board shall have exclusive control of the administration and investment of the Long-Term Care Fund, except that in a county having a board of investments, the board of investments shall have exclusive control of the investment of the fund. Funds in the Long-Term Care Fund shall be invested pursuant to the law governing the investment of the retirement fund.

(c) Income, of whatever nature, earned on the Long-Term Care Fund shall be credited to the fund.

(d) If the Long-Term Care Fund is intended to be a part of the retirement system trust fund, then the operation of the Long-Term Care Fund, including, but not limited to, its funding, governance, investment of assets, allocation of income, and payment of benefits, shall comply with the requirements of Section 401(h) of Title 26 of the United States Code, to the extent required by that title and related federal regulations. If the Long-Term Care Fund is intended to be separate from and not a part of the retirement system, then no assets attributable to that fund shall be commingled for investment or any other purpose, with the assets of the retirement system and shall constitute a separate fund with a trust that is separate from the funds and trust of the retirement system to the extent commingling of assets for investment purposes satisfies the requirements of the federal tax laws. The board shall indicate, as a part of establishment of the Long-Term Care Fund, whether the separate fund is intended to be a part of, or separate from, the retirement system.

NOT IMPLEMENTED.

(Amended by Stats.2014, c. 740 (AB 2473), Sec. 14.)

#### § 31696.4. Recovery of administrative costs

The board is authorized to recover the administrative costs of the long-term care insurance program from insurance carriers and premiums paid by enrollees.

NOT IMPLEMENTED.

#### § 31696.5. Application of subd. (b) of § 31696.1

Subdivision (b) of Section 31696.1 shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make that subdivision applicable in the county.

NOT IMPLEMENTED.



## **Article 8.9 County Retirement System Vision Care Program**

**§§31698 - 31698.5**

### **§ 31698. County Retirement System Vision Care Program**

This article shall be known and may be cited as the County Retirement System Vision Care Program.

(Added by Stats.2007, c. 331 (AB 1288), Sec. 2.)

NOT IMPLEMENTED.

#### **§ 31698.1. Persons who may be covered**

A member who retires from a county retirement system covered by this chapter may enroll in a vision care program offered pursuant to this article subject to meeting the eligibility requirements established for the program.

(Added by Stats.2007, c. 331 (AB 1288), Sec. 2.)

NOT IMPLEMENTED.

#### **§ 31698.2. Payment of premium responsibility**

Each retired member that elects to participate in the program shall be solely responsible for the payment of premiums.

(Added by Stats.2007, c. 331 (AB 1288), Sec. 2.)

NOT IMPLEMENTED.

#### **§ 31698.3. Benefits in this article**

The benefits in this article are in addition to any other benefits provided in this chapter.

(Added by Stats.2007, c. 331 (AB 1288), Sec. 2.)

NOT IMPLEMENTED.

#### **§ 31698.4. Contracts with third-party administrators**

The sponsor of the vision care program may contract with a third-party administrator to provide vision care to the retired member, his or her survivors, and his or her eligible dependents.

(Added by Stats.2007, c. 331 (AB 1288), Sec. 2.)

NOT IMPLEMENTED.

#### **§ 31698.5. Vision care program intended as part of retirement system trust fund; compliance with federal law**

If the vision care program is intended to be part of the retirement system trust fund, then the operation of the vision care program, including, but not limited to, its funding, governance, investment of assets, allocation of income, and payment of benefits, shall comply with the requirements of Section 401(h) of Title 26 of the United States Code, to the extent required by that title, and related federal regulations. If the vision care program is intended to be separate from and not a part of the retirement system, then no assets attributable to that program shall be

commingled for investment, or any other purpose, with the assets of the retirement system. Assets attributable to the program shall constitute a separate fund with a trust that is separate from the funds and trust of the retirement system except to the extent that the commingling of assets for investment purposes satisfies the requirements of the federal tax laws. The sponsor of the vision care program shall indicate as part of the establishment of the program whether that separate fund is intended to be a part of, or separate from, the retirement system.

(Added by Stats.2014, c. 740 (AB 2473), Sec. 15.)

NOT IMPLEMENTED.

**Article 8.11 Dental Care §§31699.20 - 31699.25**

**31699.20 Short title**

This article shall be known and may be cited as the County Retirement System Dental Care Program.

(Added by Stats.2012, c. 59 (AB 2664), Sec. 4.)

NOT IMPLEMENTED.

**§ 31699.21. Enrollment in dental care program**

A retired member of a county retirement system covered by this chapter may enroll in a dental care program offered pursuant to this article, subject to meeting the eligibility requirements established for the program.

(Added by Stats.2012, c. 59 (AB 2664), Sec. 4.)

NOT IMPLEMENTED.

**§ 31699.22. Payment of premiums**

A retired member who elects to participate in the program shall be solely responsible for the payment of premiums.

(Added by Stats.2012, c. 59 (AB 2664), Sec. 4.)

NOT IMPLEMENTED.

**§ 31699.23. Dental benefits**

The benefits in this article are in addition to any other benefits provided in this chapter.

(Added by Stats.2012, c. 59 (AB 2664), Sec. 4.)

NOT IMPLEMENTED.

**§ 31699.24. Contracts to provide dental care**

The board of retirement may contract with a third-party administrator to provide dental care to the retired member, his or her survivors, and his or her eligible dependents.

(Added by Stats.2012, c. 59 (AB 2664), Sec. 4.)

NOT IMPLEMENTED.

**§ 31699.25. Revision of discontinuation of dental benefits**

The provision of dental benefits in accordance with this article may be revised or discontinued at any time.

(Added by Stats.2012, c. 59 (AB 2664), Sec. 4.)

NOT IMPLEMENTED.

**Article 9 Deferred Retirement**

**§§31700-31706**

**§ 31700. Election of member leaving service to leave contributions in fund; deferred retirement; allowances; date when payable; interest**

(a) Any member, whether over or under the minimum age of voluntary service retirement, who leaves county service after completing five years of service or who leaves county service and within 90 days, or six months if Section 31840.4 applies, becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, may elect in writing, within 90 days after establishing eligibility for reciprocity, to leave his or her accumulated contributions in the retirement fund and be granted a deferred retirement allowance to become effective either:

(1) Upon the option of the member, at any time at which he or she could have retired had he or she remained in county service in a full-time position.

(2) Not later than the first day of the month following that in which he or she attains the applicable compulsory retirement age, if any.

(b) Any member who is eligible to be granted a deferred retirement allowance under subdivision (a) because he or she has completed five years of service but who fails to so elect, shall be deemed to have elected a deferred retirement.

(c) Any member, regardless of service, whose retirement system coverage ceases but who does not terminate employment shall leave his or her accumulated contributions in the retirement fund, and interest shall continue to be credited pursuant to Section 31591, until the member retires or terminates employment.

NOTE: SEE 31840.4 WHICH INCREASED ALLOWABLE PERIOD BETWEEN EMPLOYMENTS TO SIX MONTHS.

**§ 31700.5. Deferred retirement to accept appointment by court of record or judge in reciprocal county**

Notwithstanding any other provisions of this chapter, any member with more than 10 years service who resigns his position and is granted a deferred retirement under this chapter, to accept an appointment by any court of record or judge thereof in a reciprocal county, shall not be considered as breaking his continuity of service and such member shall be eligible for reinstatement within five years to the position from which he resigned or one in a lower class in the same or related series requiring similar qualifications, knowledge and abilities. The intent provision of Article 15 of this chapter shall apply to this section.

**§ 31701. Withdrawal of accumulated contributions**

Any member may elect to rescind in writing his election and withdraw his accumulated contributions pursuant to Section 31628 at any time before the effective date of his retirement except that if within 90 days after discontinuing service under this system, he became a member of the State Employees' Retirement System or a system established in another county under this chapter, he may not rescind or withdraw any of his accumulated contributions while in service as such a member.

## § 31702. Disposal of contributions on death of member

Upon the death of any member before the effective date of his deferred retirement allowance, his accumulated contributions shall be paid to his estate or to such person as he nominates by written designation duly executed and filed with the board.

## § 31703. Deferred retirement allowance

Any member upon the effective date of the member's deferred retirement allowance shall be entitled to receive a retirement allowance as provided in Sections 31662 to 31664.65, inclusive, Sections 31673 to 31677, inclusive, or Section 31751, or Section 31808.5, or Section 31808.6, whichever is applicable.

Any member who elected deferred retirement while subject to Section 31751 shall have a retirement allowance computed in accordance with Sections 31676.11 and 31808 for service which occurred prior to the date Section 31751 was applicable to the member.

(Section inadvertently not included in prior Plan Document)

## § 31704. Election for deferred retirement allowance; time for presentation

If any member elects to have his or her deferred retirement allowance calculated in accordance with Section 31762, 31763, 31764, or 31764.5, he or she shall present his or her election in writing to the board at least six months prior to the effective date of his or her deferred retirement allowance.

## § 31705. Calculation of benefit

The retirement allowance shall be calculated according to the provisions of this chapter, or the California Public Employees' Pension Reform Act of 2013, whichever is applicable, as they exist at the time of the commencement of the retirement allowance.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 43.)

## § 31706. Failure to apply for deferred retirement; member who has left county service, has elected to leave contributions in fund and who has attained age 70; deposit of contributions and interest into reserve fund

Any member who has left county service and has elected to leave accumulated contributions in the retirement fund, or who is deemed to have elected a deferred retirement pursuant to subdivision (b) of Section 31700, and who has attained 70 years of age but has not yet applied for a deferred retirement allowance, and who is not a reciprocal member of a retirement system established pursuant to this chapter or the Public Employees' Retirement Law, shall be notified in writing by the treasurer, or other entity authorized by the board, that the member is eligible to apply for, and shall begin receiving, either a deferred retirement allowance by April 1 of the year following the year in which the member attains 72 years of age or a one-time distribution of all accumulated contributions and interest. The notification shall be made at the time the deferred member attains 70 years of age and shall be sent by certified mail to the member's last known address, or to the member's last known

employer, as shown by the records of the retirement system. If the member can be located but does not make proper application for a deferred retirement allowance with retirement to be effective by April 1 of the year following the year in which the member attains 72 years of age, the retirement system shall commence paying either an unmodified allowance to the member, if the member was eligible to begin receiving a deferred retirement allowance under the provisions of 31485.22, or a one-time distribution of all accumulated contributions and interest if the member is otherwise ineligible for a deferred retirement allowance. If the member cannot be located by April 1 of the year following the year in which the member attains 72 years of age, all of the member's accumulated contributions and interest thereon shall be deposited in, and become a part of, the current pension reserve fund of the retirement system. The board may at any time after transfer of proceeds to the reserve fund upon receipt of proper information satisfactory to it, redeposit the proceeds to the credit of the claimant, to be administered in the manner provided under this law. This section shall not apply to a member while the member is actively employed past mandatory retirement age in a retirement system established under the provisions of this chapter or the Public Employees' Retirement Law.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 49)

**§ 31720. Permanent incapacity**

Any member permanently incapacitated for the Performance of duty shall be retired for disability regardless of age if, and only if:

(a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity, or

(b) The member has completed five years of service, and

(c) The member has not waived retirement in respect to the particular incapacity or aggravation thereof as provided by Section 31009.

The amendments to this section enacted during the 1979-80 Regular Session of the Legislature shall be applicable to all applicants for disability retirement on or after the effective date of such amendments.

**§ 31720.3. Requirement of competent medical opinion; prohibition against use as substitute for disciplinary process**

In determining whether a member is eligible to retire for disability, the board shall not consider medical opinion unless it is deemed competent and shall not use disability retirement as a substitute for the employer's disciplinary process.

**§ 31720.5. Heart trouble; presumption; conditions**

(a) If a safety member, a fireman member, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both or under this retirement system or under the State Employees' Retirement System or under a retirement system established under this chapter in another county, and develops heart trouble, that heart trouble developing or manifesting itself in such cases shall be presumed to arise out of and in the course of employment. That heart trouble developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to such development or manifestation.

