

AMENDED IN ASSEMBLY MARCH 9, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1902**

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**Introduced by Assembly Member Portantino**

February 16, 2010

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An act to amend Sections 31488, 31490, and 31494.5 of, and to add Section 31495.6 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1902, as amended, Portantino. County employees' retirement: Los Angeles County.

Existing law establishes retirement plans, known as Retirement Plan D and Retirement Plan E, that are applicable in the retirement system in Los Angeles County and prescribe procedures for members to transfer between those plans. Under existing law, a member who transfers from Retirement Plan E to Retirement Plan D, as specified, may retire for service-connected or nonservice-connected disability and receive disability benefits under Retirement Plan D only if he or she has either (1) completed 2 continuous years of active service after his or her most recent transfer date, or (2) earned 5 years of retirement service credit under Retirement Plan D after his or her most recent transfer date. Existing law also provides that a member who becomes disabled and retires before meeting ~~and does not meet~~ either of these conditions (1) may apply for and receive only a deferred or service retirement allowance, and (2) for the purposes of calculating his or her retirement benefits under this section, shall be credited with service under Retirement Plan E, as specified, during any period he or she is totally disabled and is receiving, or eligible to receive, disability benefits, either

during or after any elimination or qualifying period, under a disability plan provided by the employer.

This bill would instead provide that a member who transfers from Retirement Plan E to Retirement Plan D, as specified, and who becomes disabled and has not completed the 2 continuous years of active service or earned 5 years of retirement service credit under Retirement Plan D after his or her most recent transfer date (1) may apply for and receive only a deferred or service retirement allowance, or (2) may elect to transfer prospectively back to Retirement Plan E, and for the purposes of calculating his or her retirement benefits under this section, shall in lieu of credit under Retirement Plan D be credited with service under Retirement Plan E, as specified, during any period he or she is totally disabled and is receiving, or eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer up to the earlier of the date he or she retires or no longer qualifies for disability benefits.

Existing law defines the age at time of entrance into the retirement system for a person who enters within 90 days, except as specified, of last rendering service as a member of the Public Employees' Retirement System, another retirement system established under the County Employees Retirement Law of 1937, 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 specified conditions, and who retains his membership in such other system or systems, as the age at entry into the first such other system. Existing law also defines the 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, as 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.

This bill would authorize a nonretired member to use current, forfeited, and vested membership periods, as specified, when meeting the reciprocity requirements for purposes of determining age of entry.

Existing law prohibits a member of Retirement Plan E from being credited with service for any period of time, in excess of 22 consecutive

workdays, in which the member is absent from work without pay, except as specified.

This bill would instead prohibit a member from being credited with service for any payroll period, in which no compensation is received by the member, except as specified.

Existing law requires a member to have completed 10 years of service to be vested under Retirement Plan E. Under existing law, for the purposes of calculating those 10 years of service, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit that has been approved by the employer, is not considered an interruption of service, except that the period of time of unpaid leave in excess of 22 consecutive workdays is not considered as service in calculating other specified benefits.

This bill would instead provide that a payroll period in which no compensation is received by a member shall not be considered as service in calculating those other benefits.

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

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

1 SECTION 1. Section 31488 of the Government Code is  
2 amended to read:

3 31488. Unless the context otherwise requires, the definitions  
4 contained in this section, govern the construction of this article.

5 (a) As used in subdivisions (f) and (g) of Section 31491,  
6 subdivisions (b) and (c) of Section 31492, and Section 31495,  
7 “board” means the board of investments. In all other cases, “board”  
8 means the board of retirement.

9 (b) “Employer” means the county or district or agency whose  
10 employees are members of the retirement system of the county.

11 (c) “Federal system” means the Old Age and Survivors  
12 Insurance provisions of the Social Security Act.

