

AMENDED IN ASSEMBLY APRIL 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2473

Introduced by Committee on Public Employees, Retirement and Social Security (Bonta (Chair), Rendon, Ridley-Thomas, and Wieckowski)

February 21, 2014

An act to amend Sections 31564, 31592.2, 31592.4, 31649.5, 31656, 31671, 31691, 31691.1, and 31696.3 of, and to add Sections ~~31485.16~~, ~~31485.17~~, 31485.19, *31485.20*, *31485.21*, *31485.22*, 31694.6, and 31698.5 to, the Government Code, relating to county employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2473, as amended, Committee on Public Employees, Retirement and Social Security. County Employees Retirement Law of 1937: federal law compliance.

Federal tax law regulates pension plans generally and regulates public pension plans specifically based on their status as governmental plans, as defined. In this regard, among other things, federal law requires that accrued member retirement benefits be nonforfeitable, as specified, ~~establish~~ *establishes* conditions for the distribution of funds to members from a retirement system, ~~prescribe~~ *prescribes* requirements for the vesting of benefits, and ~~limit~~ *limits* the application of pension funds for medical benefits.

The County Employees Retirement Law of 1937 (CERL) permits counties and districts, as defined, to provide retirement benefits to their employees pursuant to its ~~provisions~~, *provisions* and vests the management of the retirement system in the board of retirement. CERL generally conditions distribution of benefits upon compliance with

federal requirements. CERL requires a county to retain in its retirement fund specified excess earnings to maintain a reserve against possible future deficiencies in earnings, and to transfer certain of those excess earnings into county advance reserves for the sole purpose of paying the cost of benefits, as specified. CERL authorizes the use of these reserves for the payment of certain health and medical benefits, subject to specified limitations.

This bill would revise various provisions of CERL to explicitly conform with federal law. In this regard, the bill would provide that a member’s accrued retirement benefits are nonforfeitable, in accordance with federal law, ~~once the member attains normal retirement age, as specified, or~~ upon termination of, or discontinuance of contributions under, the retirement system. Upon the withdrawal of a district from a retirement system, the bill also would prohibit a refund, distribution, or transfer of contributions ~~for~~ or other funds to an employee or district unless in compliance with prescribed federal law.

This bill would revise provisions authorizing a retirement system to apply specified earnings to designated health benefits provided federal requirements are met, and would allow the board of retirement to authorize payment of those benefits with county advance reserves. The bill would specify that, if a county establishes a Post-Employment Benefits Trust Account as a part of its retirement fund, that account shall be used exclusively to provide health benefits for retired members, their spouses, and dependents.

This bill would revise county procedures applicable to providing service credit to a member of the retirement system for all or part of his or her military service, in accordance with federal law.

This bill would require a county that elects to provide optional long-term care or vision benefits, to comply with applicable federal law and regulation, including maintaining separate trust funds for those benefits. The bill also would make various technical, nonsubstantive changes to CERL.

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

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

- 1 SECTION 1. Section ~~31485.16~~ 31485.19 is added to the
- 2 Government Code, to read:

1 ~~31485.16.~~

2 ~~31485.19.~~ (a) Notwithstanding any other provision of this
3 chapter, the rights of each member to his or her accrued retirement
4 benefits under the retirement system shall be nonforfeitable, in
5 accordance with the requirements of Sections 401(a) of Title 26
6 of the United States Code that are applicable to public employee
7 plans, as follows:

8 ~~(1) On the member's attainment of normal retirement age, while~~
9 ~~currently employed by an employer that maintains the system.~~

10 ~~(2) To plans,~~ to the extent then funded, on the date of the
11 termination of the system, the partial termination of the system,
12 or the complete discontinuance of contributions under the system,
13 as provided in Title 26 of the United States Code.

14 ~~(b) When a member's accrued benefits become nonforfeitable~~
15 ~~under this section, the member may be retired upon filing with the~~
16 ~~board a written application in the manner provided by Article 8~~
17 ~~and Article 9 of this chapter, as applicable.~~

18 ~~(e)~~

19 (b) Notwithstanding subdivision (a), the vesting provisions
20 under *Section 31485.22 and Articles 8 and 9*, or any other
21 *applicable law*, a member's earned and accrued benefits may be
22 forfeited under Sections 7522.70, 7522.72, and 7522.74.