(b) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption.

(c) As used in this section, "fireman member" includes a member engaged in active fire suppression who is not classified as a safety member.

(d) As used in this section, "member in active law enforcement" includes a member engaged in active law enforcement who is not classified as a safety member.

(Amended by Stats.2012, c. 792 (SB 996), Sec. 2.)

#### § 31720.6. Cancer; presumption that disease arose out of and in the course of employment

(a) If a safety member, a firefighter, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both or under this retirement system or under the Public Employees' Retirement System or under a retirement system established under this chapter in another county, and develops cancer, the cancer so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of employment. The cancer so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(b) Notwithstanding the existence of nonindustrial predisposing or contributing factors, any safety member, firefighter member, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of cancer shall receive a service-connected disability retirement if the member demonstrates that he or she was exposed to a known carcinogen as a result of performance of job duties.

"Known carcinogen" for purposes of this section means those carcinogenic agents recognized by the International Agency for Research on Cancer, or the Director of the Department of Industrial Relations.

(c) The presumption is disputable and may be controverted by evidence, that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, provided that the primary site of the cancer has been established. Unless so controverted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity

(d) "Firefighter," for purposes of this section, includes a member engaged in active fire suppression who is not classified as a safety member.

(e) "Member in active law enforcement," for purposes of this section, includes a member engaged in active law enforcement who is not classified as a safety member.

#### § 31720.7. Blood-borne infectious disease or methicillin-resistant *Staphylococcus aureus* skin infection; presumption that disease arose out of, and in the course of, employment

(a) If a safety member, a firefighter, a county probation officer, or a member in active law enforcement develops a blood-borne infectious disease or a methicillin-resistant *Staphylococcus aureus* skin infection, the disease or skin infection so developing or manifesting itself in those cases shall be presumed to arise out of, and in the course of, employment. The blood-borne infectious disease or methicillin-resistant *Staphylococcus aureus* skin infection so developing or manifesting itself in those cases shall in no case be attributed to any disease or skin infection existing prior to that development or manifestation.

(b) Any safety member, firefighter, county probation officer, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of a blood-borne infectious disease or methicillin-resistant *Staphylococcus aureus* skin infection shall receive a service-connected disability retirement.



(c)(1) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption.

(2) The blood-borne infectious disease presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(3) Notwithstanding paragraph (2), the methicillin-resistant *Staphylococcus aureus* skin infection presumption shall be extended to a member following termination of service for a period of 90 days commencing with the last day actually worked in the specified capacity.

(d) "Blood-borne infectious disease," for purposes of this section, means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including, but not limited to, those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(e) "Member in active law enforcement," for purposes of this section, means members employed by a sheriff's office, by a police or fire department of a city, county, city and county, district, or by another public or municipal corporation or political subdivision or who are described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or who are employed by any county forestry or firefighting department or unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member.

#### § 31720.9. Exposure to biochemical substances; rebuttable presumption that death or illness arose out of, and in course of, employment; definitions

(a) If a peace officer member, as defined in Sections 830.1 to 830.5, inclusive, of the Penal Code, or firefighter member, with service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200), or both, or under this retirement system, under the Public Employees' Retirement System, or under a retirement system established under this chapter in another county, becomes ill or dies due to exposure to a biochemical substance, the illness that develops or manifests itself in those cases shall be presumed to arise out of, and in the course of, employment. The illness that develops or manifests itself in those cases shall in no case be attributed to any illness existing prior to that development or manifestation.

(b) Any peace officer member or firefighter member, as described in subdivision (a), who becomes permanently incapacitated as a result of exposure to a biochemical substance shall receive a service-connected disability retirement.

(c) The presumption described in subdivision (a) is rebuttable by other evidence. Unless rebutted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) For purposes of this section, a peace officer member or firefighter member, as described in subdivision (a), does not include a member whose principal duties are clerical or

otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers.

(e) "Biochemical substance" means any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as these terms are defined in Section 11417 of the Penal Code.

#### § 31721. Persons entitled to make application; transfer of appeals to retirement board

(a) A member may be retired for disability upon the application of the member, the head of the office or department in which he is or was last employed, the board or its agents, or any other person on his behalf, except that an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any eligible member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirement as provided in Article 9 (commencing with Section 31700).

ONLY SUBSECTION (a) IS APPLICABLE TO SBCERS; SUBSECTION (b) NOT ADOPTED.

#### § 31722. Time for application

The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties.

#### § 31723. Necessity of proof; medical examination

The board may require such proof, including a medical examination at the expense of the member, as it deems necessary or the board upon its own motion may order a medical examination to determine the existence of the disability.

#### § 31724. Action of board on proof of incapacity; time allowances become effective

If the proof received, including any medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his duties in the service, it shall retire him effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member's consent to retirement prior to the expiration of such leave of absence with compensation. His disability retirement allowance shall be effective as of the date such application is filed with the board, but not earlier than the day following the last day for which he received regular compensation. Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement at an earlier date.

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

#### § 31725. Determination of incapacity; notice of denial; judicial review or intervention by employer; reinstatement of dismissed employee

Permanent incapacity for the performance of duty shall in all cases be determined by the board.

If the medical examination and other available information do not show to the satisfaction of the board that the member is incapacitated physically or mentally for the performance of his duties in the service and the member's application is denied on this ground the board shall give notice of such denial to the employer. The employer may obtain judicial review of such action of the board by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure or by joining or intervening in such action filed by the member within 30 days of the mailing of such notice. If such petition is not filed or the court enters judgment denying the writ, whether on the petition of the employer or the member, and the employer has dismissed the member for disability the employer shall reinstate the member to his employment effective as of the day following the effective date of the dismissal.

#### § 31725.5. Change of position in lieu of disability retirement allowance; members eligible to retire for nonservice-connected disability

If the board finds, on medical advice, that a member in county employment, although incapacitated for the performance of his duties, is capable of performing other duties in the service of the county, the member shall not be entitled to a disability retirement allowance if any competent authority in accordance with any applicable civil service or merit system procedures offers and he accepts a transfer, reassignment, or other change to a position with duties within his capacity to perform with his disability. If this new position returns to the member compensation less than that of the position from which he was disabled, the board, in lieu of a disability retirement allowance, shall pay him the difference in such compensation until the compensation of the new position equals or exceeds the compensation (including later changes) of the former position, but such amount shall not exceed the amount to which he would otherwise be entitled as a disability retirement allowance. Such payments in lieu of disability retirement allowance shall be considered as a charge against county advance reserve for current service.

If a new position cannot be arranged at the time of eligibility for disability retirement allowance, such disability retirement allowance to which the member is entitled under this article shall be paid until such time as a new position is available and accepted.

If a disability retirement allowance is paid and the member later accepts such a new position, the period while on disability retirement shall not be considered as breaking the continuity of service and his rate of contributions shall be based on the same age as it was at the date of disability. The member's accumulated contributions shall be the same as at the date his disability retirement began less the amount charged to his accumulated normal contributions.

Nothing in this section shall be construed to require a member to accept reassignment or transfer in lieu of a disability retirement allowance:

The provisions of this section become effective in any county only when the board of supervisors adopts an ordinance providing for their implementation by the board of retirement which may include application to persons retired for disability before such effective date.

The provisions of this section shall only apply to members eligible to retire for nonservice-connected disability.

ADOPTED BY BOS ORDINANCE 4642 (MAY 1, 2007).

#### **§ 31725.6. Member rehabilitation program; vocational evaluation; plan; disability retirement allowance and supplemental allowance**

(a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member is capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall inform the appropriate agency in county service of its findings and request that the agency immediately initiate a suitable rehabilitation program for the member pursuant to Section 139.5 of the Labor Code, whereby the member could become qualified for assignment to a position in county service consistent with the rehabilitation program.

(b) When the appropriate agency in county service receives such a request from the board, the agency shall immediately refer the member to a qualified rehabilitation representative for vocational evaluation. During the course of the evaluation, the rehabilitation representative shall consult with the appropriate agency in county service to determine what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities and whether rehabilitation services will enable the member to become qualified to perform the duties of the position.

(c) Upon completion of the vocational evaluation of the member, the rehabilitation representative shall develop a suitable rehabilitation plan and submit the plan for concurrence by the member and the appropriate agency in county service and, thereafter, the agency shall forward the plan to the Division of Industrial Accidents for approval pursuant to Section 139.5 of the Labor Code.

(d) Upon receipt of approval of the rehabilitation plan, the appropriate agency in county service shall notify the board that the agency is either proceeding to implement an approved rehabilitation plan that will qualify the member for a position in county service specified in the plan or is unable to provide a position in county service compatible with the approved rehabilitation plan.

(e) Upon commencement of service by the member in the position specified in the approved rehabilitation plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved rehabilitation plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the

compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved rehabilitation plan, and the compensation rate Of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved rehabilitation plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(f) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved rehabilitation plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved rehabilitation plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions shall continue to be based on the same age at entrance into the retirement system as the member's rates were based on prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(g) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved rehabilitation plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(h) If, within one year from the date that the member has been eligible for a disability retirement allowance, the appropriate agency in county service has offered to the member, in writing, the position specified in the rehabilitation plan which had previously been concurred, in writing, by the member and approved by the Division of Industrial Accidents pursuant to Section 139.5 of the Labor Code, the member shall, within 30 days of receipt of the notice, report for duty at the location specified in the notice. If the member refuses to report for duty within the time specified, the appropriate agency in county service may apply to the board to have the member's allowance discontinued. The board shall be authorized to discontinue the member's disability retirement allowance if based upon substantial evidence of the refusal of the member to report to work without reasonable cause. However, the board shall not be authorized to impair any other of the rights or retirement benefits to which the member would otherwise be entitled.

(i) This section shall apply only to members who were incapacitated for the performance of the member's duties prior to January 1, 2004, and who are eligible to retire for service-connected disability.

§ 31725.65. Incapacitated service members and performance of duties; ability to perform other duties; vacant positions; reemployment plans; compensation; disability retirement allowance; application of section

(a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member may be capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall notify the appropriate agency in county service of its findings.

When the appropriate agency in county service receives that notification from the board, the agency shall immediately inform the member of any vacant county positions that may be suitable for the member, consistent with his or her disability, and shall consult with the member in an effort to develop a reemployment plan that shall identify what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities.

Upon approval by the member of the reemployment plan, the appropriate agency in county service shall notify the board that the agency is proceeding to implement the approved reemployment plan.

Upon commencement of service by the member in the position specified in the approved reemployment plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved reemployment plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved reemployment plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved reemployment plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(e) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved reemployment plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved reemployment plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions shall continue to be based on the same age at entrance into the



retirement system on which the member's rates were based prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(f) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved reemployment plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(g) This section shall apply only to members who are incapacitated for the performance of the member's duties on or after January 1, 2004, and who are eligible to retire for service-connected disability.

#### § 31725.7. Service retirement allowance pending determination of entitlement

(a) Except as provided in subdivision (b), at any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of his or her entitlement to disability retirement. If the member is found to be eligible for disability retirement, appropriate adjustments shall be made in their retirement allowance retroactive to the effective date of their disability retirement as provided in Section 31724.

(b) Notwithstanding subdivision (a), this section shall also apply to a member retired for service who subsequently files an application for disability retirement with the board. If the member retired for service is found to be eligible for disability retirement, appropriate adjustments shall be made in their retirement allowance retroactive to the effective date of their disability retirement, as provided in Section 31724.

(c) This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement, they shall not be entitled to return to his or her job as provided in Section 31725.

(d) If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

(e) Notwithstanding subdivision (c), if the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary may be as selected by the member at the time of retirement for service, or as if the member had selected an unmodified allowance. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall not be binding as to the type of allowance the member receives if the member is awarded a disability retirement. A change to the optional or unmodified type of allowance shall be made only at the time a member is awarded a

disability retirement and the change shall be retroactive to the service retirement date and benefits previously paid shall be adjusted. If a change to the optional or unmodified type of allowance is not made, the benefit shall be adjusted to reflect the differences in retirement benefits previously received. This paragraph shall only apply to members who retire on or after January 1, 1999.

