

**ASSEMBLY BILL**

**No. 2473**

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

February 21, 2014

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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, 31694.6, and 31698.5 to, the Government Code, relating to county employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2473, as introduced, 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 conditions for the distribution of funds to members from a retirement system, prescribe requirements for the vesting of benefits, and limit 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, 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 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 is added to the Government  
 2 Code, to read:  
 3 31485.16. (a) Notwithstanding any other provision of this  
 4 chapter, the rights of each member to his or her accrued retirement  
 5 benefits under the retirement system shall be nonforfeitable, in  
 6 accordance with the requirements of Sections 401(a) of Title 26

1 of the United States Code that are applicable to public employee  
2 plans, as follows:

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

5 (2) To the extent then funded, on the date of the termination of  
6 the system, the partial termination of the system, or the complete  
7 discontinuance of contributions under the system, as provided in  
8 Title 26 of the United States Code.

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

13 (c) Notwithstanding subdivision (a), the vesting provisions under  
14 Articles 8 and 9, or any other law, a member's earned and accrued  
15 benefits may be forfeited under Sections 7522.70, 7522.72, and  
16 7522.74.

17 SEC. 2. Section 31485.17 is added to the Government Code,  
18 to read:

19 31485.17. Notwithstanding any other provision of this chapter,  
20 no amount shall be distributed from a retirement system established  
21 under this chapter prior to the time that the distribution may be  
22 made in compliance with the requirements of Section 401(a) of  
23 Title 26 of the United States Code that are applicable to public  
24 employee plans, including, but not limited to, requirements relating  
25 to the distribution of amounts prior to the earlier of a member's  
26 death, disability, separation from service with all employers that  
27 maintain the retirement system, or attainment of normal retirement  
28 age, as defined by the retirement system.

29 SEC. 3. Section 31485.19 is added to the Government Code,  
30 to read:

31 31485.19. (a) A member who has not attained normal  
32 retirement age shall have a bona fide separation from service to  
33 the extent required by Section 401(a) of Title 26 of the United  
34 States Code before working for the county or a district. The board  
35 shall establish, by regulation, the criteria under which a bona fide  
36 separation is satisfied.

37 (b) Notwithstanding any other provision of this chapter, to the  
38 extent required or permitted by Section 401(a) of Title 26 of the  
39 United States Code, no amount shall be paid to any member before

1 the date the member has attained normal retirement age or has had  
2 a bona fide separation from service, whichever is earlier.

3 (c) The board may establish, by regulation, normal retirement  
4 age consistent with federal law and eligibility requirements under  
5 state law.

6 SEC. 4. Section 31564 of the Government Code is amended  
7 to read:

8 31564. (a) All officers and employees of any district who have  
9 become members of the association as provided in Section 31557,  
10 may be withdrawn by a resolution of the governing body declaring  
11 all of the district’s employees withdrawn from the association;  
12 provided, the governing body has first received a written petition  
13 signed by a majority of its officers and employees requesting that  
14 the district’s officers and employees be withdrawn from the  
15 association.

16 ~~Upon~~

17 (b) *Upon* the adoption of any resolution to withdraw its  
18 members, all accumulated contributions held in the association  
19 shall be refunded to the district’s employees upon the effective  
20 date of their withdrawal and in the same manner as the accumulated  
21 contributions would be refunded upon the termination of their  
22 employment by the district.

23 ~~Upon~~

24 (c) *Upon* the adoption of any resolution to withdraw its  
25 members and where there are no existing retirees from the district,  
26 the district’s contributions shall be refunded to the district, or shall,  
27 upon the election of and designation by the governing body of the  
28 district, be transferred to another public retirement system *that*  
29 *meets the requirement of a tax-qualified retirement plan under*  
30 *Section 401(a) of Title 26 of the United States Code.*

31 (d) *A refund, distribution, or transfer of contributions for other*  
32 *funds shall not be made to any employee or any district unless that*  
33 *action complies with the requirements of Section 401(a) of Title*  
34 *26 of the United States Code.*

35 ~~In~~

36 (e) *In* the event of the transfer of district contributions to another  
37 public retirement system, the employee contributions shall also be  
38 transferred to the other public retirement system.

