

AMENDED IN ASSEMBLY MARCH 9, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2376**

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**Introduced by Committee on Public Employees, Retirement, and Social Security (Assembly Members Cooper (Chair), Bonta, Cooley, Gonzalez, and O'Donnell)**

February 18, 2016

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An act to amend Sections 31494.2, 31494.5, ~~and 31526~~ of 31526, and 31641.4 of, and to add Sections 31495.7 and 31520.6 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2376, as amended, Committee on Public Employees, Retirement, and Social Security. County employees' retirement: Los Angeles County.

The County Employees Retirement Law of 1937 (CERL) establishes retirement plans, known as Retirement Plan D and Retirement Plan E, that are applicable in the retirement system in Los Angeles County and prescribes procedures for members to transfer between those plans. CERL defines "Retirement Plan E" to mean the noncontributory retirement plan established by specific provisions, and defines "Retirement Plan D" to mean the contributory retirement plan otherwise available to new members of the retirement system on the transfer date.

This bill would revise the definition of Retirement Plan D to, instead, refer to the contributory retirement plan otherwise available to members of the system between June 1, 1979, and December 31, 2012, inclusive.

*CERL provides for the retirement system in Los Angeles County specific ages and pension allowances for normal and early retirement. Under CERL, a member of a CERL retirement system who is eligible*

*to retire at 50 years of age pursuant to specified statute, or who is required to retire because of age while a member of the Public Employees' Retirement System (PERS), a CERL retirement system in another county, the State Teachers' Retirement System (STRS), or a retirement system of any other public agency of the state that has established reciprocity with PERS subject to certain conditions, but who cannot retire concurrently from PERS, a CERL retirement system in another county, STRS, or a retirement system of any other public agency of the state that has established reciprocity with PERS subject to certain conditions, is entitled to have final compensation and service determined under specific statutes as if the member had retired concurrently under that other system (concurrent retirement exception). Provisions of CERL specifically applicable to Los Angeles County, among other things, apply reciprocal benefits, including the concurrent retirement exception, to the retirement system in Los Angeles County.*

*This bill would amend provisions of CERL specifically applicable to Los Angeles County to provide that the concurrent retirement exception applies to a member of the retirement system in Los Angeles County eligible to retire at 55 years of age and would state that the amendment is declaratory of existing law.*

*CERL sets forth the membership composition for boards of retirement, as specified. Under that law, the retirement board in specified counties is comprised of 9 members and an alternate member, as specified. That law also authorizes specified counties to appoint an alternate retired member to the office of the 8th member of the board and authorizes the alternate retired member to vote as a member of the board only in the event the 8th member is absent from a board meeting for any cause.*

*This bill would additionally authorize the alternate retired member to vote as a member of the board if the 8th member is present and both the 2nd and 3rd, both the 2nd and 7th, or both the 3rd and 7th members are absent for any cause.*

Under CERL, except as specified, the management of a retirement system is vested in the board of ~~retirement, with membership as prescribed:~~ retirement. CERL authorizes such a board to make regulations not inconsistent with that law, and requires that the regulations include specific provisions, including provisions for the filing of a sworn statement by every person who is or becomes a member, showing date of birth, nature and duration of employment with the county, compensation received, and other information as is required by the board.

This bill would authorize those regulations, in lieu of a sworn statement, to provide for the submission by a member’s employer to the retirement association of the information otherwise required in a sworn statement, in a form determined by the retirement association.