(Amended by Status. 2022, Ch. 524 (AB 1971), Sec. 4)

#### § 31725.8. Non-service-connected disability retirement allowance to members applying for rehearing on service-connected disability claims; intervening death of member

If any applicant for service-connected disability retirement is found by the board to be permanently physically or mentally incapacitated for the performance of his duties but not because of injury or disease arising out of and in the course of his employment, he may apply for, and the board in its discretion may grant, a non-service-connected disability retirement allowance while he is pursuing any rehearing before the board or judicial review concerning his right to service-connected disability retirement. If his disability is finally determined to have been service-connected, appropriate adjustments shall be made in his retirement allowance retroactive to the effective date of his disability retirement.

If any member dies after electing to receive non-service-connected disability retirement and before the question of his entitlement to service-connected disability retirement is finally resolved, the rights of his beneficiary shall be those selected by the member at the time he elected to receive non-service-connected disability retirement.

#### § 31726. Non-service connected disability; benefits at and under age 65

(a) Upon retirement for non-service-connected disability a member who has attained age 65 shall receive their service retirement allowance.

(b) Every member under age 65 who is retired for non-service-connected disability and who is not simultaneously retired as a member on deferred retirement of the State Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of the following:

- (1) The sum to which he or she would be entitled as service retirement; or
- (2) A sum which shall consist of any of the following:

(A) An annuity which is the actuarial equivalent of the member's accumulated contributions at the time of retirement.

(B) If, in the opinion of the board, the member's disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on the member's part, a disability retirement pension purchased by contributions of the county or district.

(C) If, in the opinion of the board, the member's disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district. This paragraph shall only apply to a person who becomes a member of the system on or after January 1, 1988.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 12)



**§ 31726.5. Safety member; nonservice-connected disability; benefits at age 55; benefits under age 55**

(a) Upon retirement for nonservice-connected disability a safety member who has attained age 55 shall receive his or her service retirement allowance.

(b) Every safety member under age 55 who is retired for nonservice-connected disability and who is not simultaneously retired as a member on deferred retirement of the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of:

(1) The sum to which he or she would be entitled to as service retirement; or

(2) A sum which shall consist of:

(A) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(B) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(C) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district.

This subparagraph shall only apply to a person who becomes a member of the association on or after January 1, 1988.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 13)

**§ 31727. Non-service-connected disability retirement pension; amount**

The non-service-connected disability retirement pension shall be such an amount as with that portion of his annuity provided by his accumulated normal contributions will make his disability retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal:

(a) Ninety percent of one-sixtieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system, and the disability retirement allowance computed under (a) does not exceed one-third of his final compensation, 90 percent of one-sixtieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 65, but in such case the retirement allowance shall not exceed one-third of his final compensation.

NOTE: § 31727 was superseded by § 31727.1 when the BOS adopted § 31676.12 in 1999.

**§ 31727.1. Service retirement allowance in counties adopting § 31676.12; amount; application**

In counties adopting Section 31676.12, a member upon retirement for non-service-connected disability, who has attained age 62, shall receive his service retirement allowance.

The non-service-connected disability retirement pension for a member under age 62 shall be such an amount as with that portion of a member's annuity provided by his accumulated normal contributions will make his disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system and the disability retirement allowance computed under subdivision (a) does not exceed one-third of his final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 62, but in such case the retirement allowance shall not exceed one-third of his final compensation.

The amendments to this section during the 1975-76 Regular Session of the Legislature shall not apply in any county until adopted by majority vote of the county supervisors of that county.

NOTE: THE BOS NEVER ADOPTED THE 1975-1976 LEGISLATIVE AMENDMENTS, THEREFORE THE LANGUAGE IN EFFECT BEFORE MARCH 6, 1976 IS APPLICABLE. THAT LANGUAGE READS AS FOLLOWS: "In counties adopting Section 31767.12, the nonservice-connected disability retirement pension shall be such an amount as with that portion of a member's annuity provided by his accumulated normal contributions will make his disability retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal (a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation."

#### § 31727.2. Safety member; non-service-connected disability retirement pension; amount

The non-service-connected disability retirement pension for a safety member shall be such an amount as with that portion of his annuity provided by his accumulated normal contributions, will make his disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system, and the disability retirement allowance computed under (a) does not exceed one-third of his final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 55, but in such case the retirement allowance shall not exceed one-third of his final compensation.

§ 31727.3. Non-service-connected disability retirement pension in counties adopting §31676.15; amount

In counties adopting Section 31676.15, the non-service-connected disability retirement pension shall be such an amount as with that portion of a member's annuity provided by his accumulated normal contributions will make his disability retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal:

(a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire, or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system and the disability retirement allowance computed under subdivision (a) does not exceed one-third of his final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 65, but in such case the retirement allowance shall not exceed one-third of his final compensation.

APPLICABLE TO APCD ONLY.

§ 31727.4. Service-connected disability pension; amount; application of section

Upon retirement of any member for service-connected disability, he shall receive an annual retirement allowance payable in monthly installments, equal to one-half of his final compensation.

Notwithstanding any other provisions of this chapter, any member upon retirement for service-connected disability shall receive a current service pension or a current service pension combined with a prior service pension purchased by the contributions of the county or district sufficient which when added to the service retirement annuity will equal one-half of his final compensation, or, if qualified for a service retirement, he shall receive his service retirement allowance if such allowance is greater but in no event shall it exceed the limitation as set forth in Section 31676.1 as it now reads or may hereafter be amended to read. The provisions of this section shall also apply to any employee who becomes disabled for service-connected causes prior to the first day of the calendar month when he would normally become a member.

§ 31728.2. Lump sum payment; disability due to conviction or criminal activity

Notwithstanding Sections 31728 and 31728.1, if, in the opinion of the board, the disability is due to or results from the conviction of the member of a felony under state or federal law or if the board determines that the criminal activity caused or resulted in the member's disability, the board may pay the member a lump-sum which is equal to the sum of his or her accumulated contributions in lieu of the benefits to which the member would otherwise be

entitled as set forth in this article and provided that nothing in this section shall be construed to divest a member of any vested right to a service retirement allowance.

This section shall apply only to a person who becomes a member of the system on or after January 1, 1988.

#### § 31729. Medical examination of beneficiary; determination of board

The board may require any disability beneficiary under age 55 to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board at the place of residence of the beneficiary or other place mutually agreed upon. Upon the basis of the examination the board shall determine whether the disability beneficiary is still physically or mentally incapacitated for service in the office or department of the county or district where he was employed and in the position held by him when retired for disability.

#### § 31730. Cancellation of benefits after medical examination; reinstatement in employment

If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.

#### § 31731. Refusal to submit to examination; effect

If any disability beneficiary under age 55 refuses to submit to medical examination, his pension shall be discontinued until his withdrawal of such refusal, and if his refusal continues for one year, his retirement allowance shall be canceled.

#### § 31732. Medical, investigatory and other services; legal services; payment

The board shall secure such medical, investigatory and other service and advice as is necessary to carry out the purpose of this article. Notwithstanding Section 31529, the board may contract with an attorney in private practice for the legal services and advice necessary to carry out the purpose of this article. Notwithstanding Section 31530, the board may contract with a physician in private practice for the medical advice necessary to carry out the purpose of this article. It shall pay for such services and advice such compensation as it deems reasonable.

(Amended by Stats. 1976, Ch. 1318, Sec. 1)

(Amended by Stats. 2021, Ch. 186 (SB 634), Sec. 16)

#### § 31733. Reentry into county service; contributions; prior service credit

If a disability beneficiary is determined by the board to be no longer incapacitated and re-enters the service of a public agency covered by the retirement system under which he retired, his disability retirement allowance shall cease immediately upon such re-entry. If such disability

beneficiary again becomes a member of the retirement system, his rate of contribution for future years is that established for his age at the time of his re-entry into the system. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based upon the mortality table adopted by the board of supervisors for disabled lives, less any amount that has been refunded to him under Section 31737. The amount shall not exceed the amount of his accumulated contributions at the time of his retirement for disability. He shall also receive credit for his service as it existed at the time of his disability retirement.

#### § 31737. Effect of cancellation of retirement allowance

If the retirement allowance of any disability beneficiary is canceled for any cause other than under Section 31733, he shall be paid his accumulated contributions, less the annuity payments made to him.

#### § 31739.31. Increase in retirement, optional death and annual death allowances; adoption of section by ordinance

Every retirement allowance, optional death allowance, or annual death allowance (including an allowance payable to a survivor of a member) payable to or on account of any member of this system or of a superseded system who has been or was retired for disability is increased as follows:

Period during which retirement became effective	Percentage of increase in monthly retirement allowance
On or prior to June 30, 1962 .....	10%
12 months ended June 30, 1963 .....	8%
12 months ended June 30, 1964 .....	6%
12 months ended June 30, 1965 .....	4%
12 months ended June 30, 1966 .....	2%

In no event shall any allowance be increased by an amount greater than fifty dollars (\$50) a month or less than ten dollars (\$10) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS ORDINANCE 1985 (APRIL 7, 1969).

#### § 31739.32. Increase in retirement, optional death and annual death allowances; adoption of section by ordinance

Every retirement allowance, optional death allowance, or annual death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system or of a superseded system who has been or was retired for disability is increased as follows:

Period during which retirement became effective	Percentage of increase in monthly retirement allowance
On or prior to June 30, 1967 .....	10%
12 months ended June 30, 1968 .....	8%
12 months ended June 30, 1969 .....	6%
12 months ended June 30, 1970 .....	4%
12 months ended June 30, 1971 .....	2%

In no event shall any allowance be increased by an amount greater than seventy-five dollars (\$75) a month or less than twenty-five dollars (\$25) a month. A member with credit for 10 or more years of service in the system shall receive not less than twenty-five dollars (\$25) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS RESOLUTION 87-471 (SEPTEMBER 24, 1987); BOR RESOLUTION 87/88-7 (SEPTEMBER 16, 1987).

#### § 31739.34. Increase in retirement, optional death or annual death allowances under \$500; adoption by county

(a) Except as provided in subdivision (b) of this section, a retirement allowance, optional death allowance or annual death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system, or of a superseded system, who retired for disability on or before December 31, 1971, is hereby increased as follows:

Number of Years of County or District Service	Percentage of Increase in Monthly Retirement Allowance
25 or more years .....	10%
20-25 years .....	8%
15-20 years .....	6%
10-15 years .....	4%

(b) No allowance shall be increased to more than five hundred dollars (\$500) per month pursuant to subdivision (a) of this section.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

ADOPTED BY BOS RESOLUTION 87-471 (SEPTEMBER 24, 1987); BOR RESOLUTION 87/88-6 (SEPTEMBER 16, 1987).

#### § 31740. Supplemental disability retirement allowance

In any county which has implemented the provisions of Article 15.6 (commencing with Section 31855), any member who is thereafter retired for disability shall receive a supplemental disability retirement allowance in the sum of three hundred dollars (\$300) per month in addition to any other benefits due under this chapter, provided the member's disability is such that the member is incapable of gainful employment. The board may adopt regulations, including a requirement for periodic declarations of nonemployment, to administer this supplemental allowance.

APPLICABLE TO APCD ONLY.

## **Article 11    Optional Retirement Allowances**

## **§§31760-31765.1**

### **§ 31760. Election of actuarial equivalent of retirement allowance; change of allowance type pending determination of disability entitlement**

(a) Except as provided in subdivision (b), until the first payment of any retirement allowance is made, a member or retired member, in lieu of the retirement allowance for the member's life alone, may elect to have the actuarial equivalent of their retirement allowance as of the date of retirement applied to a lesser retirement allowance payable throughout life in accordance with one of the optional settlements specified in this article.

