

Senate Bill No. 519

Passed the Senate September 11, 2009

Secretary of the Senate

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 21572, 21573, and 21574.7 of, and to add Section 22944.3 to, the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 519, Ashburn. Public employment.

The Public Employees' Retirement System provides preretirement death benefits for the surviving spouse or children, or both, as specified, of state members and specified school members not covered by the federal Social Security Act and provides that a surviving spouse becomes eligible for certain of these benefits when he or she attains 60 years of age and meets other specified criteria. Existing law provides that on January 1, 2010, the surviving spouse's eligibility age will increase to 62 years of age, and the financial monthly benefits to the survivors would decrease.

This bill would delete the provisions that would change the law on January 1, 2010, and would instead maintain indefinitely the benefits that are currently in effect.

Existing law requires the state to pay sworn members of the California Highway Patrol who are rank-and-file members of State Bargaining Unit 5 the estimated average total compensation for each corresponding rank for the Los Angeles Police Department, Los Angeles County Sheriff's Office, San Diego Police Department, Oakland Police Department, and San Francisco Police Department, as specified. Existing law requires the state and the exclusive representative for State Bargaining Unit 5 to jointly survey annually and calculate the estimated average total compensation based on projected average total compensation for the above-named departments as of July 1 of the year in which the survey is conducted. Existing law requires any increase in total compensation resulting from those provisions to be implemented through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act.

This bill would instead use any amount that would otherwise be used to permanently increase compensation for those members of

State Bargaining Unit 5 pursuant to those provisions, effective on July 1, 2009, and on July 1, 2010, to permanently prefund postemployment health care benefits for patrol members, as defined. The bill would prohibit any amount used to prefund postemployment health care for patrol members pursuant to that provision from being included in any calculation for benefits using final compensation. The bill would require patrol members to contribute an additional 0.5% of base pay toward prefunding retiree health benefit obligations effective on the first day of the pay period following the effective date of this act and the ratification of the addendum by the members of State Bargaining Unit 5. The bill would also require the state to contribute toward prefunding retiree health benefits, on a prospective basis, as specified, effective July 1, 2012. The bill would provide that if those provision are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions would not become effective unless approved by the Legislature in the annual Budget Act.

Existing law requires the Department of Personnel Administration to provide any side letter, appendix, or other addendum to a properly ratified memorandum of understanding that requires the expenditure of \$250,000 or more related to salary and benefits and that is not already contained in the original memorandum of understanding or the Budget Act to the Joint Legislative Budget Committee. Existing law requires the Joint Legislative Budget Committee, within 30 days after receiving the side letter, appendix, or other addendum, to determine if the addendum presents substantial additions that are not reasonably within the parameters of the original memorandum of understanding and thereby requires legislative action to ratify the addendum.

This bill would approve an addendum to a memorandum of understanding entered into by the state employer and State Bargaining Unit 5 that require the expenditure of funds. The bill would approve provisions of the addendum that require the expenditure of funds. The bill would provide that those provisions shall not take effect unless the funds are specifically appropriated by the Legislature or already exist within available appropriations,

and would allow the reopening of negotiations if the Legislature does not approve or fully fund any addendum included in the bill.

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

SECTION 1. Section 21572 of the Government Code is amended to read:

21572. (a) In lieu of benefits provided in Section 21571, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid four hundred fifty dollars (\$450) per month if there is one child or five hundred thirty-eight dollars (\$538) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under

this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of two hundred twenty-five dollars (\$225) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid two hundred twenty-five dollars (\$225) per month.

(B) If there are two children, the children shall be paid four hundred fifty dollars (\$450) per month divided equally between them.

(C) If there are three or more children, the children shall be paid five hundred thirty-eight dollars (\$538) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid two hundred twenty-five dollars (\$225) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1) or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be eighty-eight dollars (\$88) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid two hundred twenty-five dollars (\$225) per month.

(c) “Stepchildren,” for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) This section shall apply to beneficiaries receiving 1959 survivor allowances on July 1, 1975, as well as to beneficiaries with respect to the death of a state member occurring on or after July 1, 1975.

(e) This section shall apply, with respect to benefits payable on and after July 1, 1981, to all members employed by a school employer, and school safety members employed with a school district or community college district as defined in subdivision (i) of Section 20057, except that it shall not apply, without contract amendment, with respect to safety members who became members after July 1, 1981. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of all miscellaneous members employed by a school employer and all safety members who are members on July 1, 1981.

(f) This section does not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

(g) On and after January 1, 2000, all state members covered by this section shall be covered by the benefit provided under Section 21574.7.

(h) On and after the date determined by the board, all assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section.

(i) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section is projected to have a surplus in its 1959 survivor benefit account as of the date the assets and liabilities are first pooled, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section is projected to have a deficit in its 1959 survivor benefit account as of the date the assets and liabilities are

first pooled, its rate of contribution shall be increased until the projected deficit is paid.