13 (d) “Final compensation” means the average annual  
14 compensation earnable by a general member during any three  
15 years, whether or not consecutive, elected by the member at or  
16 before the time an application for retirement is filed or, if no  
17 election is made, during the three years in which the member or  
18 former member last earned compensation preceding retirement. If  
19 a member or former member has less than three years of service,

1 final compensation shall be determined by dividing total  
2 compensation by the number of months of service credited to the  
3 member or former member and multiplying by 12. In no event  
4 shall final compensation include any disability benefits received  
5 by the member or former member under a disability plan provided  
6 by the employer.

7 (e) “Member” or “general member” means an employee hired  
8 on a monthly permanent basis of at least three-quarter time, as  
9 defined by the employer, except an employee eligible for safety  
10 membership.

11 (f) “Primary insurance amount” means the monthly retirement  
12 benefit payable under the federal system at the age at which full  
13 retirement benefits are available under the federal system. This  
14 age is deemed to be age 65 until June 30, 1983.

15 (g) “Service” means the period of uninterrupted employment  
16 of a member and the time in which a member or former member  
17 (1) is totally disabled, and (2) is receiving disability benefits or is  
18 eligible to receive disability benefits either during or after any  
19 elimination or qualifying period, under a disability plan provided  
20 by the employer.

21 Except as otherwise herein provided, a member shall not be  
22 credited with service for any payroll period in which no  
23 compensation is received by the member.

24 Unless otherwise provided, service shall not include military  
25 service or public service other than service with the employer.

26 SEC. 2. Section 31490 of the Government Code is amended  
27 to read:

28 31490. (a) Except as provided in Sections 31490.5 and 31494,  
29 and under reciprocal provisions of this article, a member who was  
30 in public service prior to becoming a member may not elect to  
31 receive credit in this retirement plan for that public service time,  
32 and shall not receive credit for that prior public service.

33 (b) Absence from work or termination of employment while an  
34 eligible employee or disability beneficiary, as defined by a  
35 disability plan provided by the employer, shall not be considered  
36 as breaking the continuity of service.

37 (c) For the purposes of subdivision (b) of Section 31491, an  
38 unpaid leave of absence of not to exceed one year, or a leave of  
39 absence for which an employee receives any benefit that has been  
40 approved by the employer, shall not be considered an interruption

1 of service. However, a payroll period in which no compensation  
2 is received by a member shall not be considered as service in  
3 calculating the benefits otherwise provided under this article.

4 SEC. 3. Section 31494.5 of the Government Code is amended  
5 to read:

6 31494.5. (a) A general member whose benefits are governed  
7 by Retirement Plan E may, during a period of active employment,  
8 elect to change plan membership and become a member,  
9 prospectively, in Retirement Plan D. The election shall be made  
10 upon written application signed by the member and filed with the

11 board, pursuant to enrollment procedures and during an enrollment  
12 period established by the board, which enrollment period shall not  
13 occur more frequently than once every three years for that member.  
14 The change in plan membership shall be effective as of the transfer  
15 date, as defined in subdivision (g). Except as otherwise provided  
16 in this section, the rights and obligations of a member who elects  
17 to change membership under this section shall be governed by the  
18 terms of Retirement Plan D on and after the transfer date. Prior to  
19 the transfer date, the rights to retirement, survivors', or other  
20 benefits payable to a member and his or her survivors or  
21 beneficiaries shall continue to be governed by Retirement Plan E.

22 (b) If a member has made the election to change plans under  
23 subdivision (a), monthly contributions by the member and the  
24 employer under the terms of Retirement Plan D shall commence  
25 as of the transfer date. For the purposes of calculating the member's  
26 contribution rate under Retirement Plan D, his or her entry age  
27 shall be deemed to be his or her age at his or her birthday nearest  
28 the transfer date; however, if the member exchanges service credit  
29 in accordance with subdivision (c), with regard to contributions  
30 made for periods after that exchange, his or her entry age shall be  
31 adjusted and deemed to be the member's age at his or her birthday  
32 nearest the date on which begins the most recent period of  
33 unbroken service credited under Retirement Plan D, taking into  
34 account service purchased under subdivision (c). In no event shall  
35 the exchange of service under subdivision (c) affect the entry age  
36 with respect to, or the cost of, employee contributions made, or  
37 service purchased, prior to the exchange.