(b) Notwithstanding subdivision (a), a member who applies for disability and is subsequently granted a service retirement pending a determination of entitlement to disability may change the type of optional or unmodified allowance that they elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.

(c) Notwithstanding subdivision (a), a member retired for service who applies for, and is subsequently granted, a disability retirement may change the type of optional or unmodified allowance that was elected at the time the service retirement was granted, subject to the provisions of Section 31725.7

(Amended by Stats. 2015, Ch. 40 (AB 992) Sec. 1)

(Amended by Stats. 2022, Ch. 524 (AB 1971), Sec. 5)

### **§ 31760.1. Continuance of allowance to family of deceased member; minor children; designated beneficiary**

Upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1, 60 percent of the member's retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to the member's surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if the surviving spouse dies before every natural or adopted child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had the surviving spouse lived, shall be paid to the surviving spouse's natural or adopted child or children under that age collectively, to continue until every child dies or attains that age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless the surviving spouse was married to the member at least one year prior to the date of the member's retirement. The right of a child or children of a deceased member to receive an allowance under this section, in the absence of an eligible surviving spouse, shall not be dependent on whether the child or children were nominated by the deceased member as the beneficiary of any benefits payable upon or by reason of the member's death, and shall be superior to and shall supersede the rights and claims of any other beneficiary so nominated.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.



If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section, and the total retirement allowance income received by the member during the member's lifetime did not equal or exceed the member's accumulated normal contributions, the member's designated beneficiary shall be paid an amount equal to the excess of the member's accumulated normal contributions over the member's total retirement allowance income.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 50)

#### § 31760.2. Continuance of retirement allowance to surviving spouse or children of deceased member; conditions

(a) Notwithstanding Section 31481 or 31760.1, upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of the member's retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued to the member's surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if the surviving spouse dies before every child of the deceased member attains the age of 18 years, then the allowance that the surviving spouse would have received had the surviving spouse lived, shall be paid to the surviving spouse's child or children under that age collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless the surviving spouse was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school, as determined by the board.

(d) If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section and the total retirement allowance income received by the retired member during the member's lifetime did not equal or exceed the member's accumulated normal contributions, the retired member's designated beneficiary shall be paid an amount equal to the excess of the member's accumulated normal contributions over the member's total retirement allowance income.

(e) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31760.1.

(f) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(g) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The

board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 51)

ADOPTED BY BOS RESOLUTION 96-349 (AUGUST 27, 1996) (WHEN STATUTE PROVIDED FOR ADOPTION BY BOARD OF SUPERVISORS); BOR RESOLUTION 2003/04-01 (JULY 16, 2003) (AFTER STATUTE AMENDED TO REQUIRE ADOPTION BY BOARD OF RETIREMENT).

#### § 31761. Optional Settlement 1

Optional settlement 1 consists of the right to elect in writing to have a retirement allowance paid to the member until the member's death and, if the member dies before receiving in annuity payments the amount of the member's accumulated contributions at retirement, to have the balance at death paid to the member's estate or to the natural person, having an insurable interest in the member's life, as the member nominates by written designation duly executed and filed with the board.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 14)

#### § 31762. Optional settlement 2

Optional settlement 2 consists of the right to elect in writing to have a retirement allowance paid to the member until the member's death, and thereafter to the natural person, having an insurable interest in the member's life, as the member nominates by written designation duly executed and filed with the board at the time of the member's retirement.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 15)

#### § 31763. Optional settlement 3

Optional settlement 3 consists of the right to elect in writing to have a retirement allowance paid to the member until the member's death, and thereafter to have one-half of the member's retirement allowance paid to the natural person, having an insurable interest in the member's life, as the member nominates by written designation duly executed and filed with the board at the time of the member's retirement.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 16)

#### § 31764. Optional settlement 4

Optional settlement 4 consists of the right to elect in writing to have a retirement allowance paid to the member until the member's death and thereafter to have other benefits as are approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the natural persons, having an insurable interest in the member's life, as the member nominates by written designation duly executed and filed with the board at the time of retirement. The designation shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 17)

**§ 31765. Election of retirement allowance by surviving spouse of member eligible to retire; rights of surviving children; minor children**

Upon the death of a member who was eligible to retire, in circumstances in which a death benefit is payable under Article 12, if the deceased member has designated as beneficiary the member's spouse who survives the member by not less than 30 days, such surviving spouse may elect, at any time before acceptance of any benefits from the retirement system, to receive, in lieu of the death benefit otherwise payable under Article 12, the same retirement allowance as that to which such spouse would have been entitled had such member retired on the day of the member's death and selected Optional Settlement 3. Such surviving spouse may elect in writing, before the first payment of any allowance is made, to receive in a lump sum payment all or any part of the member's accumulated additional contributions. The sum so paid shall not be included in the calculation of the annuity of the surviving spouse.

If, at the death of such spouse, the spouse is survived by one or more unmarried children of such member, under the age of 18, such retirement allowance shall continue to such child or children, collectively, until every child dies, marries, or attains age 18. If such spouse dies, either before or after the death of such member without either making such election or receiving any portion of the death benefit, and no part of the death benefit has been paid to any person, prior to the payment of any benefits, the legally appointed guardian of such children shall make the election herein provided for on behalf of such surviving children as in the guardian's judgment may appear to be in their interest and advantage and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 52)

[Section 31765.1, providing for a 60% continuance to a survivor's spouse, takes precedence to this provision.]

**§ 31765.1. Election of retirement allowance by surviving spouse of member of system in certain counties; rights of surviving children; minor children**

Upon the death of any member of a retirement system established in a county subject to the provisions of Section 31676.1 or Section 31695.1, eligible for retirement pursuant to Article 7.5, 8, or 8.7 who leaves a spouse designated as beneficiary, such surviving spouse may, in lieu of the death benefit provided for in Article 12, elect to receive a retirement allowance equal to 60 percent of the amount to which the member would have been entitled had the member retired on the date of the member's death with a retirement allowance not modified in accordance with one of the optional settlements specified in Article 11. Such surviving spouse may elect in writing, before the first payment of any allowance is made, to receive in a lump sum payment all or any part of the member's accumulated additional

contributions. The sum so paid shall not be included in the calculations of the annuity of the surviving spouse.

If, at the death of such spouse, the spouse is survived by one or more unmarried children of such member, under the age of 18, such retirement allowance shall continue to such child or children, collectively, until every child dies, marries, or attains age 18. If such spouse dies, either before or after the death of such member without either making such election or receiving any portion of the death benefit, and no part of the death benefit has been paid to any person, prior to the payment of any benefits, the legally appointed guardian of such children shall make the election herein provided for on behalf of such surviving children as in the guardian's judgment may appear to be in their interest and advantage and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 53)

SEE 31458.2, WHICH PRESUMES THAT THE SURVIVING SPOUSE HAS BEEN DESIGNATED AS THE BENEFICIARY WHENEVER THE MEMBER DIES WITHOUT DESIGNATING A BENEFICIARY.

## **Article 12    Death Benefit**

## **§§31780-31789.5**

### **§ 31780. Liability for death benefit; payment**

Upon the death before retirement of a member while in service or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of service, or within one month after discontinuance of service unless the member's accumulated contributions have been paid to the member pursuant to Section 31628, the retirement system is liable for a death benefit which shall be paid:

(a) As provided in Section 31765 or 31765.1 or 31765.11 or 31781.1 or 31787, if the surviving spouse or guardian of one or more of the surviving children of the member so elects, or

(b) If no election is made pursuant to Section 31765, or 31765.1, or 31765.11, or 31781.1, or 31787 and no person is entitled to a survivor's allowance pursuant to Article 15.5 (commencing with Section 31841) or Article 16 (commencing with Section 31861) to such person as he nominates by written designation duly executed and filed with the board, before the death of the member, or

(c) If no such election is made, and a parent as defined in Article 15.5 but no other person is entitled to a survivor's allowance pursuant to Article 15.5 or 16 and a surviving spouse or child is designated as beneficiary, to such surviving spouse or child, or

(d) If no such election is made, no person is entitled to a survivor's allowance pursuant to Article 15.5 or 16, and a member has not nominated a beneficiary, to his estate.

SEE 31458.2, WHICH PRESUMES THAT THE SURVIVING SPOUSE HAS BEEN DESIGNATED AS THE BENEFICIARY WHENEVER THE MEMBER DIES WITHOUT DESIGNATING A BENEFICIARY.

### **§ 31780.1. Survivor benefits; unmarried children; determination of marital status; changes in marital status**

A child eligible to receive a survivor benefit under Section 31760.1, 31781.1, 31786, or 31787 shall be considered unmarried if the child is not married as of the date the member dies, whether or not the child was previously married. If the child thereafter marries, eligibility for the survivor benefit shall terminate, and the benefit shall not be reinstated if the child subsequently returns to unmarried status.

### **§ 31781. Death benefits; elements**

The death benefit shall consist of:

(a) The member's accumulated contributions.

(b) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable or pensionable compensation as defined in Section 7522.34, whichever is applicable, by the deceased during the 12 months immediately preceding the member's death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of such annual compensation. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence.

(Amended by Stats.2014, c. 741 (AB 2474), Sec. 8.)

(Amended by Stats. 2022, Ch. 231 (AB 1824), Sec. 18)

**§ 31781.1. Optional death allowance; election by surviving spouse; persons to whom paid; minor children**

(a) If a member of a retirement system established in a county subject to the provisions of Section 31676.1 would have been entitled to retirement in the event of a non-service-connected disability, but dies as the result of an injury or illness prior to retirement, the surviving spouse of the member shall have the right to elect, by written notice filed with the board, to receive and be paid in lieu of the death benefit provided in Sections 31780 and 31781, an “optional death allowance.”

(b) The allowance shall consist of a monthly payment equal to 60 percent of the monthly retirement allowance to which the deceased member would have been entitled if the member had retired by reason of non-service-connected disability as of the date of the member’s death.

(c) If the surviving spouse elects to receive the “optional death allowance” the payments due for this allowance shall be retroactive to the date of the deceased member’s death, and shall continue throughout the life of the spouse.

(d) If the surviving spouse elects to receive the “optional death allowance,” and thereafter dies leaving an unmarried surviving child or unmarried children of the deceased member under the age of 18 years, the “optional death allowance” shall thereafter be paid to those surviving children collectively until each child dies, marries, or reaches the age of 18 years. The right of any child to the allowance shall cease upon the child’s death or marriage, or upon reaching the age of 18 years, and the entire amount of the allowance shall thereafter be paid collectively to each of the other qualified children.

(e) If the deceased member leaves no surviving spouse but leaves an unmarried child or children under the age of 18 years, the legally appointed guardian of the child or children shall make the election provided in this section on behalf of the surviving child or children that, in the guardian’s judgment, is in the best interests of the surviving child or children. The election made shall be binding and conclusive upon all parties in interest.

(f) The rights and privileges conferred by this section upon the surviving spouse and each child of the deceased member are not dependent upon whether any of these persons have been nominated by the deceased member as the beneficiary of any death benefits and shall supersede the rights and claims of any other beneficiary so nominated.

(g) Notwithstanding any other provisions of this section, the benefits otherwise payable to each child of the member shall be paid to each child up to the 22nd birthday of the child if the child remains unmarried and is regularly enrolled as a full-time student in an accredited school as determined by the board.

(h) For purposes of this section, “child” means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of the member’s death.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 55)

**§ 31781.2. Deferred death benefits; children's benefits; minor children**

In lieu of accepting in cash the death benefit payable under Section 31781 or 31781.01, the surviving spouse of a member who dies prior to reaching the minimum retirement age and

who at the date of the member's death has 10 or more years of service to the member's credit, shall have the option to leave the amount of the death benefit on deposit in the retirement system until the earliest date when the deceased member could have retired had the member lived, and at that time receive the retirement allowance provided for in Section 31765, 31765.1, or 31765.11, whichever is applicable.

