**Assembly Bill No. 1124**

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Passed the Assembly September 5, 2007

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*Chief Clerk of the Assembly*

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Passed the Senate September 5, 2007

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*Secretary of the Senate*

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This bill was received by the Governor this _____ day of _______________, 2007, at _____ o'clock ___M.

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*Private Secretary of the Governor*

CHAPTER ________

An act to amend Sections 31520.1, 31580.2, 31694, 31694.1, and 31694.2 of, and to add and repeal Section 31580.3 of, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1124, Karnette. County employees' retirement.

(1) The County Employees Retirement Law of 1937 sets forth the membership composition for boards of retirement and boards of investments, as specified. Under that law, the retirement board in specified counties is comprised of 9 members and, unless there is no eligible candidate, an alternate member who is the candidate for the 7th member from the group of safety members under specified provisions that is not represented by a board member who received the highest number of votes for all candidates in that group. Under that law, the alternate member shall vote as a member of the retirement board only if the 2nd, 3rd, 7th, or 8th member is absent from a board meeting or if there is a vacancy on the board with respect to those members, as specified.

This bill would, unless prohibited by a resolution or regulation of the board, provide that the alternate member shall have the same rights, privileges, responsibilities, and access to closed sessions as the 2nd, 3rd, 7th, or 8th member and permit the alternate member to hold positions on committees of the board independent of the 2nd, 3rd, 7th, or 8th member and permit the alternate member to participate in the deliberations of the board or its committees whether or not the 2nd, 3rd, 7th, or 8th member is present.

(2) That law also provides that in counties in which the board of retirement or the board of retirement and the board of investments have appointed personnel, as defined, the respective board or boards shall annually adopt a budget covering the entire expense of the administration of the retirement system and that expense shall be charged against the earnings of the retirement fund. That law prohibits the expense incurred in any year from exceeding $^{18}/_{100}$ of 1% of the total assets of the retirement system.

This bill would provide, until January 1, 2013, that if during any year the expense of administration of the retirement system includes expenditures for software, hardware, and computer technology consulting services in support of that software or hardware, the expense incurred may not exceed the greater of the sum of $^{18}/_{100}$ of 1% of the total assets of the retirement system plus $1,000,000 or $^{23}/_{100}$ of 1% of the total assets of the retirement system.

(3) That law permits the board of supervisors of a county or the governing body of a district or other public entity, with the agreement of the board of retirement, to provide for the contribution of funds into a Post-Employment Benefits Trust Account and requires the retirement system to establish the account as part of the retirement fund. Existing law establishes the Post-Employment Benefits Trust Account for the purpose of funding the benefits provided under a post-employment group health, life, or other welfare benefits plan established and maintained by the county or district. Existing law prohibits the use of the assets of the retirement fund for paying the costs of benefits provided through the Post-Employment Benefits Trust Account, but permits the account assets to be invested with retirement fund assets. Existing law requires that the funds in the account be separately accounted on the books of the retirement system. If the board of retirement elects to terminate the account, existing law provides a specific order and method for disbursing the funds in the account, and requires an employer to retain sufficient amounts to pay for the post-employment insurance benefits for participants in plans provided by the former participating employer. Existing law permits an employer participating in the Post-Employment Benefits Trust Account to expressly delegate specified responsibilities in this regard to the retirement system.

This bill would provide that the retirement system's action to establish the Post-Employment Benefits Trust Account as a part of the retirement fund is discretionary and not mandatory. The bill would additionally provide that a permitted use of funds in the account is for the funding of benefits provided under a supplemental benefits plan generally. The bill would delete the requirement that the retirement system account for Post-Employment Benefits Trust Account funds on the books of the system. The bill would specify that various actions in connection with the Post-Employment Benefits Trust Account be taken in conformance with federal law and the California Constitution. The bill would require, upon termination of the account, as described above, that the employer retain sufficient amounts to pay for post-employment benefits generally for participants in plans provided by the former participating employer. The bill would correct an erroneous cross-reference.

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

SECTION 1. Section 31520.1 of the Government Code is amended to read:

31520.1. (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 January 1, 1952, or the date on which a retirement system established by this chapter becomes operative, whichever is the later. 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 members are three years.

(b) The alternate 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 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) Unless prohibited by a resolution or regulation of the board, the alternate member shall be entitled to both of the following:

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

(2) The alternate 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 its committees whether or not the second, third, seventh, or eighth member is present.

(d) The amendments to this section during the 1972 Regular Session do not affect the continuation on the board of retired members appointed by the board of supervisors until the expiration of the term for which they were appointed.

SEC. 2. Section 31580.2 of the Government Code is amended to read:

31580.2. 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 or 31522.5, or both, 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. Except as described in Section 31580.3, the expense incurred in any year may not exceed eighteen hundredths of 1 percent of the total assets of the retirement system.

SEC. 3. Section 31580.3 is added to the Government Code, to read:

31580.3. (a) If during any year the expense of administration of the retirement system includes expenditures for software, hardware, and computer technology consulting services in support of that software or hardware, the expense incurred may not exceed the greater of the following:

(1) The sum of eighteen hundredths of 1 percent of the total assets of the retirement system plus one million dollars ($1,000,000).

(2) Twenty-three hundredths of 1 percent of the total assets of the retirement system.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 31694 of the Government Code is amended to read:

31694. (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.

SEC. 5. Section 31694.1 of the Government Code is amended to read:

31694.1. (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.

SEC. 6. Section 31694.2 of the Government Code is amended to read:

31694.2. 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.

Approved ______________________________, 2007

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*Governor*