38 (c) A general member who has elected to change plans under  
39 subdivision (a) also may elect to exchange, at that time or any time  
40 thereafter, but prior to the earlier of his or her application for

1 retirement, termination from employment, or death, some portion  
2 designated in whole-month increments, or all of the service credited  
3 under Retirement Plan E for an equivalent amount of service  
4 credited under Retirement Plan D, provided, however, that the  
5 member may not exchange less than ~~12-months~~ *months*' service  
6 or, if less, the total service credited under Retirement Plan E. The  
7 exchange shall be effective on the date when the member completes  
8 the purchase of that service by depositing in the retirement fund,  
9 by lump sum or regular monthly installments, over the period of  
10 time determined by a resolution adopted by a majority vote of the  
11 board of retirement, or both, but in any event prior to the earlier  
12 of his or her death or the date that is 120 days after the effective  
13 date of his or her retirement, the sum of: (1) the contributions the  
14 member would have made to the retirement fund under Retirement  
15 Plan D for that length of time for which the member shall receive  
16 credit as service under Retirement Plan D, computed in accordance  
17 with the rate of contribution applicable to the member under  
18 Retirement Plan D, based upon his or her entry age, and in the  
19 same manner prescribed under Retirement Plan D as if that plan  
20 had been in effect during the period for which the member shall  
21 receive service credit, and (2) the regular interest thereon.

22 For the purposes of this subdivision, a member's entry age shall  
23 be deemed to be the member's age at his or her birthday nearest  
24 the date on which begins the most recent period of unbroken  
25 service credited under Retirement Plan D following completion  
26 of the service exchange under this subdivision. A member may  
27 receive credit for a period of service under only one plan and in  
28 no event shall a member receive credit for the same period of  
29 service under both Retirement Plan D and Retirement Plan E.

30 A member who fails to complete the purchase of service as  
31 required under this subdivision shall be treated as completing an  
32 exchange of service under Retirement Plan E for an equivalent  
33 amount of service under Retirement Plan D only with regard to  
34 the service that actually has been purchased through completed  
35 deposit with the retirement fund of the requisite purchase amount,  
36 calculated in accordance with this subdivision.

37 (d) Except as otherwise provided in this section, effective as of  
38 the transfer date, a member who has transferred to Retirement Plan  
39 D pursuant to this section and his or her survivors or beneficiaries  
40 shall receive retirement, disability, survivors', death, or other

1 benefits that shall consist of: (1) the benefits to which they are  
2 entitled under the terms of Retirement Plan D, but based on the  
3 member's service credited only under that plan, and payable at the  
4 time and in the manner provided under Retirement Plan D, and  
5 (2) the benefits to which they would have been entitled under the  
6 terms of Retirement Plan E had the member remained a member  
7 of Retirement Plan E, but based on the member's service credited  
8 only under that plan, and payable at the time and in the manner  
9 provided under Retirement Plan E. Except as otherwise provided  
10 in this section, the calculation of the portion of a member's or  
11 beneficiary's benefit that is attributable to each plan is subject to  
12 that plan's respective, separate terms, including, but not limited  
13 to, the definitions of "final compensation" and provisions  
14 establishing cost-of-living adjustments, establishing minimum age  
15 and service requirements, and governing integration with federal  
16 social security payments. Notwithstanding the foregoing, the  
17 aggregate service credited under both Retirement Plan D and  
18 Retirement Plan E shall be taken into account for the purpose of  
19 determining eligibility for, and vesting of, benefits under each  
20 plan.