If, at the death of the spouse, the spouse is survived by one or more unmarried children of the member, under the age of 18 years, the retirement allowance shall continue to the child or children, collectively, until every child dies, marries, or attains the age of 18 years. If the spouse dies, either before or after the death of the member, without either making the election or receiving any portion of the death benefit, and no part of the death benefit had been paid to any person, prior to the payment of any benefits, the legally appointed guardian of the children shall make the election herein provided for on behalf of the surviving children as, in the guardian's judgment, may appear to be in their interest and advantage, and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 56)

(Amended by Stats. 2021, Ch. 186 (SB 634), Sec. 17)

### § 31781.3. Combined benefit; member who dies in service after five years or as result of service-connected injury or disease; election by surviving spouse

The surviving spouse of a member who dies in service after five years of service or as a result of service-connected injury or disease may elect, in lieu of the death benefit in Section 31781 or the life annuity provided in Section 31781.1 or 31787, the benefit that is the sum of both of the following:

(a) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable or pensionable compensation as defined in Section 7522.34, whichever is applicable, by the deceased during the 12 months immediately preceding his or her death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of that compensation.

(b) A monthly allowance as provided in Section 31781.1 or 31787 reduced by a monthly amount which is the actuarial equivalent of the amount in subdivision (a) as applied to the life of the surviving spouse.

(Amended by Stats. 2014, c. 741 (AB 2474) Sec. 9.)

### § 31782. Revocation of nomination of beneficiary

The nomination of a beneficiary under this system, other than nominations under optional settlements 2, 3 and 4, may be revoked at the pleasure of the person who made it and a different beneficiary nominated by written designation duly executed and filed with the board.



### § 31783. Payment of funeral expenses in absence of beneficiary; effect

If the nominated beneficiary cannot be found by the board, or if the nominated beneficiary is the estate of the deceased person, the board in its discretion may pay to the undertaker who conducted the funeral all or a portion of the amount payable as a death benefit, but not more than the funeral expenses of the deceased person as evidenced by the sworn itemized statement of the undertaker and by such other documents as the board may require. Payment so made is a full discharge of the board and system for the amount so paid.

### § 31783.5. Unclaimed benefits; location of claimants; holding period; deposits to reserve fund; authority to return

(a) Whenever a person or estate entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) The board shall attempt to locate the claimant through such means as the board in its sound discretion deems reasonable including, but not limited to a registered or certified letter, return receipt requested, mailed to the last known address of the claimant.

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivision (a) shall be held for the claimant. If the amounts are not claimed within five years after the last attempted contact with the claimant, the amounts shall be deposited in and become a part of the pension reserve fund. The board may at any time after transfer of unclaimed amounts upon receipt of information satisfactory to it, authorize the return of amounts so held in reserve to the credit of the claimant. Those amounts shall be paid only to claimants who have not yet attained the age for mandatory distribution under the Internal Revenue Code.

### § 31784. Election of installment payments; lump sum payment on death of beneficiary

The person to whom the whole or any part of a death benefit is payable may, at any time before payment thereof, elect in writing to have such death benefit or part thereof paid over a period not to exceed 10 years in monthly installments, plus interest on the unpaid balance thereof, at a rate to be determined by the board. If such person dies before all such installments are paid, the board shall pay the balance in one lump sum to his estate or person entitled to receive his property.

### § 31785. Continuance of allowance to family of deceased safety member of retirement system of certain counties; restrictions; payment in cases of death prior to Jan. 1, 1952; minor children

Upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1 or 31695.1, 60 percent of the member's retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to the member's surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if the surviving spouse dies before



every child of the deceased safety member attains the age of 18 years, then the allowance which the surviving spouse would have received had the surviving spouse lived, shall be paid to the surviving spouse's child or children under that age, collectively, to continue until every child dies or attains that age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless the surviving spouse was married to the safety member at least one year prior to the date of the member's retirement.

Any qualified surviving spouse or children of a member of a pension system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200), who shall have been retired on or before December 31, 1951, shall be paid a retirement allowance pursuant to the provisions of this section. In cases where the death of a member occurred prior to January 1, 1952, the payment of the retirement allowance to the qualified surviving spouse or children shall be made effective on January 1, 1952.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 57)

#### **§ 31786. Continuance of allowance to family of deceased member retired for service-connected disability; restrictions; minor children**

Upon the death of any member after retirement for service-connected disability, the member's retirement allowance as it was at the member's death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to the member's surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if the surviving spouse dies before every child of such deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had the surviving spouse lived, shall be paid to the surviving spouse's child or children under said age, collectively, to continue until every such child dies or attains said age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless the surviving spouse was married to the member prior to the date of the member's retirement.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 59)

**§ 31786.1. Continuance of retirement allowance to surviving spouse or children of deceased member; conditions**

(a) Notwithstanding Section 31481 or 31786, upon the death of any member after retirement for service-connected disability, the member's retirement allowance as it was at the member's death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued to the member's surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if the surviving spouse dies before every child of the deceased member attains the age of 18 years, then the allowance that the surviving spouse would have received had the surviving spouse lived, shall be paid to the surviving spouse's child or children under that age, collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless the surviving spouse was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(d) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31786.

(e) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(f) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 60)

ADOPTED BY BOS RESOLUTION; (AUGUST 27, 1996) (WHEN STATUTE PROVIDED FOR ADOPTION BY BOARD OF SUPERVISORS); BOR RESOLUTION 2003/04-01 (JULY 16, 2003) (AFTER STATUTE AMENDED TO REQUIRE ADOPTION BY BOARD OF RETIREMENT).

**§ 31787. Optional death allowance; surviving spouse or children; election**

(a) If a member would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of injury or disease arising out of and in the course of the member's employment, the surviving spouse of the member shall have the right to elect, by written notice filed with the board, to receive and be paid in lieu of the death benefit provided for in Sections 31780 and 31781, an optional death allowance.

(b) The optional death allowance shall consist of a monthly payment equal to the monthly retirement allowance to which the deceased member would have been entitled if the member had retired by reason of a service-connected disability as of the date of the member's death.

(c) If the surviving spouse elects to receive the optional death allowance, the payments due for this allowance shall be retroactive to the date of the deceased member's death, and shall continue throughout the life of the spouse.

(d) If the surviving spouse elects to receive the optional death allowance, and thereafter dies leaving an unmarried surviving child or unmarried children of the deceased member under the age of 18 years, the optional death allowance shall thereafter be paid to those surviving children collectively until each child dies, marries, or reaches the age of 18 years. The right of any child to the allowance shall cease upon the child's death or marriage, or upon reaching the age of 18 years, and the entire amount of the allowance shall thereafter be paid collectively to each of the other qualified children.

(e) If the deceased member leaves no surviving spouse but leaves an unmarried child or children under the age of 18 years, the legally appointed guardian of the child or children shall make the election provided in this section on behalf of the surviving child or children that, in the guardian's judgment, is in the best interests of the surviving child or children. The election made shall be binding and conclusive upon all parties in interest.

(f) The rights and privileges conferred by this section upon the surviving spouse and each child of the deceased member are not dependent upon whether any of those persons have been nominated by the deceased member as the beneficiary of any death benefits and shall supersede the rights and claims of any other beneficiary so nominated.

(g) Notwithstanding any other provision of this section, the benefits otherwise payable to each child of the member shall be paid to each child up to the 22nd birthday of the child if the child remains unmarried and is regularly enrolled as a full-time student in an accredited school as determined by the board.

(h) For purposes of this section, "child" means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of the member's death.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 61

#### § 31787.5. Special death benefit; additional amount for children

(a) A surviving spouse of a member who is killed in the performance of duty or who dies as the result of an accident or an injury caused by external violence or physical force, incurred in the performance of the member's duty, now or hereafter entitled to receive a death allowance under Section 31787, shall be paid an additional amount for each of the member's children during the lifetime of the child, or until the child marries or reaches the age of 18 years, as follows, subject to the limitation in subdivision (b):

(1) For one child, 25 percent of the allowance provided in Section 31787.

(2) For two children, 40 percent of the allowance provided in Section 31787.

(3) For three or more children, 50 percent of the allowance provided in Section 31787.

(b) If a benefit payable under this section, when added to a benefit payable under Section 31787, exceeds the maximum benefit payable by a tax-qualified pension plan under the

Internal Revenue Code (26 U.S.C.A. Sec. 401 et. seq.), the benefit payable under this section shall be reduced to the amount required to meet that benefit limit.

(c) If the surviving spouse does not have legal custody of the member's children, the allowance provided by this section shall be payable to the person to whom custody of the children has been awarded by a court of competent jurisdiction for each child during the lifetime of the child, or until the child marries or reaches the age of 18 years.

(d) The allowance provided by this section shall be payable to the surviving spouses of members whose duties consist of active law enforcement or active fire suppression or any other class or group of members as the retirement board shall fix. The allowance provided by this section is not payable to the surviving spouses of members described in Section 31469.2.

(e) Any child whose eligibility for an allowance pursuant to this section commenced on or after October 1, 1965, shall lose that eligibility effective on the date of the child's adoption.

(f) This section shall become operative in any county, which has adopted the provisions of this chapter but which has not previously adopted the provisions of this section on October 1, 1965. Each surviving spouse of a member or other person having legal custody of a member's child or children who is paid an additional amount for each of the member's children because of the amendments to this section enacted at the 1965 or 1967 Regular Session shall receive those payments as they accrue from and after October 1 of the year during which this section was amended to provide for the payment to the member's child or children of that allowance, but the surviving spouse or other person shall not be given a claim for any increase in those benefits for a time prior to that date.

(g) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 62

#### § 31787.6. Special death benefit; spouse of safety member who dies as a result of accident or injury caused by external violence or physical force; exception

A surviving spouse of a safety member who is killed in the performance of duty or who dies as the result of an accident or injury caused by external violence or physical force, incurred in the performance of his or her duty, shall be paid the following amount in addition to all other benefits provided by this chapter:

A one-time lump-sum benefit equal to an amount, provided from contributions by the county or district, equal to the annual compensation earnable or pensionable compensation as defined in Section 7522.34, whichever is applicable, by the deceased at his or her monthly rate of compensation at the time of his or her death.

This section is not applicable to members described in Section 31469.2.

(Amended by Stats. 2014, c. 741 (AB 2474), Sec. 11.)

§ 31789.5. Death of person while receiving retirement allowance; operation and application

(a) Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his or her estate, or to the beneficiary as he or she shall nominate by written designation duly executed and filed with the board, an amount determined by the board of supervisors. The board of supervisors shall, by resolution adopted by majority vote, fix and determine an amount that may not exceed five thousand dollars (\$5,000).

(b) This section applies to every member who dies after this section becomes operative whether he or she has retired before or after the operative date or effective date of this section.

(c) The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1 and may be paid in part, from contributions of the county or district in accordance with Section 31789, and in part, from surplus earnings of the retirement system in accordance with Section 31789.1.

(d) The death benefit provided by this section may, at the election of the board of retirement, be provided through a group life insurance policy if the cost of that policy to the system is the same or less than the cost to the system, county, or district of other methods of providing the benefit.

(e) This section may not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section applicable in the county and the board of retirement, by resolution adopted by a majority vote, determines that its portion of the cost of the benefits may be financed from surplus earnings of the retirement fund.

(f) Upon adoption, by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610), only that portion of those benefits that is paid from surplus earnings described in Section 31592.2 shall be paid, instead, from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

BOS RESOLUTION 98-177 (MAY 12, 1998) MADE BENEFIT AMOUNT \$2000 EFFECTIVE JULY 1, 1998; AND BOS RESOLUTION 99- 408 (OCTOBER 5, 1999) MADE IT \$5,000, EFFECTIVE JANUARY 1, 2000.