*CERL requires that a safety member who receives credit for prior employment in public service, the principal duties of which consisted of active law enforcement or active fire suppression, or active service in the Armed Forces of the United States during time of war or national emergency, have his or her pension or retirement allowance for that service calculated on the same basis as the calculation of the retirement allowance the member would receive as a safety member under certain laws relating to the retirement of safety members for service.*

*This bill would require instead that the allowance be calculated on the same basis as the calculation of the retirement allowance the member would receive as a safety member under the safety benefit formula in effect on the date of the member’s initial safety membership.*

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 31494.2 of the Government Code is  
2 amended to read:  
3 31494.2. (a) A general member whose benefits are governed  
4 by Retirement Plan D may, during a period of active employment,  
5 elect to change plan membership and become a member,  
6 prospectively, in Retirement Plan E. The election shall be made  
7 upon written application signed by the member and filed with the  
8 board, pursuant to enrollment procedures and during an enrollment  
9 period established by the board, which enrollment period shall not  
10 occur more frequently than once every three years for that member.  
11 The change in plan membership shall be effective as of the transfer  
12 date, as defined in subdivision (d). Except as otherwise provided  
13 in this section, the rights and obligations of a member who elects  
14 to change membership under this section shall be governed by the  
15 terms of this article on and after the transfer date. Prior to the  
16 transfer date, the rights to retirement, survivors’, or other benefits  
17 payable to a member and his or her survivors or beneficiaries shall  
18 continue to be governed by Retirement Plan D.

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

24 (c) Notwithstanding any other provision of Retirement Plan D  
25 or Retirement Plan E:

26 (1) A member who has transferred to Retirement Plan E pursuant  
27 to this section may not retire for disability and receive disability  
28 retirement benefits under Retirement Plan D.

29 (2) If a member who has transferred to Retirement Plan E  
30 pursuant to this section dies prior to retirement, that member's  
31 survivor or beneficiary may not receive survivor or death benefits  
32 under Retirement Plan D but shall receive a refund of the member's  
33 contributions to Retirement Plan D together with all interest  
34 credited thereto.

35 (d) As used in this section:

36 (1) "Period of active employment" means a period during which  
37 the member is actively performing the duties of a full-time or  
38 part-time employee position or is on any authorized paid leave of  
39 absence, except a leave of absence during which the member is  
40 totally disabled and is receiving, or is eligible to receive, disability

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

3 (2) “Retirement Plan D” means the contributory retirement plan  
4 otherwise available to members of the system between June 1,  
5 1979, and December 31, 2012, inclusive.

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

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

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

15 SEC. 2. Section 31494.5 of the Government Code is amended  
16 to read:

17 31494.5. (a) A general member whose benefits are governed  
18 by Retirement Plan E may, during a period of active employment,  
19 elect to change plan membership and become a member,  
20 prospectively, in Retirement Plan D. The election shall be made  
21 upon written application signed by the member and filed with the  
22 board, pursuant to enrollment procedures and during an enrollment  
23 period established by the board, which enrollment period shall not  
24 occur more frequently than once every three years for that member.  
25 The change in plan membership shall be effective as of the transfer  
26 date, as defined in subdivision (g). Except as otherwise provided  
27 in this section, the rights and obligations of a member who elects  
28 to change membership under this section shall be governed by the  
29 terms of Retirement Plan D on and after the transfer date. Prior to  
30 the transfer date, the rights to retirement, survivors’, or other  
31 benefits payable to a member and his or her survivors or  
32 beneficiaries shall continue to be governed by Retirement Plan E.

33 (b) If a member has made the election to change plans under  
34 subdivision (a), monthly contributions by the member and the  
35 employer under the terms of Retirement Plan D shall commence  
36 as of the transfer date. For the purposes of calculating the member’s  
37 contribution rate under Retirement Plan D, his or her entry age  
38 shall be deemed to be his or her age at his or her birthday nearest  
39 the transfer date; however, if the member exchanges service credit  
40 in accordance with subdivision (c), with regard to contributions

1 made for periods after that exchange, his or her entry age shall be  
2 adjusted and deemed to be the member's age at his or her birthday  
3 nearest the date on which begins the most recent period of  
4 unbroken service credited under Retirement Plan D, taking into  
5 account service purchased under subdivision (c). In no event shall  
6 the exchange of service under subdivision (c) affect the entry age  
7 with respect to, or the cost of, employee contributions made, or  
8 service purchased, prior to the exchange.

