AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN SENATE MAY 28, 2009

SENATE BILL   No. 752

Introduced by Senator Correa
(~~Coauthor: Assembly Member Silva~~ *Coauthors: Assembly Members
Silva and Solorio*)

February 27, 2009

An act to add Section 31678.31 to the Government Code, relating to
county employees' retirement, and declaring the urgency thereof, to
take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 752, as amended, Correa. County employees' retirement: Orange
County.

(1) The County Employees Retirement Law of 1937 permits counties
and districts, as defined, to provide retirement benefits to their
employees pursuant to its provisions. The law permits the board of
supervisors or the governing body of a district in Orange County, by
resolution adopted by majority vote and pursuant to a memorandum of
understanding, as specified, to make certain formulas for the calculation
of benefits for general or safety members applicable to the employees
of a bargaining unit comprised of general members, safety members,
or employees of the Probation Services Unit and Probation Supervisory
Management Unit, as specified, and requires the affected members,
subject to certain conditions, to pay some or all of those additional
contributions, as specified.

This bill would permit, in Orange County, the board of supervisors, or the governing body of a district within the county, by resolution adopted by majority vote, to require an employee hired after approval of the resolution, to make a written election between 2 specified pension calculations within 45 days of beginning employment. The bill would require that an employee who fails to elect one of the pension calculations within 45 days of beginning employment be deemed to have elected the other. The bill would also permit the resolution, as described above, to require a current employee to make a similar written election regarding his or her own pension benefits for future service within 180 calendar days of approval of the resolution. The bill would require that a current employee who chooses to terminate a specified pension calculation be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The bill would further permit the resolution to require a current employee of the county or district, hired before approval of the resolution, who subsequently become eligible for a specified pension calculation to make a one-time written election between the 2 pension calculations for future service within 45 days of becoming eligible. The bill would require that the employee who chooses to terminate a specified pension calculation be provided with a written explanation of the effect and impact of the termination and sign a specified affidavit. The bill would provide that failure to make an election within 45 calendar days shall be considered cause for termination of employment until the required election has been made. The bill would make these elections irrevocable, except as specified.

The bill would require that a retirement allowance for service rendered prior to the effective date of the election be calculated under the employee's prior pension calculation and would provide that an employee who has made this election is not eligible for retirement unless the employee meets the minimum requirements of the provisions applicable at the date of retirement. The bill would require that specified pension elections include the signature of the employee's designated beneficiary ~~and~~ *or* a specified written declaration ~~made under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program.~~ *The bill would provide a civil penalty for a person who knowingly provides false information in the declaration, in an action to be brought at the option of a public prosecutor.* The bill would require that an employee who elects the lesser of the 2 specified pension calculations be eligible to receive a

contribution to a defined contribution program from the county or district based on the employee's contribution to a defined contribution program. The bill would permit the resolution to apply these provisions to unrepresented employees, as specified, and would provide that its provisions are not be applicable to safety members of the retirement system. The bill would provide that an employee who fails to certify his or her election under specified circumstances would continue to be covered by his or her immediately preceding retirement plan, as specified. The bill would provide that the adoption of the resolution by the county would not extend to the employees of any district within the county, and would permit the governing body of a district to elect to make its provisions applicable to the employees of the district irrespective of whether the board of supervisors has made that election applicable to employees in the county.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3)

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

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

1   SECTION 1.   Section 31678.31 is added to the Government
2   Code, to read:
3   31678.31.   (a) Notwithstanding any other provision of this
4   chapter, the board of supervisors or the governing body of a district
5   within the county may, by resolution adopted by majority vote, do
6   the following:
7   (1) Require an employee hired after approval of the resolution,
8   to elect in writing, either the pension calculation stated in Section
9   31676.19 or the pension calculation stated in Section 31676.01.
10   The election shall be made within 45 calendar days of beginning
11   employment with the county or the district. If an employee does
12   not elect the pension calculation stated in Section 31676.19 within
13   45 days of beginning employment, the employee shall be deemed

