

Assembly Bill No. 1902

CHAPTER 86

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.

[Approved by Governor July 15, 2010. Filed with
Secretary of State July 15, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1902, 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 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.

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

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

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

(a) As used in subdivisions (f) and (g) of Section 31491, subdivisions (b) and (c) of Section 31492, and Section 31495, “board” means the board of investments. In all other cases, “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 monthly permanent basis of at least three-quarter time, as defined by the employer, except an employee eligible for safety membership.

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

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

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

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

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

31490. (a) Except as provided in Sections 31490.5 and 31494, 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 shall not receive credit for that prior public service.

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

(c) For the purposes of subdivision (b) of Section 31491, 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, shall not be considered an interruption of service. However, a payroll period in which no compensation is received by a member shall not be considered as service in calculating the benefits otherwise provided under this article.

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

31494.5. (a) A general member whose benefits are governed by Retirement Plan E may, during a period of active employment, elect to change plan membership and become a member, prospectively, in Retirement Plan D. The election shall be made upon written application signed by the member and filed with the board, pursuant to enrollment procedures and during an enrollment period established by the board, which enrollment period shall not occur more frequently than once every three years for that member. The change in plan membership shall be effective as of the transfer date, as defined in subdivision (g). Except as otherwise provided in this section, the rights and obligations of a member who elects to change membership under this section shall be governed by the terms of Retirement Plan D on and after the transfer date. Prior to the transfer date, the rights to retirement, survivors', or other benefits payable to a member and his or her survivors or beneficiaries shall continue to be governed by Retirement Plan E.

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

(c) A general member who has elected to change plans under subdivision (a) also may elect to exchange, at that time or any time thereafter, but prior to the earlier of his or her application for retirement, termination from employment, or death, some portion designated in whole-month increments, or all of the service credited under Retirement Plan E for an equivalent amount of service credited under Retirement Plan D, provided, however, that the member may not exchange less than 12 months' service or, if less, the total service credited under Retirement Plan E. The exchange shall be effective on the date when the member completes the purchase of that service by depositing in the retirement fund, by lump sum or regular monthly installments, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, or both, but in any event prior to the earlier of his or her death or the date that is 120 days after the effective

date of his or her retirement, the sum of: (1) the contributions the member would have made to the retirement fund under Retirement Plan D for that length of time for which the member shall receive credit as service under Retirement Plan D, computed in accordance with the rate of contribution applicable to the member under Retirement Plan D, based upon his or her entry age, and in the same manner prescribed under Retirement Plan D as if that plan had been in effect during the period for which the member shall receive service credit, and (2) the regular interest thereon.

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

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

(d) Except as otherwise provided in this section, effective as of the transfer date, a member who has transferred to Retirement Plan D pursuant to this section and his or her survivors or beneficiaries shall receive retirement, disability, survivors', death, or other benefits that shall consist of: (1) the benefits to which they are entitled under the terms of Retirement Plan D, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan D, and (2) the benefits to which they would have been entitled under the terms of Retirement Plan E had the member remained a member of Retirement Plan E, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan E. Except as otherwise provided in this section, the calculation of the portion of a member's or beneficiary's benefit that is attributable to each plan is subject to that plan's respective, separate terms, including, but not limited to, the definitions of "final compensation" and provisions establishing cost-of-living adjustments, establishing minimum age and service requirements, and governing integration with federal social security payments. Notwithstanding the foregoing, the aggregate service credited under both Retirement Plan D and Retirement Plan E shall be taken into account for the purpose of determining eligibility for, and vesting of, benefits under each plan.

(e) Notwithstanding any other provision of Retirement Plan D or Retirement Plan E, a member who transfers into Retirement Plan D under this section 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 two continuous years of active service

after his or her most recent transfer date, or (2) earned five years of retirement service credit under Retirement Plan D after his or her most recent transfer date. Notwithstanding any other provision to the contrary, a member who becomes disabled and does not meet either of these conditions (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 provided under subdivision (g) of Section 31488 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. If a member dies before he or she is eligible to retire and before completing either two continuous years of active service after the transfer date into Retirement Plan D or after earning five years of retirement service credit under Retirement Plan D after that transfer date, that member's beneficiary shall not be entitled to the survivor allowance under Section 31781.1 or 31781.12, if operative.

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

(g) As used in this section:

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

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

(3) "Period of active employment" means a period during which the member is actively performing the duties of a full-time or part-time employee

position or is on any authorized paid leave of absence, except a leave of absence during which the member is totally disabled and is receiving, or is eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer.

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

(5) "Retirement Plan E" means the noncontributory retirement plan established under this article.

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

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

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

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