9 (c) (1) A general member who has elected to change plans  
10 under subdivision (a) also may elect to exchange, at that time or  
11 any time thereafter, but prior to the earlier of his or her application  
12 for retirement, termination from employment, or death, some  
13 portion designated in whole-month increments, or all of the service  
14 credited under Retirement Plan E for an equivalent amount of  
15 service credited under Retirement Plan D, provided, however, that  
16 the member may not exchange less than 12 months' service or, if  
17 less, the total service credited under Retirement Plan E. The  
18 exchange shall be effective on the date when the member completes  
19 the purchase of that service by depositing in the retirement fund,  
20 by lump sum or regular monthly installments, over the period of  
21 time determined by a resolution adopted by a majority vote of the  
22 board of retirement, or both, but in any event prior to the earlier  
23 of his or her death or the date that is 120 days after the effective  
24 date of his or her retirement, the sum of: (1) the contributions the  
25 member would have made to the retirement fund under Retirement  
26 Plan D for that length of time for which the member shall receive  
27 credit as service under Retirement Plan D, computed in accordance  
28 with the rate of contribution applicable to the member under  
29 Retirement Plan D, based upon his or her entry age, and in the  
30 same manner prescribed under Retirement Plan D as if that plan  
31 had been in effect during the period for which the member shall  
32 receive service credit, and (2) the regular interest thereon.

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

1 period of service under both Retirement Plan D and Retirement  
2 Plan E.

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

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

34 (e) Notwithstanding any other provision of Retirement Plan D  
35 or Retirement Plan E, a member who transfers into Retirement  
36 Plan D under this section may retire for service-connected or  
37 nonservice-connected disability and receive disability benefits  
38 under Retirement Plan D only if he or she has either (1) completed  
39 two continuous years of active service after his or her most recent  
40 transfer date, or (2) earned five years of retirement service credit

1 under Retirement Plan D after his or her most recent transfer date.  
2 Notwithstanding any other provision to the contrary, a member  
3 who becomes disabled and does not meet either of these conditions  
4 (1) may apply for and receive only a deferred or service retirement  
5 allowance, or (2) may elect to transfer prospectively back to  
6 Retirement Plan E, and for the purposes of calculating his or her  
7 retirement benefits under this section, shall in lieu of credit under  
8 Retirement Plan D be credited with service under Retirement Plan  
9 E as provided under subdivision (g) of Section 31488 during any  
10 period he or she is totally disabled and is receiving, or eligible to  
11 receive, disability benefits, either during or after any elimination  
12 or qualifying period, under a disability plan provided by the  
13 employer up to the earlier of the date he or she retires or no longer  
14 qualifies for disability benefits. If a member dies before he or she  
15 is eligible to retire and before completing either two continuous  
16 years of active service after the transfer date into Retirement Plan  
17 D or after earning five years of retirement service credit under  
18 Retirement Plan D after that transfer date, that member's  
19 beneficiary shall not be entitled to the survivor allowance under  
20 Section 31781.1 or 31781.12, if operative.

21 (f) Notwithstanding any other provisions of Retirement Plan D  
22 or Retirement Plan E, a member who has transferred to Retirement  
23 Plan D pursuant to this section and who retires for disability when  
24 eligible under this section and Retirement Plan D, may not also  
25 retire for service and receive service retirement benefits under  
26 Retirement Plan E. However, for the purpose of calculating  
27 disability benefits under Retirement Plan D, the "sum to which he  
28 or she would be entitled as service retirement" or his or her "service  
29 retirement allowance," as those terms are used in Sections 31726,  
30 31726.5, and 31727.4, shall consist of the blended benefit to which  
31 the member would be entitled under subdivision (d) if he or she  
32 retired for service, not just the service retirement benefit to which  
33 he or she would be entitled under Retirement Plan D.

34 (g) As used in this section:

35 (1) "Active service" means time spent on active, on-the-job  
36 performance of the duties of a full-time or part-time position and  
37 on any authorized paid leaves of absence; provided, however, that  
38 any authorized paid leave of absence or part-time service shall not  
39 constitute active service if the leave of absence or part-time service  
40 is necessitated by a preexisting disability, injury, or disease. The

1 board of retirement shall determine whether or not a leave of  
2 absence or part-time service is necessitated by a preexisting  
3 disability, injury, or disease, and thus excluded from the member's  
4 active service, based upon evidence presented by the employer  
5 and the member upon request by the board.