39 ~~The~~

1 (f) *The* effective date of withdrawal of any resolution adopted  
2 pursuant to this section shall be at the end of the calendar month  
3 during which such resolution is adopted.

4 SEC. 5. Section 31592.2 of the Government Code is amended  
5 to read:

6 31592.2. (a) In any county, earnings of the retirement fund  
7 during any year in excess of the total interest credited to  
8 contributions and reserves during such year shall remain in the  
9 fund as a reserve against deficiencies in interest earnings in other  
10 years, losses on investments, and other contingencies, except that,  
11 when such surplus exceeds 1 percent of the total assets of the  
12 retirement system, the board may transfer all, or any part, of such  
13 surplus in excess of 1 percent of the said total assets into county  
14 advance reserves for the sole purpose of payment of the cost of  
15 the benefits described in this chapter.

16 ~~Where~~

17 (b) *Where* the board of supervisors has provided for the payment  
18 of all, or a portion, of the premiums, dues, or other charges for  
19 health benefits, Medicare, or the payment of accrued sick leave at  
20 retirement to or for all, or a portion, of officers, employees, and  
21 retired employees and their dependents, from the county general  
22 fund or other sources, the board of retirement may authorize the  
23 payment of all, or a portion, of payments of the benefits described  
24 in this ~~paragraph~~ *subdivision* from the county advance reserves.  
25 *This payment shall comply with the requirements of Section 401*  
26 *of Title 26 of the United States Code. Payment may be made*  
27 *directly from the county advance reserves for the benefits described*  
28 *in Section 31691.1.*

29 SEC. 6. Section 31592.4 of the Government Code is amended  
30 to read:

31 ~~31592.4. (a) Notwithstanding Article 5.5 (commencing with~~  
32 ~~Section 31610) and Article 8.6 (commencing with Section 31694),~~  
33 ~~the~~ *The* amount of excess earnings available at the end of a fiscal  
34 year of the retirement fund, shall, subject to the limitations in this  
35 section, be treated in the immediately succeeding fiscal year, for  
36 all purposes under this chapter, as appropriations, transfers, and  
37 contributions made to the retirement fund by the county and  
38 *applicable* districts. ~~That treatment shall be solely for the purposes~~  
39 ~~of meeting the applicable requirements of Section 401 of the~~  
40 ~~Internal Revenue Code of the United States. That treatment shall~~

1 ~~also~~ occur only to the extent that, in the immediately succeeding  
 2 fiscal year, the county and *applicable* districts pay for, ~~or otherwise~~  
 3 ~~make reimbursement of, an equal amount of health benefits for~~  
 4 members heretofore or hereafter retired and their ~~dependents. For~~  
 5 *dependents or make contributions in an equal amount to an account*  
 6 *established under Section 401(h) of Title 26 of the United States*  
 7 *Code solely for the purpose of providing health benefits for retired*  
 8 *members, their spouses, and dependents, and for the associated*  
 9 *administrative and investment expenses.*

10 (b) For purposes of this section, “excess earnings” means  
 11 earnings of the retirement fund at the end of any fiscal year that  
 12 exceed the total interest credited to contributions and reserves plus  
 13 1 percent of the total assets of the retirement fund. ~~The~~

14 (c) ~~The board of supervisors and or the board of retirement may~~  
 15 ~~shall take any actions otherwise authorized by law, necessary~~  
 16 *necessary and appropriate* to ensure that the program provided  
 17 by this section complies with all applicable federal and state income  
 18 ~~tax laws. laws, including, but not limited to, establishing rules and~~  
 19 *procedures for establishing and maintaining an account under*  
 20 *Section 401(h) of Title 26 of the United States Code.*