SEC. 2. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars (\$700) per month if there is one child, or eight hundred forty dollars (\$840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars (\$350) per month, shall be divided equally among all those children

and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars (\$350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars (\$700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars (\$840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid three hundred fifty dollars (\$350) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1) or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars (\$140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars (\$350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, and prior to July 1, 2001, to make this article applicable to local members employed by the agency. On or after January 1, 1985, and prior to July 1, 2001, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject

to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on or after January 1, 1994, and prior to July 1, 2001, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, and prior to July 1, 2001, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, unless provided for in a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, or authorized by the Trustees of the California State University for employees excluded from collective bargaining. The memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(j) This section shall apply to local members employed by a contracting agency that has included this benefit in its contract with the board on or before June 30, 2001.

(k) This section shall not apply to any contracting agency that first contracts with the board on or after July 1, 2001.

(l) On and after January 1, 2000, all eligible state and school members covered by this section shall be covered by the benefit provided under Section 21574.7.

SEC. 3. Section 21574.7 of the Government Code is amended to read:

21574.7. (a) In lieu of benefits provided in Section 21571, 21572, or 21573, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving spouse of the member who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age or are incapacitated because of a disability that began before and has continued without interruption after the attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving spouse of the member who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the employer, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid one thousand five hundred dollars (\$1,500) per month if there is one child or one thousand eight hundred dollars (\$1,800) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of seven

hundred fifty dollars (\$750) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid seven hundred fifty dollars (\$750) per month.

(B) If there are two children, the children shall be paid one thousand five hundred dollars (\$1,500) per month divided equally between them.

(C) If there are three or more children, the children shall be paid one thousand eight hundred dollars (\$1,800) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 60 years, and who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid seven hundred fifty dollars (\$750) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1) or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be three hundred dollars (\$300) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 60 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid seven hundred fifty dollars (\$750) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall only apply to state and school members effective on or after January 1, 2000.

(e) All assets and liabilities of state employers subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of state members employed by the state.

(f) All assets and liabilities of school employers, as defined in Section 20063, that are subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section.

(g) The rate of contribution of an employer subject to this section shall be calculated using a method determined by the board. Surplus assets shall be applied to reduce the rate of contribution. If a deficit exists, the rate of contribution shall be increased until the deficit is paid.

(h) On and after January 1, 2000, all state employees and school members shall be covered by this section.

SEC. 4. Section 22944.3 is added to the Government Code, to read:

22944.3. (a) Any amount that would otherwise be used to permanently increase compensation pursuant to Section 19827, effective on July 1, 2009, and on July 1, 2010, shall instead be used to permanently prefund postemployment health care benefits for patrol members. The amount used to prefund benefits relative to any increases under the survey methodology effective July 1, 2010, shall not exceed 2 percent. The state shall take credit for these prefunding contributions in the survey methodology established in Section 19827 in the same manner as it would for an increase to the base salary for patrol members.

(b) Patrol members shall contribute an additional 0.5 percent of base pay toward prefunding retiree health benefit obligations effective on the first day of the pay period following the effective date of the act adding this section and the ratification of the addendum by the members of State Bargaining Unit 5. This contribution shall not reduce the base salary of patrol members under the survey methodology established by Section 19827.

(c) Effective July 1, 2012, the state shall contribute toward prefunding retiree health benefits, on a prospective basis, an

amount at least equal to the combined contribution rate established pursuant to subdivisions (a) and (b). These contributions may be used in the survey methodology established by Section 19827 if mutually agreed in a memorandum of understanding.

(d) Contributions paid pursuant to this section shall be used exclusively for the cost of providing postemployment health care to eligible enrolled patrol member annuitants and their eligible enrolled dependents, beneficiaries, and survivors.

(e) Contributions paid pursuant to this section shall not be refundable under any circumstances to a patrol member or his or her beneficiary or survivor.

(f) Any amount used to prefund postemployment health care for patrol members pursuant to subdivision (a) shall not be included in any calculation for benefits using final compensation.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(h) For purposes of this section, “patrol member” has the same meaning as in Section 20390. This section shall not apply to an employee of a county.

SEC. 5. The provisions of the addenda to memoranda of understanding entered into by the state employer and State Bargaining Unit 5 that require the expenditure of funds are hereby approved for the purposes of Section 3517.63 of the Government Code.

SEC. 6. The addendum to memoranda of understanding entered into by the state employer and State Bargaining Unit 5, dated August 26, 2009, is hereby approved.

SEC. 7. The provisions of the addendum to the memorandum of understanding approved by Sections 5 and 6 of this act and that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature or already exist within available appropriations. If the Legislature does not approve or fully fund the addendum in this act, either party may reopen negotiations on all or part of the addendum.

Approved _____, 2009

Governor