23 SEC. 2. ~~Section 31485.17~~ *31485.20* is added to the Government
24 Code, to read:

25 ~~31485.17.~~

26 *31485.20.* Notwithstanding any other provision of this chapter,
27 no amount shall be distributed from a retirement system established
28 under this chapter prior to the time that the distribution may be
29 made in compliance with the requirements of Section 401(a) of
30 Title 26 of the United States Code that are applicable to public
31 employee plans, including, but not limited to, requirements relating
32 to the distribution of amounts prior to the earlier of a member's
33 death, disability, separation from service with all employers that
34 maintain the retirement system, or attainment of normal retirement
35 age, as defined by the retirement system.

36 SEC. 3. ~~Section 31485.19~~ *31485.21* is added to the Government
37 Code, to read:

38 ~~31485.19.~~

39 *31485.21.* (a) A member who has not attained normal
40 retirement age shall have a bona fide separation from service to

1 the extent required by Section 401(a) of Title 26 of the United
 2 States Code before working for the county or a district. The board
 3 shall establish, by regulation, the criteria under which a bona fide
 4 separation is satisfied.

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

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

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

18 *SEC. 4. Section 31485.22 is added to the Government Code,*
 19 *to read:*

20 *31485.22. (a) A member who, while currently employed, has*
 21 *reached normal retirement age, as defined by the retirement*
 22 *system, and has met the benefit commencement requirements in*
 23 *Article 8 or Article 9, shall be fully vested in the benefits payable*
 24 *under the retirement system. Upon satisfying the requirements of*
 25 *this section, a member may be retired upon filing with the board*
 26 *a written application in the manner provided in Articles 8 and 9*
 27 *of this chapter, as applicable.*

28 (b) *Notwithstanding subdivision (a), the vesting provisions under*
 29 *Section 31485.19 and Articles 8 and 9 of this chapter, or any other*
 30 *applicable law, a member’s earned and accrued benefits may be*
 31 *forfeited under Section 7522.70, 7522.72, or 7522.74.*

32 ~~SEC. 4.~~

33 *SEC. 5. Section 31564 of the Government Code is amended*
 34 *to read:*

35 *31564. (a) All officers and employees of any district who have*
 36 *become members of the association as provided in Section 31557,*
 37 *may be withdrawn by a resolution of the governing body declaring*
 38 *all of the district’s employees withdrawn from the association;*
 39 *provided, the governing body has first received a written petition*
 40 *signed by a majority of its officers and employees requesting that*

1 the district's officers and employees be withdrawn from the
2 association.

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

9 (c) Upon the adoption of any resolution to withdraw its members
10 and where there are no existing retirees from the district, the
11 district's contributions shall be ~~refunded to the district, or shall,~~
12 ~~upon the election of and designation by the governing body of the~~
13 ~~district,~~ be transferred to another public retirement system that
14 meets the requirement of a tax-qualified retirement plan under
15 Section 401(a) of Title 26 of the United States Code.

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

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

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

26 ~~SEC. 5:~~

27 *SEC. 6.* Section 31592.2 of the Government Code is amended
28 to read:

29 31592.2. (a) In any county, earnings of the retirement fund
30 during any year in excess of the total interest credited to
31 contributions and reserves during such year shall remain in the
32 fund as a reserve against deficiencies in interest earnings in other
33 years, losses on investments, and other contingencies, except that,
34 when such surplus exceeds 1 percent of the total assets of the
35 retirement system, the board may transfer all, or any part, of such
36 surplus in excess of 1 percent of the said total assets into county
37 advance reserves for the sole purpose of payment of the cost of
38 the benefits described in this chapter.

39 (b) Where the board of supervisors has provided for the payment
40 of all, or a portion, of the premiums, dues, or other charges for

1 health benefits, Medicare, or the payment of accrued sick leave at
 2 retirement to or for all, or a portion, of officers, employees, and
 3 retired employees and their dependents, from the county general
 4 fund or other sources, the board of retirement may authorize the
 5 payment of all, or a portion, of payments of the benefits described
 6 in this subdivision from the county advance reserves. This payment
 7 shall comply with the requirements of Section 401 of Title 26 of
 8 the United States Code. Payment may be made directly from the
 9 county advance reserves for the benefits described in Section
 10 31691.1.

11 ~~SEC. 6.~~

12 *SEC. 7.* Section 31592.4 of the Government Code is amended
 13 to read:

14 31592.4. (a) The amount of excess earnings available at the
 15 end of a fiscal year of the retirement fund, shall, subject to the
 16 limitations in this section, be treated in the immediately succeeding
 17 fiscal year, for all purposes under this chapter, as appropriations,
 18 transfers, and contributions made to the retirement fund by the
 19 county and applicable districts. That treatment shall occur only to
 20 the extent that, in the immediately succeeding fiscal year, the
 21 county and applicable districts pay for an equal amount of health
 22 benefits for members heretofore or hereafter retired and their
 23 dependents or make contributions in an equal amount to an account
 24 established under Section 401(h) of Title 26 of the United States
 25 Code solely for the purpose of providing health benefits for retired
 26 members, their spouses, and dependents, and for the associated
 27 administrative and investment expenses.