**Article 14    Subrogation                    §§31820-31823**

**§ 31820. Recovery by board against third party tortfeasor; application of Workmen's Compensation Law**

If benefits are payable under this chapter because of an injury to, or the death of, a member of the retirement association, and such injury or death is the proximate consequence of the act of any person other than his employer, the board on behalf of the retirement association may recover from such person an amount which is the lesser of the following:

(1) An amount which is equal to one-half of the actuarial equivalent of the benefits for which the association is liable because of such injury or death; or

(2) An amount which is equal to one-half of the remaining balance of the amount recovered after allowance of that amount which the employer or its insurance carrier have paid or become obligated to pay. The right shall be determined under the subrogation provisions of any workmen's compensation law.

**§ 31821. Joinder of retirement association with employer or insurer**

The retirement association may join with the employer or its compensation insurance carrier in any proceeding under this article.

**§ 31822. Application of amounts recovered from third party**

Any amount recovered by any of the parties shall be applied, first, to the amounts which the employer or its insurance carrier have paid or become obligated to pay, and second, to the amounts to which the retirement association is entitled under the provisions of Section 31820 hereof.

**§ 31823. Commencement of actions; time at which liability of retirement systems fixed**

Actions brought by the board under this article shall be commenced within three years after the liability of the retirement system to pay benefits is fixed. Liability of the retirement system is fixed at the time the board approves the payment of benefits under this chapter.

**§ 31830. Legislative intent**

The provisions of this article are intended to encourage career public service by granting reciprocal retirement benefits to members who are entitled to retirement rights or benefits from two or more retirement systems established under this chapter or from a retirement system established under this chapter and the Public Employees' Retirement System, the State Teachers Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and to delineate the financial obligations of each system and related political entity so that no system or political entity shall be liable for more than its just financial obligation.

**§ 31831. Authority to elect deferred retirement; rescission; withdrawal of contributions**

Any member, whether over or under the minimum age of service retirement, who leaves county service and within 90 days or six months if Section 31840.4 applies thereafter becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, regardless of the amount of county service, may elect deferred retirement pursuant to Article 9 of this chapter, except that he or she may not, after that election, rescind the election or withdraw any of his or her accumulated contributions while a member of such other system.

**§ 31831.1. Election by member leaving county service and becoming member of another system to leave contributions on deposit**

Any member who left county or district service on or before December 31, 1971, and became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System, who did not elect to, or was not eligible to, leave his contributions on deposit pursuant to Article 9 (commencing with Section 31700) may now elect to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) by redepositing in the retirement fund of the county or district he left the amount of accumulated contributions and interest he withdrew from such retirement fund plus regular interest thereon from date of separation.

Any such member whose accumulated contributions are on deposit as provided in this section and any other member who left county or district service on or before December 31, 1971, who became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System and who elected to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) shall be eligible for the benefits provided in this article, and for purposes of such benefits shall be deemed to have entered membership in such other system within 90 days of his separation from county or employment. The deferred retirement allowance for such member shall be determined in accordance with the provisions of this chapter applicable to members retiring directly from



county employment on the date of his retirement. Any member who qualifies for a reduced age at entry pursuant to this section shall be entitled to use such age only from and after the date he completes the redeposit as provided in this section or, if he elected to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700), from and after the date he notifies the board in writing that he desires the benefits of this section. This section shall not apply to members who are retired or who are not in service of an employer making him a member of a retirement system established under this chapter or of the Public Employees' Retirement System.

Unless this chapter expressly provides to the contrary the retirement allowance received by a member pursuant to this section shall be calculated based upon the laws pertaining to the retirement system of such district or county as of the date of retirement and not the laws pertaining to such system as of the date the member first left county or district service.

This section shall not be applicable to any member entering service after December 31, 1977.

### § 31831.3. Election to redeposit contributions on deposit for active members of retirement systems; rights of former members; application of sections; criteria to determine eligibility of former members

(a) Notwithstanding Sections 31831.1 and 31831.2, any former member who left county or district service and became a member of a retirement system established under this chapter in another county or district, or a reciprocal retirement system, or a retirement system established under the Public Employees' Retirement Law, and who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700), may elect to redeposit those contributions if he or she is an active member of a county retirement system, the Public Employees' Retirement System, or another reciprocal retirement system at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the county or district he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the fund. The deferred retirement allowance of the member shall be determined in accordance with the provisions of this chapter applicable to a member retiring directly from county employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions payable the first day of the month following the date the association receives notice of the redeposit, only to the extent provided in Section 31833.

(d) This section does not apply to the following:

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a retirement system established under this chapter in another county or district, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in this system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a "former member" is a member who left county or district service and who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700).

(g) Each retirement system shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, pursuant to this section in those cases in which the system no longer maintains complete records with respect to the former member.

#### § 31832. Data and information on employee's status

The board shall, on request of the Board Of Administration of the Public Employees Retirement System, the board of retirement of a retirement system established in another county under this chapter, the Board of Retirement of the State Teachers' Retirement System, or the board of retirement of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, supply information and data necessary for the administration of such other system as it is affected by membership in and service credited under this system.

#### § 31833. Age at entry

For the purpose of this article and Articles 6 and 6.8 of this chapter, age at time of entrance into the retirement system for a person who enters within 90 days, or six months if Section 31840.4 applies, of last rendering service as a member of the Public Employees' Retirement System, another retirement system established under this chapter, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and who retains his membership in such other system or systems, shall be his age at entry into the first such other system.

### § 31833.1. Member's age at time of entrance into retirement system; redeposit of contributions

For the purpose of this article and Article 6 (commencing with Section 31620) and Article 6.8 (commencing with Section 31639) of this chapter, a member's age at the time of entrance into the retirement system for a person who, after entering, redeposits the contributions he or she withdrew from the Public Employees' Retirement System, and who otherwise meets all requirements for reciprocity under this article by reason of his or her membership in the Public Employees' Retirement System, shall be his or her age at entry into the Public Employees' Retirement System, commencing with the pay period immediately following receipt of confirmation from the Public Employees' Retirement System that all withdrawn contributions have been redeposited.

### § 31834. Time of becoming safety members

Notwithstanding Section 31558 and regardless of age at entry into the system in counties subject to the provisions of Section 31676.1 and in counties electing pursuant to Section 31695.1, a person shall become a safety member on the first day of the calendar month following his entrance into service in a position the principal duties of which are defined in Sections 31470.2, 31470.4 or 31470.6, if such first day of the calendar month is within 90 days, or six months if Section 31840.4 applies of last rendering active police or fire suppression or lifeguard work as a member of the Public Employees' Retirement System or a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and the person retains his membership in such other system.

### § 31835. Average earnable compensation; computation; conditions

The average compensation during any period of service as a member of the Public Employees' Retirement System, a member of the Judges' Retirement System or Judges' Retirement System II, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be considered compensation earnable or pensionable compensation pursuant to Section 7555.34, whichever is applicable, by a member for purposes of computing final compensation for that member provided:

(a) The period intervening between active memberships in the respective systems does not exceed 90 days, or 6 months if Section 31840.4 applies. That period shall not include any time during which the member was prohibited by law from becoming a member of the system of another county.

Notwithstanding anything in this chapter to the contrary, the 90-day or 6-month restriction referred to in this section or any other provision of this chapter affecting deferred

retirement shall not be applicable to any members who left county or district service prior to October 1, 1949, and subsequently redeposited.

(b) He or she retires concurrently under both systems and is credited with the period of service under that other system at the time of retirement.

The provisions of this section shall be applicable to all members and beneficiaries of the system.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 44.)

#### **§ 31835.1. Member eligible to retire at age 50 or required to retire because of age who cannot retire concurrently from public employees retirement system in another county**

Notwithstanding the provisions of Sections 31835 and 31836, a member of a retirement system established under this chapter who is eligible to retire at age 50 pursuant to Section 31672, or who is required to retire because of age while a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, but who cannot retire concurrently from the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be entitled to have his final compensation and service determined under Sections 31835 and 31836 as if he had retired concurrently under such other system.

#### **§ 31836. Service; credit for service**

"Service," solely for purposes of qualification for payment of benefits and retirement allowances, shall also include service as an employee of the state or a contracting agency under the Public Employees' Retirement System or of another county having a retirement system established under this chapter, or as a member of the State Teachers' Retirement System, or as a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, if the compensation for such service constitutes compensation earnable or pensionable compensation pursuant to Section 7522.34, whichever is applicable, by a member under Section 31835 of this part.

No credit shall be granted in this retirement system for service for which the member has received credit in another retirement system or for which he or she is presently receiving a retirement allowance from another retirement system.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 45.)

#### **§ 31836.1. "Service" defined; operative date**

"Service," for the purpose of qualifying members for the discontinuance of contributions pursuant to Section 31625.2, shall also include service as an employee of the state, a contracting agency under the Public Employees' Retirement System, another county having a retirement

system established Under this chapter, or any other public agency if the compensation for the service constitutes compensation earnable by a member under Section 31835.

This section shall become operative on January 1, 1988.

THIS STATUTE APPLIES TO MEMBERS OF LEGACY SAFETY PLANS FOR WHOM CONTRIBUTIONS DISCONTINUE AFTER 30 YEARS (SEE SECTIONS 31664, 31664.1(c) and 31664.2(c)), BUT ONLY FOR GENERAL MEMBERS WHO WERE MEMBERS ON MARCH 7, 1973 (SEE SECTION 31625.2).

#### § 31837. Members leaving accumulated contributions on deposit; eligibility; conditions

Any member who elects, pursuant to Section 31700 and 31832, to leave his accumulated contributions on deposit may be retired for disability, regardless of age or length of service, and receive a disability retirement allowance under this article based on the service credited to him at the time of retirement during any period thereafter in which he receives a disability retirement allowance under the Public Employees' Retirement System or a retirement system established under this chapter in another county, subject to the following conditions:

- (1) That such allowance shall not be paid if the period intervening between the last service credited under this system and his becoming a member in such other system exceeds 90 days.
- (2) That if the member is retiring for non-service-connected disability, and, if a safety member has not attained age 55, or if a nonsafety member has not attained age 65, his retirement allowance shall be as calculated pursuant to Section 31838.
- (3) That such allowance shall be an annuity which is the actuarial equivalent of the member's accumulated contributions when retirement under the other system is for disability arising out of and in the course of employment subject to such other system.

#### § 31838. Retirement allowance; computation of amount

Every safety member under age 55 years and every other member under age 65 years who is retired for non-service-connected disability and who is retired simultaneously under a disability retirement allowance from the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a retirement allowance equal to the greater of the following amounts:

- (1) The sum to which he would be entitled as service retirement; or
- (2) A sum which shall consist of:
  - (a) An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement, and
  - (b) If, in the opinion of the board, his disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his part, a disability retirement pension purchased by contributions of the county or district, all computed as provided in Sections 31727 or 31727.2.

#### § 31838.5. Members with service credits in more than one entity; disability benefit amount

No provision of this chapter shall be construed to authorize any member, credited with service in more than one entity and who is eligible for a disability allowance, whether service

connected or nonservice connected to receive an amount from one county that, when combined with any amount from other counties or the Public Employees' Retirement System, results in a disability allowance greater than the amount the member would have received had all the member's service been with only one entity.

In cases of service-connected disability allowances only, the limitation on disability allowances provided for in this section shall apply to service-connected disability allowances payable to those who, after being employed with another county or an entity within the Public Employees' Retirement System, become employed by a second public entity on or after January 1, 1984.

Each entity shall calculate its respective obligations based upon the member's service with that entity and each shall adjust its payment on a pro rata basis.

#### § 31839. Death before retirement; death benefit

Upon the death before retirement of a member, while in service as a member of the Public Employees' Retirement System or a retirement system established pursuant to this chapter in another county, who has made an election pursuant to Section 31700 and 31832, the death benefit provided in Section 31781 payable by the system from which he elected deferred retirement shall consist of:

(a) When death is not the result of a disease or injury arising out of and in the course of employment, the amount of such death benefit shall not exceed an amount which when added to the death benefit payable for the member under such other system will equal the total of the accumulated contributions to both systems plus 50 percent of the annual compensation earnable by the deceased during the 12 months immediately preceding his death.