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

10 (3) "Period of active employment" means a period during which  
11 the member is actively performing the duties of a full-time or  
12 part-time employee position or is on any authorized paid leave of  
13 absence, except a leave of absence during which the member is  
14 totally disabled and is receiving, or is eligible to receive, disability  
15 benefits, either during or after any elimination or qualifying period,  
16 under a disability plan provided by the employer.

17 (4) "Retirement Plan D" means the contributory retirement plan  
18 otherwise available to members of the system between June 1,  
19 1979, and December 31, 2012, inclusive.

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

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

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

29 *SEC. 3. Section 31495.7 is added to the Government Code, to*  
30 *read:*

31 *31495.7. Section 31835.1 applies to a member eligible to retire*  
32 *at 55 years of age pursuant to Section 31491. This section is*  
33 *declaratory of existing law.*

34 *SEC. 4. Section 31520.6 is added to the Government Code, to*  
35 *read:*

36 *31520.6. Notwithstanding any provision to the contrary in*  
37 *Section 31520.3 or 31520.5, in any county in which there is an*  
38 *alternate retired member, if the eighth member is present, the*  
39 *alternate retired member may also vote as a member of the board*  
40 *in the event both the second and third, or both the second and*

1 *seventh, or both the third and seventh members are absent for any*  
2 *cause.*

3 ~~SEC. 3.~~

4 *SEC. 5.* Section 31526 of the Government Code is amended  
5 to read:

6 31526. The regulations shall include provisions:

7 (a) For the election of officers, their terms, meetings, and all  
8 other matters relating to the administrative procedure of the board.

9 (b) For one of the following:

10 (1) The filing of a sworn statement by every person who is or  
11 becomes a member, showing date of birth, nature and duration of  
12 employment with the county, compensation received, and other  
13 information as is required by the board.

14 (2) In lieu of a sworn statement, the submission by the member’s  
15 employer to the retirement association of the information otherwise  
16 required in paragraph (1), in a form determined by the retirement  
17 association.

18 (c) For forms of annuity certificates and other forms as required.

19 *SEC. 6.* Section 31641.4 of the Government Code is amended  
20 to read:

21 31641.4. (a) A member shall receive credit for employment  
22 in public service only for such service as he *or she* is not entitled  
23 to receive a pension or retirement allowance from ~~such~~ *the* public  
24 agency. The service for which ~~he~~ *the member* elects to contribute  
25 and the fact that no pension or retirement allowance will accrue  
26 to ~~such~~ *the* member by virtue of ~~his~~ *the member’s* employment in  
27 ~~such~~ *that* public agency ~~must~~ *shall* be certified to by an officer of  
28 the public agency where he *or she* rendered ~~such~~ *that* public service  
29 or ~~must~~ *shall* be established to the satisfaction of the board.

30 ~~Notwithstanding~~

31 (b) ~~Notwithstanding~~ any other ~~provision~~ of law, a safety member  
32 who receives credit for prior employment in public service, the  
33 principal duties of which consisted of active law enforcement or  
34 active fire suppression, or active service in the ~~armed~~ *services*  
35 *Armed Forces* of the United States during time of war or national  
36 emergency, shall have his *or her* pension or retirement allowance  
37 for ~~such~~ *that* service calculated on the same basis as the calculation  
38 of the retirement allowance ~~such~~ *the* member would receive as a  
39 safety member under ~~Section 31664.~~ *the safety benefit formula in*  
40 *effect on the date of the member’s initial safety membership.*

1     ~~A~~  
2     (c) A safety member who entered the service as a peace officer  
3     prior to the establishment of the safety membership provisions in  
4     his *or her* county shall be considered a safety member from his *or*  
5     *her* initial hiring date, for the purposes of this section,  
6     notwithstanding any other ~~provision~~ of law.

O