28 (b) For purposes of this section, “excess earnings” means
 29 earnings of the retirement fund at the end of any fiscal year that
 30 exceed the total interest credited to contributions and reserves plus
 31 1 percent of the total assets of the retirement fund.

32 (c) The board of supervisors or the board of retirement shall
 33 take any actions necessary and appropriate to ensure that the
 34 program provided by this section complies with all applicable
 35 federal and state income tax laws, including, but not limited to,
 36 establishing rules and procedures for establishing and maintaining
 37 an account under Section 401(h) of Title 26 of the United States
 38 Code.

1 (d) In accordance with Section 401(h) of Title 26 of the United
2 States Code and Section 1.401-14(c) of the Code of Federal
3 Regulations:

4 (1) The retirement system shall specify the medical benefits
5 that will be available and shall set out the amount that will be paid.

6 (2) Medical benefits shall be subordinate to the retirement
7 benefits when added to any life insurance benefits.

8 (3) A separate account shall be maintained for contributions to
9 fund the medical benefits.

10 (4) The funds in the separate account may be invested with the
11 funds for retirement benefits and the earnings shall be allocated
12 to each account in a reasonable manner.

13 (5) Amounts contributed for medical benefits shall be reasonable
14 and ascertainable.

15 (6) No part of the medical benefits account may be used for or
16 diverted to any purpose other than providing medical benefits and
17 paying necessary or appropriate expenses for the administration
18 of the medical benefits account.

19 (7) Any amounts remaining in the medical benefits account
20 after satisfaction of all medical benefits liabilities for all members,
21 their spouses, and dependents shall be returned to the employer.

22 (8) If a member's interest in the medical benefits account is
23 forfeited prior to plan termination, an amount equal to the forfeiture
24 shall reduce employer contributions to fund the account.

25 (e) Except to the extent allowed by Sections 401 and 420 of
26 Title 26 of the United States Code, and related federal regulations,
27 assets shall not be transferred or otherwise paid from the funds
28 held by the retirement system for retirement benefits to a medical
29 benefits account. Assets shall not be transferred or otherwise paid
30 from a medical benefits account to the funds held by the retirement
31 system for retirement benefits.

32 (f) This section shall not be operative in any county until the
33 board of supervisors and the board of retirement of the county, by
34 resolution adopted by a majority vote of each board, make this
35 section operative in the county.

36 (g) This section is not intended, and shall not be construed to,
37 affect the validity of any agreement entered into by a county and
38 a retirement association whereby a county has agreed to provide
39 and fund a health insurance program for retired employees and
40 their dependents for hospital services, medical services, dental

1 services, and optical services, prior to the effective date of this
2 section.

3 (h) This section establishes a method of providing health benefits
4 for retired members, their spouses, and dependents to the extent
5 allowed under Sections 31592.2 and 31691. This section does not
6 authorize duplicate benefits.

7 (i) This section may be made applicable in any county that has
8 adopted Article 5.5 (commencing with Section 31610), in which
9 case the Supplemental Retiree Benefits Reserve shall be substituted
10 for the excess earnings described in this section. This section also
11 may be made applicable to any arrangement established under
12 Article 8.6 (commencing with Section 31694).

13 ~~SEC. 7.~~

14 *SEC. 8.* Section 31649.5 of the Government Code is amended
15 to read:

16 31649.5. Notwithstanding Section 31649, any member who
17 resigned, or obtained a leave of absence, to enter and did enter the
18 Armed Forces of the United States on a voluntary or involuntary
19 basis and returned to county service within one year after separation
20 therefrom, under honorable conditions, shall receive credit for
21 service and prior service for all or any part of his or her military
22 service, if, before retirement from the county, he or she contributes
23 what he or she would have paid to the fund based on his or her
24 compensation earnable pursuant to Section 31461 at the time he
25 or she resigned or received the leave of absence, together with
26 regular interest thereon, and if, when he or she contributes, the
27 military service is not a basis for present or future military
28 retirement pay.

29 ~~SEC. 8.~~

30 *SEC. 9.* Section 31656 of the Government Code is amended
31 to read:

32 31656. Nothing in this chapter shall be construed to prohibit
33 any district established pursuant to Part 4 (commencing with
34 Section 40000) of Division 10 of the Public Utilities Code, from
35 extending retirement service credit pursuant to Section 40127 of
36 the Public Utilities Code to any employee of the district who is on
37 an authorized leave of absence to serve as an official of a
38 recognized employee bargaining unit, under all of the following
39 conditions:

1 (a) The employee agrees to pay the total contributions that would
2 otherwise be paid if the employee were not on leave, as well as
3 any additional costs which may accrue to the system as a result of
4 this extension of coverage.