(b) When death is the result of disease or injury arising out of and in the course of his employment as a member of such other system, such death benefit shall consist solely of the member's accumulated contributions.

#### § 31840. Applicability of death benefit provisions to certain counties

The death benefit provisions of paragraph (a) of Section 31839 shall be subject to the provisions of Sections 31765, 31765.1, 31781.1 and 31781.2 in those counties where these sections are applicable. In all calculations under these sections only the retirement allowances which would be payable by the system from which the member elected deferred retirement shall be considered. The provisions of Section 31784 shall apply to the death benefits provided by paragraphs (a) and (b) of Section 31839.

#### § 31840.2. Extension of rights or subjecting member to limitation by reason of membership in public employees retirement system

The provisions of this article extending rights to a member of a county retirement system established under this chapter or subjecting him or her to any limitation by reason of his or her membership in the Public Employees' Retirement System shall apply in like manner and under like conditions to a member by reason of his or her membership in any retirement system established under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 with respect to which an ordinance complying with Section 45310.5 has been filed with and accepted



by the board or by reason of his or her membership in a retirement system established by or pursuant to the charter of a city or city and county or by any other public agency of this state which system, in the opinion of the board, provides a similar modification of rights and benefits because of membership in a system established under this chapter and with respect to which the governing body of such city, city and county or public agency and the board have entered into agreement pursuant to Section 20351. This section shall apply only to a member whose termination and subsequent reentry into employment resulting in a change in membership from a system established under this chapter to such other system or from such other system to a system established under this chapter occurred after such acceptance or determination by the board; provided, however, that provisions relating to computation of final compensation shall apply to any other member if such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by the board.

As used in this section, "board" means the Board of Administration of the Public Employees' Retirement System.

#### § 31840.4. Rights conditioned upon reemployment prior to termination of membership; length of time; applicability of section

Wherever in this chapter the rights of a member, because of membership in another retirement system, are conditioned upon reemployment within 90 days of termination of employment covered by a system under this chapter or another retirement system, with respect to such reemployment which occurs on and after January 1, 1976, such period shall be six months rather than 90 days.

This section shall also be applicable to members who were permanent employees of the state who were laid off because of a reduction in work force and whose break in service between retirement systems occurred prior to January 1, 1976, but not before April 1, 1970.

#### § 31840.8. Application of chapter provisions; State Teachers' Retirement System Defined Benefit Plan members; Judges' Retirement System and Judges' Retirement System II

The provisions of this chapter extending rights to a member of a county retirement system established under this chapter by reason of his or her membership in the Public Employees' Retirement System shall also apply to members of the State Teachers' Retirement System Defined Benefit Plan, the Judges' Retirement System, and the Judges' Retirement System II.



THIS ARTICLE, ADOPTED BY APCD RESOLUTION 95-9, IS APPLICABLE TO APCD ONLY.

#### § 31855. Legislative intent

It is the intent of the Legislature to provide by this article a means by which any county which has provided all or any of officers and employees with both retirement benefits pursuant to this chapter and federal social security benefits on a nonintegrated basis may provide the benefits set forth herein as an alternative to survivorship benefits under social security. Accordingly, this article shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote and specifying the class or classes of employees to which it applies, make the provisions of this article applicable in such county, and a majority of the members of the affected class or classes voting at an election held during 1974 with more than 50 percent of the members participating favor the termination of supplemental survivorship benefits under social security. Any such resolution may specify a date subsequent to the date of adoption as the operative date for implementation of this article.

#### § 31855.1. Inapplicability to retired or deferred retirement status members; reentry into employment

This article shall not be applicable to any member who has retired or been placed in a deferred retirement status prior to the date this article becomes operative in any county; provided, however, that if such member reenters county-employment on a full-time basis subsequent to the operative date of the article, it shall become applicable to such member.

#### § 31855.2. Adoption of enabling resolution

Adoption of an enabling resolution by a board of supervisors shall make the provisions of this article applicable only to officers and employees of that county. If the governing board of any special district whose employees are within the retirement system of that county desire to include their employees within the coverage of this article, they shall do so by adoption of a resolution so to do by a majority of all of the members of the board.

#### § 31855.3. Child

As used in this article "child" means a member's child who, when the member dies, is both dependent on the member and unmarried, as well as any of the following:

- (a) Under 18 years of age.
  - (b) Any age, totally disabled, and became totally disabled before reaching 18 years of age.
  - (c) Age 18 years or over, but under 22 years of age, and enrolled as a full-time student in an accredited school, as determined by the board.
- (Amended by Stats. 2018, Ch. 92 (SB 1289), Sec. 112)  
(Amended by Stats. 2020, Ch. 275 (AB 2101), Sec. 63)

#### § 31855.4. Parent

As used in this article "parent" means the father or mother of the deceased member who at the time of the death of such member was not less than 62 years of age and was receiving not less than one-half of his or her support from the member, and who has not remarried since the member's death.

#### § 31855.5. Survivor's allowance; spouse

Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death, the member's surviving spouse shall be paid a monthly survivor's allowance equal to the sum, based upon the appropriate factual circumstances, specified in Section 31855.8 or 31855.12.

(Amended by Stats.2009, c. 9 (AB 1355), Sec. 1.)

#### § 31855.6. Survivor's allowance; child or children

Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death and who is survived by one or more children but no surviving spouse, the child or children shall be entitled to a monthly survivor's allowance as specified in Section 31855.8 or 31855.12. The monthly survivor's allowance of two or more children shall be divided equally as to those children.

(Amended by Stats.2009, c. 9 (AB 1355), Sec. 2.)

#### § 31855.7. Survivor's allowance; parent or parents

Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death, the member's surviving parent or parents shall be entitled to a monthly survivor's allowance as specified in Section 31855.8 or 31855.12.

(Amended by Stats.2009, c. 9 (AB 1355), Sec. 3.)

#### § 31855.9. Supplemental survivorship benefit; lump sum

Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death who is survived by a spouse with whom the member was living at the time of his or her death, the retirement system shall pay to such surviving spouse, in addition to all other payments due, if any, a lump sum supplemental survivorship benefit of two hundred fifty-five dollars (\$255), as set forth in Section 31855.8 or 31855.12. If such member is not survived by a spouse with whom the member was living, the retirement system shall apply a lump sum supplemental survivorship benefit to reimburse the person who paid the funeral expenses of the member in an amount not to exceed two hundred fifty-five dollars (\$255).

(Amended by Stats.2009, c. 9 (AB 1355), Sec. 4; Stats.2010, c. 328 (SB 1330), Sec. 90.)

§ 31855.10. Financing cost of benefits; deduction from salary or wages; contributions by county

In addition to the contributions required elsewhere in this chapter there shall be deducted from the salary or wages of each member covered by the provisions of this article, to finance the cost of the benefits provided herein, the sum of three dollars and fifty cents (\$3.50) per month and an equivalent amount to be paid by the county as an additional county contribution. The amounts deducted pursuant to this section shall not be considered to be a portion of a member's accumulated contributions and shall not be refunded to a member upon termination of service or for any other reason. The board is empowered to change the contribution figures set forth herein from time to time based on actuarial recommendation as to contributions needed to fund these benefits.

§ 31855.12. Survivor's allowances; alternative table; contingent operation

Monthly survivor's allowances shall be based upon the following table:

Members Survivors	Monthly allowances
Surviving spouse caring for one child .....	\$1,390
Surviving spouse caring for two or more children .....	1,622
One child only .....	695
Two children only .....	1,390
Three or more children.....	1,622
Widow or widower age 62 (no child).....	768
Widow or widower age 60 (no child).....	663
Each of two dependent parents at age 62 .....	695
Sole dependent parent at age 62 .....	795
Lump-sum payment .....	255

This section is an alternative to Section 31855.8.

This section shall not be operative in any county which has adopted this article, until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

## **Article 16.5 Cost of Living Adjustment §§31870-31874.3**

### **§ 31870. Determination; maximum annual change of two percent in allowances; limitation on reduction**

The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or a superseded system, who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 2 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 2 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.

ADOPTED BY BOS ORDINANCE 1986 (APRIL 7, 1969) BUT SUPERSEDED BY ADOPTION OF 31870.1 PER ORDINANCE 2367(OCTOBER 16, 1972) SECTION 31870 WAS SUBSEQUENTLY RE-ADOPTED IN 2012 PER BOS ORD. 4835 (MAY 15, 2012) FOR ALL GENERAL MEMBERS HIRED ON OR AFTER JUNE 25, 2012 (GENERAL PLANS 7 and 8).

### **§ 31870.1. Determination; maximum annual change of three percent in allowances; limited on reduction;**

The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired Or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 3 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 3 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his

beneficiary on the effective date of the allowance or the application of this article, whichever is later.

SEE HISTORY ACCOMPANYING SECTION 31870.

#### § 31871. Funding increases in allowances based on service rendered prior to applicable date of article

Any increases in allowances which are based upon service rendered prior to the applicable date of this article (as fixed pursuant to Section 31874) shall be funded insofar as possible from the moneys in the reserve described in Section 31592 which are in excess of one (1) percent of the assets of the retirement system; except that in counties which have applied Section 31592.2 the board of supervisors may fund all or part of the increases from the county general fund.

#### § 31872. Funding other increases in allowances

Any such increases in allowances which are not funded as provided in Section 31871 and any such increases which are based upon service rendered after the applicable date of this article (as fixed pursuant to Section 31874) shall be funded by contributions set by the board, as it determines necessary.

#### § 31873. Increases in contributions; equal apportionment; payment by county of contribution assessable to member

(a) Any increases in contributions shall be shared equally between the county or district and the contributing members, with the individual member's contributions based upon the member's age at his or her nearest birthday at time of entrance into the retirement system or based on a single rate of contributions pursuant to Section 31621.11, 31639.26, or as otherwise authorized by this chapter or the California Public Employees' Pension Reform Act of 2013. The board of supervisors by a majority vote may elect to pay part of the costs of the contributions which would otherwise be assessed to the individual members.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 47.)

#### § 31874. Applicable date of article; use of surplus for cost-of-living adjustments

This article (commencing with Section 31870) may be made applicable in any county on the date specified in the ordinance, or if no such date is specified, on the first day of the month after the effective date of an ordinance adopted by the board of supervisors to this effect, provided that an actuarial survey of the retirement system has been made by the adopting county prior to the passage of said ordinance. No provision of this chapter shall prevent or be construed to prevent the use and expenditure of surplus described in Section 31592.2 to fund any part or all of any increases in allowances otherwise permitted. After this article or Article 16.6 (commencing with Section 31875) or both this article and Article 16.6 or any of the provisions of this article or Article 16.6 have been made applicable.

Except in a county of the first class, upon adoption by a county providing increases in allowances pursuant to this article, of Article 5.5 (commencing with Section 31510) of this

chapter, only that portion of the increases in allowances which is paid from surplus earnings described in Section 31592.2 shall be paid, instead, from the Supplemental Retiree Benefits Reserve established pursuant to Section 31510.8.

ARTICLE FIRST MADE APPLICATION BY BOS ORDINANCE 1986 (APRIL 7, 1969).

#### § 31874.2. Determination; maximum annual change; ordinance

The board of supervisors in any county, by a majority vote, may enact an ordinance providing that the maximum annual change pursuant to this article shall be increased to 4, 5, or 6 percent, as determined by the board, on the operative date of such ordinance.

NOT IMPLEMENTED.