21 (d) *In accordance with Section 401(h) of Title 26 of the United*  
 22 *States Code and Section 1.401-14(c) of the Code of Federal*  
 23 *Regulations:*

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

26 (2) *Medical benefits shall be subordinate to the retirement*  
 27 *benefits when added to any life insurance benefits.*

28 (3) *A separate account shall be maintained for contributions to*  
 29 *fund the medical benefits.*

30 (4) *The funds in the separate account may be invested with the*  
 31 *funds for retirement benefits and the earnings shall be allocated*  
 32 *to each account in a reasonable manner.*

33 (5) *Amounts contributed for medical benefits shall be reasonable*  
 34 *and ascertainable.*

35 (6) *No part of the medical benefits account may be used for or*  
 36 *diverted to any purpose other than providing medical benefits and*  
 37 *paying necessary or appropriate expenses for the administration*  
 38 *of the medical benefits account.*

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

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

7 (e) Except to the extent allowed by Sections 401 and 420 of Title  
8 26 of the United States Code, and related federal regulations,  
9 assets shall not be transferred or otherwise paid from the funds  
10 held by the retirement system for retirement benefits to a medical  
11 benefits account. Assets shall not be transferred or otherwise paid  
12 from a medical benefits account to the funds held by the retirement  
13 system for retirement benefits.

14 ~~(b)~~

15 (f) This section shall not be operative in any county until the  
16 board of supervisors and the board of retirement of the county, by  
17 resolution adopted by a majority vote of each board, make this  
18 section operative in the county.

19 ~~(e) Nothing in this section is intended to, or should~~

20 (g) This section is not intended, and shall not be construed to,  
21 affect the validity of any agreement entered into by a county and  
22 a retirement association whereby a county has agreed to provide  
23 and fund a health insurance program for retired employees and  
24 their dependents for hospital services, medical services, dental  
25 services, and optical services, prior to the effective date of this  
26 section.

27 ~~(d) In any county in which this section becomes operative, the~~  
28 ~~payments provided pursuant to this section shall be in lieu of any~~  
29 ~~similar payments which could be made pursuant to Section 31592.2~~  
30 ~~and no payments shall be made pursuant to Section 31592.2 for~~  
31 ~~all, or a portion, of the premiums, dues, or other charges for health~~  
32 ~~benefits for retired employees and their dependents.~~

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

37 (i) This section may be made applicable in any county that has  
38 adopted Article 5.5 (commencing with Section 31610), in which  
39 case the Supplemental Retiree Benefits Reserve shall be substituted  
40 for the excess earnings described in this section. This section also

1 *may be made applicable to any arrangement established under*  
2 *Article 8.6 (commencing with Section 31694).*

3 SEC. 7. Section 31649.5 of the Government Code is amended  
4 to read:

5 31649.5. ~~(a)~~ Notwithstanding Section 31649, any member  
6 who resigned, or obtained a leave of absence, to enter and did enter  
7 the armed forces of the United States on a voluntary or involuntary  
8 basis and returned to county service within one year after separation  
9 therefrom, under honorable conditions, shall receive credit for  
10 service and prior service for all or any part of his or her military  
11 service, if, before retirement from the county, he or she contributes  
12 what he or she would have paid to the fund based on his or her  
13 compensation earnable pursuant to Section 31461 at the time he  
14 or she resigned or received the leave of absence, together with  
15 regular interest thereon, and if, when he or she contributes, the  
16 military service is not a basis for present or future military  
17 retirement pay.