5 (b) The maximum service credit accumulated under this section
6 shall not exceed 12 years.

7 (c) Employees covered under this section shall not be eligible
8 for disability benefits under any public employees' retirement
9 system in this state while on such leave of absence.

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

13 ~~SEC. 9.~~

14 *SEC. 10.* Section 31671 of the Government Code is amended
15 to read:

16 31671. (a) The amount of compensation that is taken into
17 account in computing benefits payable to any person who first
18 becomes a member of the retirement system on or after July 1,
19 1996, or January 1, 1996, for systems operating on a calendar
20 basis, shall not exceed the limitations in Section 401(a)(17) of
21 Title 26 of the United States Code upon public retirement systems,
22 as that section may be amended from time to time and as that limit
23 may be adjusted by the Commissioner of Internal Revenue for
24 increases in cost of living. The determination of compensation for
25 each 12-month period shall be subject to the annual compensation
26 limit in effect for the calendar year in which the 12-month period
27 begins. In a determination of average annual compensation over
28 more than one 12-month period, the amount of compensation taken
29 into account for each 12-month period shall be subject to the
30 applicable annual compensation limit.

31 (b) The compensation limitations specified in Section 7522.10
32 shall also apply to a member who is subject to the provisions of
33 the California Public Employees' Pension Reform Act of 2013 for
34 all or any portion of his or her membership in the county retirement
35 system.

36 ~~SEC. 10.~~

37 *SEC. 11.* Section 31691 of the Government Code is amended
38 to read:

39 31691. (a) The board of supervisors of any county by
40 ordinance, or the governing body of any district under the County

1 Employees Retirement Law, by ordinance or resolution, may
2 provide for the contribution by the county or district from its funds
3 and not from the retirement fund, toward the payment of all or a
4 portion of the premiums on a policy or certificate of life insurance
5 or disability insurance issued by an admitted insurer, or toward
6 the payment of all or part of the consideration for any hospital
7 service or medical service corporation, including any corporation
8 lawfully operating under Section 9201 of the Corporations Code,
9 contract, or for any combination thereof, for the benefit of any
10 member heretofore or hereafter retired or his or her dependents.
11 At least one of these plans shall include free choice of physician
12 and surgeon.

13 (b) The benefits provided by this section are in addition to any
14 other benefits provided by this chapter.

15 (c) The board of retirement may provide on behalf of a member
16 who has retired, or an eligible surviving spouse who was married
17 to the member for one year prior to the date of retirement of the
18 member, or, if there is no such spouse, the surviving unmarried
19 children of the member who are under 18 years of age, or under
20 22 years of age and full-time students, for the hospital and medical
21 benefits enumerated in subdivision (a) from the earnings of the
22 retirement fund that are in excess of the total interest credited to
23 contributions and reserves plus 1 percent of the total assets of the
24 retirement fund. The board may provide for the benefits enumerated
25 from like sources when the board of supervisors or the governing
26 body of a district has elected to provide these benefits to its active
27 employees, even though the benefits are not provided to those who
28 have retired from the service of the county or district. Hospital and
29 medical benefits provided under this section shall be provided in
30 compliance with Section 401(h) of Title 26 of the United States
31 Code. They may also be provided in compliance with Section
32 31592.2.

33 (d) Except in a county of the first class, upon adoption by any
34 county *providing benefits pursuant to this section*, that has adopted
35 Article 5.5 (commencing with Section 31610), the Supplemental
36 Retiree Benefits Reserve established pursuant to Section 31618
37 shall be substituted for the excess earnings described in subdivision
38 (c).

1 ~~SEC. 11.~~

2 *SEC. 12.* Section 31691.1 of the Government Code is amended
3 to read:

4 31691.1. (a) In lieu of the benefits prescribed by Section
5 31691, the board of retirement may provide on behalf of a member
6 who has retired, or an eligible surviving spouse who was married
7 to the member prior to the date of retirement of the member, or,
8 if there is no such spouse, the surviving unmarried children of the
9 member who are under 18 years of age, or under 22 years of age
10 and full-time students, for an equivalent increase in allowance
11 from the earnings of the retirement fund that are in excess of the
12 total interest credited to contributions and reserves plus 1 percent
13 of the total assets of the retirement fund. Any benefit provided by
14 this section shall be subject to Section 31692.