#### § 31874.3. Determination; application of excess to allowances; effect on subsequent increases

(a) (1) Whenever the percentage of annual increase in the cost of living as of January 1 of each year as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers exceeds the maximum benefit increase provided in Section 31870, 31870.1, 31870.2, or 31870.3, whichever is applicable, the board of retirement may provide that all or part of the excess-percentage increase shall be applied to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3. The board shall determine the amount of the excess to be applied, which amount shall not exceed an amount that can be paid from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(2) The supplemental increases in excess of the increases applied to the retirement allowances, optional death allowances, or annual death allowances pursuant to Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances, or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(b) (1) The board of retirement may, instead of taking action pursuant to subdivision (a), provide supplemental cost-of-living increases, effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, that only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 shall equal or exceed 20 percent as of January 1 of the year in which the board of retirement adopts an increase under this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(c) (1) The board of retirement may, instead of taking action pursuant to subdivision (a) or (b), provide supplemental cost-of-living increases, on a prefunded basis and effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 equal or exceed 20 percent as of January 1 of the year in which the board of retirement takes action pursuant to this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall become a part of the retirement allowances, optional death allowances, or annual death allowances and shall serve to reduce the accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3, as applicable, by the same percentage as the payment that is made pursuant to this section.

(3) Before the board of retirement provides benefits pursuant to this subdivision, the costs of the benefits shall be determined by a qualified actuary and the board of retirement shall, with the advice of the actuary, provide for the full funding of the benefits utilizing funds in the reserve against deficiencies established pursuant to Section 31592.2, using surplus earnings that exceed 1 percent of the total assets of the retirement system.

(4) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(d) Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefit Reserve established pursuant to Section 31618.

NOTE: SECTION 31870.1 WAS ADOPTED BY BOS ORDINANCE 2367 (OCTOBER 16, 1972) AND SECTION 31780 WAS RE-ADOPTED FOR GENERAL MEMBERS HIRED AFTER JUNE 26, 2012 (GENERAL PLANS 7 and 8) BY BOS ORD. 4835 (MAY 15, 2012).



**Article 18    Adjustment to Fit Other Allowances            §§31895-31898**

**§ 31895. "Public agency" defined**

As used in this article "public agency" includes the federal government or any federal department or agency, this state, any other state or any state department or agency, a county, city, public corporation, or public district of this state or any other state. Section 31478 does not apply to this article.

**§ 31895.5. "Total benefits" defined**

As used in this article, "total benefits" means the retirement allowance or other benefit payable to any beneficiary pursuant to the provisions of this chapter plus any other monetary payments due to the same beneficiary from any public agency.

**§ 31896. Increase in allowance resulting in decrease in amount of monetary payments due beneficiary**

If an increase in the retirement allowance or other benefit payable to any beneficiary pursuant to the provisions of this chapter, whether such increase begins prior or subsequent to the effective date of this article, results in the decrease of the amount of any monetary payments due to the same beneficiary from any public agency, such retirement allowance or other benefit shall be so reduced as to result in the maximum total benefits to such beneficiary.

**§ 31896.5. Change in effect of increase of retirement allowance or other benefit payable to beneficiary**

If the statutes, ordinances, rules, regulations, or orders of any public agency are so changed, or if for any other reason the effect of the increase of the retirement allowance or other benefit payable to any beneficiary pursuant to the provisions of this chapter on the amount of any monetary payments due to the same beneficiary by such public agency are changed, the board shall adjust such retirement allowance or other benefit, but not to an amount greater than otherwise authorized by this chapter so as to result in the maximum total benefits to such beneficiary.

**§ 31897. Provisions mandatory; information to board; procedure for ascertainment of facts**

The provisions of this article are mandatory and not subject to option or election by any member or other beneficiary. Every such beneficiary shall inform the board of all facts necessary in order to comply with this article. The board shall ascertain such facts by such procedures as it sees fit to adopt.

#### § 31897.5. Liability for excess payment

If the board in good faith diligently seeks to ascertain all facts necessary in order to comply with this article, but, despite such effort, a payment of a retirement allowance or other benefit to any beneficiary is made without having been reduced as required by this article, neither the board, nor any member thereof, nor any public officer nor public employee shall be liable for such excess payment.

#### § 31897.6. Deduction of amounts of advanced disability pension payments made to local safety members pursuant to specified Labor Code sections from member's retroactive disability pension payments

The board shall deduct the amount of advanced disability pension payments made to a local safety member pursuant to Section 4850.3 or 4850.4 of the Labor Code from the member's retroactive disability pension payments. If the retroactive disability allowance is not sufficient to reimburse the total advanced disability pension payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the local agency until the total advanced disability pension payments have been repaid. The local safety member and this system may agree to any other arrangement or schedule for the member to repay the advanced disability pension payments.

#### § 31898. Reduction not to impair constitutional rights

A retirement allowance or other benefit payable to a beneficiary pursuant to this chapter shall not be reduced pursuant to this article if such reduction would impair the constitutional rights of any person.

## **CHAPTER 3.9 INTERNAL REVENUE CODE COUNTY COMPLIANCE AND REPLACEMENT BENEFITS PROGRAM 31899-31899.9**

### **§ 31899. Purpose**

(a) The purpose of this chapter is to ensure the federal tax-exempt status of the county employees' retirement systems, to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions, and to ensure that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of Section 415 of the Internal Revenue Code.

(b) To achieve this purpose, this chapter incorporates certain pension payment limitations and elects the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code. Also, this chapter provides for certain replacement benefits.

(c) On or after January 1, 2013, the application of this chapter is limited as specified in Section 7522.43.

(Amended by Stats.2013, c. 247 (AB 1380), Sec. 50.)

### **§ 31899.1. Definitions**

(a) The definitions in Chapter 3 (commencing with Section 31450) of this part shall apply to this chapter.

(b) The term "Internal Revenue Code" includes all regulations, revenue rulings, notices, and revenue procedures issued by the Internal Revenue Service.

### **§ 31899.2. First time members on or about Jan. 1, 1990; payment limitations; grandfather election; counties of first class; application**

(a) In accordance with Section 31899.3, the retirement benefits for any person who for the first time became a member of the system on or after January 1, 1990, shall be subject to the payment limitations of Section 415 of the Internal Revenue Code. The retirement benefits for any person who became a member of the system before January 1, 1990, also shall be subject to the payment limitations of Section 415 of the Internal Revenue Code to the extent that those benefits are not exempt from those limitations under the "grandfather" election that has been made under that section and this section.

(b) The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made. All members of a retirement system who joined the system prior to January 1, 1990, are exempt from the Section 415 limits to the extent permitted by the Internal Revenue Code.

(c) This section does not apply in a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

### § 31899.3. Impact of I.R.C. upon retirement rights; notice to employers; counties of first class

(a) Notwithstanding any other provision of law, the retirement rights conferred by this chapter and by Chapter 3 (commencing with Section 31450) of this part upon any person who for the first time becomes a member of a retirement system on or after January 1, 1990, shall be subject to the limitations in the Internal Revenue Code upon benefits that may be paid by public retirement systems. That person may not have any retirement right or benefit that exceeds those limitations, and no retirement right or benefit may accrue to or vest in that person under Chapter 3 (commencing with Section 31450) that exceeds those limitations. That person may, however, have retirement rights and benefits under the replacement benefits program established under this chapter.

(b) Each retirement board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution, prior to employment, to each person who may become a member and to each person who for the first time becomes a member on or after January 1, 1990.

(c) Chapter 3 (commencing with Section 31450) shall be construed as if it included this section.

(d) This section does not apply in a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

### § 31899.4. Replacement benefits program

(a) Each county and district shall provide a program to replace the benefits that are limited by Section 415 of the Internal Revenue Code for members whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Section 31538. The replacement benefits program shall provide benefits that, together with the benefits provided by the retirement system, are the same as, and may not exceed, the benefits that would be paid by the retirement system but for the application of the limits of Section 415. Notwithstanding the foregoing, the county or district may modify its replacement benefits program and may add, modify, or eliminate any replacement benefits, as necessary, to carry out the purpose of this chapter. A replacement benefit may not be reduced if the reduction would impair the vested rights of any person.

(b) Each county shall establish and administer its own replacement benefits program for Members whose retirement benefits are limited by Section 415 of the Internal Revenue Code.

(c) A county may, pursuant to a contract with a district, agree to administer the district's replacement benefits program for the district's members whose retirement benefits are limited by Section 415 of the Internal Revenue Code. The county may charge each district a reasonable fee for administering the district's program and the county and district may agree on any other conditions relating to that administration. If a district does not contract with the county to administer its replacement benefits program, it shall establish and administer its own replacement benefits program.

(d) Upon the recommendation of the retirement system's actuary, and in accordance with its obligation to recommend county and district contribution rates under Sections 31453 and 31453.5, the board shall adjust the contributions required to be made by a county or district to the extent that benefits are payable under a replacement benefits program of that county or district.

(e) The county, and any district that establishes and administers its own program, shall enact an ordinance or prescribe regulations or other written documentation setting forth the terms of its replacement benefits program.

(f) Notwithstanding any other provision of this chapter, a county of the first class, as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, is not required to provide replacement benefits to any member under this section if that member participates in General Plan F or Safety Plan F under Article 2.1 (commencing with Section 31510) of Chapter 3.

REPLACEMENT BENEFIT PLAN ADOPTED BY BOS RESOLUTION 04-257  
(SEPTEMBER 21, 2004) AND PROVIDED FOR PARTICIPATION BY ELECTING  
DISTRICTS.

#### § 31899.5. Administration of replacement benefits program

Each county, and each district that establishes its own replacement benefits program, shall administer the replacement benefits program established by it pursuant to this chapter. The board may, pursuant to an agreement with the county or the district that establishes its own program, assist in the administration of the replacement benefits program to the extent permitted under the Internal Revenue Code.

#### § 31899.6. Nonconformity with I.R.C. § 415; inoperative effect on Chapters 3 and 3.9

If the Internal Revenue Service determines that any provision of Chapter 3 (commencing with Section 31450) of this part or this chapter cannot be given effect without placing a retirement system administered under this chapter or Chapter 3 (commencing with Section 31450) of this part out of conformity with Section 415 of the Internal Revenue Code, that provision, only to the extent that it causes that nonconformity and only with respect to the affected parties shall become inoperative with respect to the payment of benefits pursuant to Chapter 3 (commencing with Section 31450) of this part, as of the effective date of the determination. The retirement board shall notify the Secretary of State of in operation under this section.

#### § 31899.7. Exclusion of public retirement systems; invalidation of application of I.R.C. § 415; inoperation of chapter; actions by retirement board

(a) If Section 415 of the Internal Revenue Code is amended to exclude public retirement systems, or if the application of Section 415 of the Internal Revenue Code to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all

sections of this chapter, except this section, shall become inoperative as of the effective date of that amendment or decision. The retirement board shall immediately notify the Secretary of State whenever any provision of this chapter becomes inoperative pursuant to this section.

(b) Whenever all sections of this chapter, except this section, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the retirement board, county, and districts shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 of the Internal Revenue Code for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and pay benefits that are due under the system to the affected annuitants without regard to any limitations of Section 415 of the Internal Revenue Code.

(3) Take any and all other actions they deem necessary and feasible.

#### § 31899.8. Legislative intent; compliance with I.R.C.; legislative findings and declarations; costs

It is the sole intent of the Legislature, in enacting this chapter, to fully comply with the provisions of the Internal Revenue Code that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems, to elect the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code, and to require that each county and district provide benefits that replace the benefits that are limited by Section 415 of the Internal Revenue Code for affected members of the county employees' retirement systems.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of Section 6 of Article XIIB of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2, as construed in *City of Sacramento v. State of California* (50 Cal. 3d 51).

It is the intent of the Legislature that this chapter not be construed to impose upon local public agencies that are maintaining county retirement systems pursuant to Chapter 3 (commencing with Section 31450) of this part, state-reimbursable, state-mandated local program benefit costs within the meaning of Section 6 of Article XIIB of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2.

If either the Commission on State Mandates or a court determines that this chapter imposes upon any local agency, state-mandated local program benefit costs, notwithstanding any other provision of law, no reimbursement therefor shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 or from any other state fund.

§ 31899.9. Amendment of chapter; reservation of power; memorandums of understanding

The Legislature reserves the power and right to amend this chapter, as needed to effect its purposes. This chapter shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.