18 ~~(b) This section shall not be operative in any county until the~~  
19 ~~board of supervisors so orders.~~

20 SEC. 8. Section 31656 of the Government Code is amended  
21 to read:

22 31656. Nothing in this chapter shall be construed to prohibit  
23 any district established pursuant to Part 4 (commencing with  
24 Section 40000) of Division 10 of the Public Utilities Code, from  
25 extending retirement service credit pursuant to Section 40127 of  
26 the Public Utilities Code to any employee of the district who is on  
27 an authorized leave of absence to serve as an official of a  
28 recognized employee bargaining unit, under all of the following  
29 conditions:

30 ~~(a) The employee or the recognized employee organization, or~~  
31 ~~both, as determined pursuant *agrees* to applicable provisions of~~  
32 ~~this part, agree to pay the total contributions which *that* would~~  
33 otherwise be paid if the employee were not on leave, as well as  
34 any additional costs which may accrue to the system as a result of  
35 this extension of coverage.

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

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

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

4 SEC. 9. Section 31671 of the Government Code is amended  
5 to read:

6 31671. (a) The amount of compensation that is taken into  
7 account in computing benefits payable to any person who first  
8 becomes a member of the retirement system on or after July 1,  
9 1996, *or January 1, 1996, for systems operating on a calendar*  
10 *basis*, shall not exceed the limitations in Section 401(a)(17) of  
11 Title 26 of the United States Code upon public retirement systems,  
12 as that section may be amended from time to time and as that limit  
13 may be adjusted by the Commissioner of Internal Revenue for  
14 increases in cost of living. The determination of compensation for  
15 each 12-month period shall be subject to the annual compensation  
16 limit in effect for the calendar year in which the 12-month period  
17 begins. In a determination of average annual compensation over  
18 more than one 12-month period, the amount of compensation taken  
19 into account for each 12-month period shall be subject to the  
20 applicable annual compensation limit.

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

26 SEC. 10. Section 31691 of the Government Code is amended  
27 to read:

28 31691. (a) The board of supervisors of any county by  
29 ordinance, or the governing body of any district under the County  
30 Employees Retirement Law, by ordinance or resolution, may  
31 provide for the contribution by the county or district from its funds  
32 and not from the retirement fund, toward the payment of all or a  
33 portion of the premiums on a policy or certificate of life insurance  
34 or disability insurance issued by an admitted insurer, or toward  
35 the payment of all or part of the consideration for any hospital  
36 service or medical service corporation, including any corporation  
37 lawfully operating under Section 9201 of the Corporations Code,  
38 contract, or for any combination thereof, for the benefit of any  
39 member heretofore or hereafter retired or his or her dependents.

1 At least one of these plans shall include free choice of physician  
 2 and surgeon.

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

5 (c) 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 for one year prior to the date of retirement of the  
 8 member, or, if there is no such spouse, the surviving unmarried  
 9 children of the member who are under 18 years of age, or under  
 10 22 years of age and full-time students, for the *hospital and medical*  
 11 ~~benefits enumerated herein in subdivision (a)~~ from the earnings  
 12 of the retirement fund that are in excess of the total interest credited  
 13 to contributions and reserves plus 1 percent of the total assets of  
 14 the retirement fund. The board may provide for the benefits  
 15 enumerated from like sources when the board of supervisors or  
 16 the governing body of a district has elected to provide these  
 17 benefits to its active employees, even though the benefits are not  
 18 provided to those who have retired from the service of the county  
 19 or district. *Hospital and medical benefits provided under this*  
 20 *section shall be provided in compliance with Section 401(h) of*  
 21 *Title 26 of the United States Code. They may also be provided in*  
 22 *compliance with Section 31592.2.*

23 (d) Except in a county of the first class, upon adoption by any  
 24 county ~~providing benefits pursuant to this section, the board of~~  
 25 ~~retirement shall, instead, pay those benefits from the~~ *that has*  
 26 *adopted Article 5.5 (commencing with Section 31610), the*  
 27 *Supplemental Retiree Benefits Reserve established pursuant to*  
 28 ~~Section 31618: 31618 shall be substituted for the excess earnings~~  
 29 *described in subdivision (c).*

30 SEC. 11. Section 31691.1 of the Government Code is amended  
 31 to read:

32 31691.1. (a) In lieu of the benefits prescribed by ~~subdivision~~  
 33 ~~(d) of Section 31691,~~ the board of retirement may provide on behalf  
 34 of a member who has retired, or an eligible surviving spouse who  
 35 was married to the member prior to the date of retirement of the  
 36 member, or, if there is no such spouse, the surviving unmarried  
 37 children of the member who are under 18 years of age, or under  
 38 22 years of age and full-time students, for an equivalent increase  
 39 in allowance from the earnings of the retirement fund that are in  
 40 excess of the total interest credited to contributions and reserves

1 plus 1 percent of the total assets of the retirement fund. Any benefit  
2 provided by this section shall be subject to Section 31692.