15 (b) Except in a county of the first class, upon adoption by any
16 county providing benefits pursuant to this ~~section~~, *section that has*
17 *adopted Article 5.5 (commencing with Section 31610)*, the board
18 of retirement shall, instead, pay those benefits from the
19 Supplemental Retiree Benefits Reserve established pursuant to
20 Section 31618.

21 ~~SEC. 12.~~

22 *SEC. 13.* Section 31694.6 is added to the Government Code,
23 to read:

24 31694.6. (a) Notwithstanding any provision to the contrary in
25 this article, if the Post-Employment Benefits Trust Account
26 established under Section 31694 is established as a part of the
27 retirement fund, then that account shall be established for the sole
28 purpose of providing health benefits for retired members, their
29 spouses, and dependents, and shall comply with all requirements,
30 including the limitations on contributions, of Section 401(h) of
31 Title 26 of the United States Code, as applicable.

32 (b) The board of supervisors or the board of retirement shall
33 take any actions necessary or appropriate to ensure that the program
34 provided by this section complies with all applicable federal and
35 state income tax laws, including, but not limited to, establishing
36 rules and procedures for establishing and maintaining an account
37 under Section 401(h) of Title 26 of the United States Code.

38 (c) If the Post-Employment Benefits Trust Account is established
39 under Section 31694, assets shall not be transferred or otherwise
40 paid from the funds held by the retirement system for retirement

1 benefits to a medical benefits account. Assets shall not be
2 transferred or otherwise paid from a medical benefits account to
3 the funds held by the retirement system for retirement benefits.

4 ~~SEC. 13.~~

5 *SEC. 14.* Section 31696.3 of the Government Code is amended
6 to read:

7 31696.3. (a) The board shall establish a trust fund designated
8 as the Long-Term Care Fund for the purpose of the payment of
9 the costs and administration of the long-term care plan. The
10 Long-Term Care Fund shall be held for the exclusive benefit of
11 enrollees and the payment of the costs and administration of the
12 program.

13 (b) The board shall have exclusive control of the administration
14 and investment of the Long-Term Care Fund, except that in a
15 county having a board of investments, the board of investments
16 shall have exclusive control of the investment of the fund. Funds
17 in the Long-Term Care Fund shall be invested pursuant to the law
18 governing the investment of the retirement fund.

19 (c) Income, of whatever nature, earned on the Long-Term Care
20 Fund shall be credited to the fund.

21 (d) If the Long-Term Care Fund is intended to be a part of the
22 retirement system trust fund, then the operation of the Long-Term
23 Care Fund, including, but not limited to, its funding, governance,
24 investment of assets, allocation of income, and payment of benefits,
25 shall comply with the requirements of Section 401(h) of Title 26
26 of the United States Code, to the extent required by that title and
27 related federal regulations. If the Long-Term Care Fund is intended
28 to be separate from and not a part of the retirement system, then
29 ~~the assets shall not~~ *no assets attributable to that fund shall be*
30 *commingled for investment or any other purpose*, with the assets
31 of the retirement system and shall constitute a separate fund with
32 a trust that is separate from the funds and trust of the retirement
33 ~~system.~~ *system to the extent commingling of assets for investment*
34 *purposes satisfies the requirements of the federal tax laws.* The
35 board shall indicate, as a part of establishment of the Long-Term
36 Care Fund, whether the separate fund is intended to be a part of,
37 or separate from, the retirement system.

38 ~~SEC. 14.~~

39 *SEC. 15.* Section 31698.5 is added to the Government Code,
40 to read:

1 31698.5. If the vision care program is intended to be part of
2 the retirement system trust fund, *then* the operation of the vision
3 care program, including, but not limited to, its funding, governance,
4 investment of assets, allocation of income, and payment of benefits,
5 shall comply with the requirements of Section 401(h) of Title 26
6 of the United States Code, to the extent required by that title, and
7 related federal regulations. If the vision care program is intended
8 to be separate from and not a part of the retirement system, then
9 no assets attributable to that program shall be commingled for
10 ~~investment~~ *investment, or any other purpose*, with the assets of
11 ~~the retirement system and the program shall be separate from the~~
12 ~~funds and trust of the retirement system.~~ *Assets attributable to the*
13 *program shall constitute a separate fund with a trust that is*
14 *separate from the funds and trust of the retirement system except*
15 *to the extent that the commingling of assets for investment purposes*
16 *satisfies the requirements of the federal tax laws.* The sponsor of
17 the vision care program shall indicate as part of the establishment
18 of the program whether that separate fund is intended to be a part
19 of, or separate from, the retirement system.