21 (e) Notwithstanding any other provision of Retirement Plan D  
22 or Retirement Plan E, a member who transfers into Retirement  
23 Plan D under this section may retire for service-connected or  
24 nonservice-connected disability and receive disability benefits  
25 under Retirement Plan D only if he or she has either (1) completed  
26 two continuous years of active service after his or her most recent  
27 transfer date, or (2) earned five years of retirement service credit  
28 under Retirement Plan D after his or her most recent transfer date.  
29 Notwithstanding any *other* provision to the contrary, a member  
30 who becomes disabled and does not meet either of these conditions  
31 (1) may apply for and receive only a deferred or service retirement  
32 allowance, or (2) may elect to transfer prospectively back to  
33 Retirement Plan E, and for the purposes of calculating his or her  
34 retirement benefits under this section, shall in lieu of credit under  
35 Retirement Plan D be credited with service under Retirement Plan  
36 E as provided under subdivision (g) of Section 31488 during any  
37 period he or she is totally disabled and is receiving, or eligible to  
38 receive, disability benefits, either during or after any elimination  
39 or qualifying period, under a disability plan provided by the  
40 employer up to the earlier of the date he or she retires or no longer

1 qualifies for disability benefits. If a member dies before he or she  
2 is eligible to retire and before completing either two continuous  
3 years of active service after the transfer date into Retirement Plan  
4 D or *after* earning five years of retirement service credit under  
5 Retirement Plan D after that transfer date, that member's  
6 beneficiary shall not be entitled to the survivor allowance under  
7 Section 31781.1 or 31781.12, if operative.

8 (f) Notwithstanding any other provisions of Retirement Plan D  
9 or Retirement Plan E, a member who has transferred to Retirement  
10 Plan D pursuant to this section and who retires for disability when  
11 eligible under this section and Retirement Plan D, may not also  
12 retire for service and receive service retirement benefits under  
13 Retirement Plan E. However, for the purpose of calculating  
14 disability benefits under Retirement Plan D, the "sum to which he  
15 or she would be entitled as service retirement" or his or her "service  
16 retirement allowance," as those terms are used in Sections 31726,  
17 31726.5, and 31727.4, shall consist of the blended benefit to which  
18 the member would be entitled under subdivision (d) if he or she  
19 retired for service, not just the service retirement benefit to which  
20 he or she would be entitled under Retirement Plan D.

21 (g) As used in this section:

22 (1) "Active service" means time spent on active, on-the-job  
23 performance of the duties of a full-time or part-time position and  
24 on any authorized paid leaves of absence; provided, however, that  
25 any authorized paid leave of absence or part-time service shall not  
26 constitute active service if the leave of absence or part-time service  
27 is necessitated by a preexisting disability, injury, or disease. The  
28 board of retirement shall determine whether or not a leave of  
29 absence or part-time service is necessitated by a preexisting  
30 disability, injury, or disease, and thus excluded from the member's  
31 active service, based upon evidence presented by the employer  
32 and the member upon request by the board.

33 (2) "Entry age" means the age used for calculating the normal  
34 rate of contribution to Retirement Plan D with respect to a member  
35 who has transferred membership to Retirement Plan D under this  
36 section.

37 (3) "Period of active employment" means a period during which  
38 the member is actively performing the duties of a full-time or  
39 part-time employee position or is on any authorized paid leave of  
40 absence, except a leave of absence during which the member is



1 totally disabled and is receiving, or is eligible to receive, disability  
2 benefits, either during or after any elimination or qualifying period,  
3 under a disability plan provided by the employer.

4 (4) “Retirement Plan D” means the contributory retirement plan  
5 otherwise available to new members of the retirement system on  
6 the transfer date.

7 (5) “Retirement Plan E” means the noncontributory retirement  
8 plan established under this article.

9 (6) “Transfer date” means the first day of the first month that  
10 is at least 30 days after the date that the application is filed with  
11 the board to change plan membership under subdivision (a).

12 (h) This section shall only be applicable to Los Angeles County  
13 and shall not become operative until the board of supervisors of  
14 that county elects, by resolution adopted by a majority vote, to  
15 make this section operative in the county.

16 SEC. 4. Section 31495.6 is added to the Government Code, to  
17 read:

18 31495.6. A member may use current, forfeited, and vested  
19 membership periods earned under this chapter when meeting the  
20 reciprocity requirements for purposes of determining age of entry,  
21 as defined in Sections 31833 and 31833.1. This section shall not  
22 apply to members who are retired from this system.