3 (b) Except in a county of the first class, upon adoption by any  
4 county providing benefits pursuant to this section, the board of  
5 retirement shall, instead, pay those benefits from the Supplemental  
6 Retiree Benefits Reserve established pursuant to Section 31618.

7 SEC. 12. Section 31694.6 is added to the Government Code,  
8 to read:

9 31694.6. (a) Notwithstanding any provision to the contrary in  
10 this article, if the Post-Employment Benefits Trust Account  
11 established under Section 31694 is established as a part of the  
12 retirement fund, then that account shall be established for the sole  
13 purpose of providing health benefits for retired members, their  
14 spouses, and dependents, and shall comply with all requirements,  
15 including the limitations on contributions, of Section 401(h) of  
16 Title 26 of the United States Code, as applicable.

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

23 (c) If the Post-Employment Benefits Trust Account is established  
24 under Section 31694, assets shall not be transferred or otherwise  
25 paid from the funds held by the retirement system for retirement  
26 benefits to a medical benefits account. Assets shall not be  
27 transferred or otherwise paid from a medical benefits account to  
28 the funds held by the retirement system for retirement benefits.

29 SEC. 13. Section 31696.3 of the Government Code is amended  
30 to read:

31 31696.3. (a) The board shall establish a trust fund designated  
32 as the Long-Term Care Fund for the purpose of the payment of  
33 the costs and administration of the long-term care plan. The  
34 Long-Term Care Fund shall be held for the exclusive benefit of  
35 enrollees and the payment of the costs and administration of the  
36 program.

37 (b) The board shall have exclusive control of the administration  
38 and investment of the Long-Term Care Fund, except that in a  
39 county having a board of investments, the board of investments  
40 shall have exclusive control of the investment of the fund. Funds

1 in the Long-Term Care Fund shall be invested pursuant to the law  
2 governing the investment of the retirement fund.

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

5 (d) *If the Long-Term Care Fund is intended to be a part of the*  
6 *retirement system trust fund, then the operation of the Long-Term*  
7 *Care Fund, including, but not limited to, its funding, governance,*  
8 *investment of assets, allocation of income, and payment of benefits,*  
9 *shall comply with the requirements of Section 401(h) of Title 26*  
10 *of the United States Code, to the extent required by that title and*  
11 *related federal regulations. If the Long-Term Care Fund is intended*  
12 *to be separate from and not a part of the retirement system, then*  
13 *the assets shall not be commingled for investment with the assets*  
14 *of the retirement system and shall constitute a separate fund with*  
15 *a trust that is separate from the funds and trust of the retirement*  
16 *system. The board shall indicate, as a part of establishment of the*  
17 *Long-Term Care Fund, whether the separate fund is intended to*  
18 *be a part of, or separate from, the retirement system.*

19 SEC. 14. Section 31698.5 is added to the Government Code,  
20 to read:

21 31698.5. If the vision care program is intended to be part of  
22 the retirement system trust fund, the operation of the vision care  
23 program, 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 vision care program is intended  
28 to be separate from and not a part of the retirement system, then  
29 no assets attributable to that program shall be commingled for  
30 investment with the assets of the retirement system and the program  
31 shall be separate from the funds and trust of the retirement system.  
32 The sponsor of the vision care program shall indicate as part of  
33 the establishment of the program whether that separate fund is  
34 intended to be a part of, or separate from, the retirement system.