1 to have elected the pension calculation stated in Section 31676.01.
2 An employee shall not be permitted to rescind his or her election
3 unless the board of supervisors or the governing body of a district,
4 through the adoption of a subsequent ordinance or resolution by
5 majority vote, makes a provision permitting the employee to
6 rescind the election applicable to the county or district.
7   (2) Require a current employee of the county or district covered
8 by the pension calculation stated in Section 31676.19, hired before
9 approval of the resolution, within 180 calendar days of approval
10 of the resolution to make, at the employee's option, a one-time
11 written election to terminate the application of the pension
12 calculation stated in Section 31676.19 for future service and elect
13 instead the pension calculation stated in Section 31676.01 for
14 future service. This election shall be signed by the employee. Prior
15 to signing an election, a current employee who chooses to terminate
16 the pension calculation stated in Section 31676.19 and elects
17 instead the pension calculation stated in Section 31676.01, shall
18 be provided by the county or district governing body with a written
19 explanation of the effect and impact of the termination. A current
20 employee who chooses to terminate the pension calculation stated
21 in Section 31676.19 shall be required to sign an affidavit stating
22 that the employee has been fully informed regarding the effect of
23 the termination and understands that the termination is irrevocable.
24 The affidavit shall also state that the employee has chosen
25 termination of his or her own free will and was not coerced into
26 termination by the employer or any other person. An employee
27 shall not be permitted to rescind his or her election unless the board
28 of supervisors or the governing body of a district, through the
29 adoption of a subsequent ordinance or resolution by majority vote,
30 makes a provision permitting the employee to rescind the election
31 applicable to the county or district.
32   (3) Require a current employee of the county or district, hired
33 before approval of the resolution, but not covered by the pension
34 calculation stated in Section 31676.19, who after approval of the
35 resolution becomes eligible for the pension calculation stated in
36 Section 31676.19, to make a one-time written election between
37 the pension calculation stated in Section 31676.19 for future service
38 and the pension calculation stated in Section 31676.01 for future
39 service. The election shall be made within 45 calendar days of
40 becoming eligible for the pension calculation stated in Section

1   31676.19. The election shall be signed by the employee. Prior to
2 signing the election, an employee who does not elect the pension
3 calculation stated in Section 31676.19 and elects instead the
4 pension calculation stated in Section 31676.01 shall be provided
5 by the county or the district governing body with a written
6 explanation of the effect and impact of the election. An employee
7 who does not choose the pension calculation stated in Section
8 31676.19 shall be required to sign an affidavit stating that the
9 employee has been fully informed regarding the effect of the
10 election and understands that the election is irrevocable. The
11 affidavit shall also state that the employee has chosen the election
12 of his or her own free will and was not coerced into the election
13 by the employer or any other person. An employee shall not be
14 permitted to rescind his or her election unless the board of
15 supervisors or the governing body of a district, through the
16 adoption of a subsequent ordinance or resolution by majority vote,
17 makes a provision permitting the employee to rescind the election
18 applicable to the county or district. Failure to make an election
19 within 45 calendar days shall be considered cause for termination
20 of employment until the employee described in this paragraph has
21 made the required election.
22   (b) The retirement allowance for service rendered prior to the
23 effective date of the election under paragraph (2) or (3) of
24 subdivision (a) for an employee covered by any other pension
25 calculation shall be calculated under the employee's prior pension
26 calculation. Any employee who has made an election shall not be
27 eligible for retirement unless the employee meets the minimum
28 requirements of the provision or provisions pursuant to the election
29 applicable at the date of retirement.
30   (c) (1) An election for the pension calculation stated in Section
31 31676.01 by any employee hired before approval of the resolution
32 shall include the signature of the designated beneficiary of the
33 employee's pension acknowledging the election, or shall include
34 a written ~~declaration, made under penalty of perjury,~~ *declaration*
35 of one or more of the following as may be applicable:
36   (A) The beneficiary has no identifiable community property
37 interest in the benefit.
38   (B) The employee does not know, and has taken all reasonable
39 steps to determine, the whereabouts of the beneficiary.

1   (C) The beneficiary has been advised of the election and has
2 refused to sign the written acknowledgment.
3   (D) The beneficiary is incapable of executing the
4 acknowledgment because of an incapacitating mental or physical
5 condition.
6   (2) The purpose of this subdivision is to notify the beneficiary,
7 including the employee's spouse or domestic partner, of an election
8 made by the employee that may affect the entitlement of the
9 beneficiary. In addition to the foregoing, if the designated
10 beneficiary of an employee's pension is a spouse or domestic
11 partner of the employee, the election shall also evidence agreement
12 to the election by the spouse or domestic partner.
13   *(3) A person who knowingly provides false information in the*
14 *written declaration submitted pursuant to paragraph (1) shall be*
15 *subject to a civil penalty of not less than one thousand dollars*
16 *($1,000) and not more than twenty-five thousand dollars ($25,000),*
17 *in addition to any civil remedies available to the board. An action*
18 *to impose a civil penalty pursuant to this paragraph may be*
19 *brought by any public prosecutor in the name of the people of the*
20 *state.*
21   (d) In the event the employee elects the pension calculation
22 stated in Section 31676.01, the employee shall be eligible to receive
23 a contribution from the county or district based on the employee's
24 contribution to a defined contribution program.
25   (e) In addition to employees represented by bargaining units,
26 any other employees not represented by a bargaining unit, as well
27 as supervisors, managers, and executives, may be subject to
28 subdivision (a) pursuant to the resolution described in subdivision
29 (a).
30   (f) This section shall apply only to members who retire on or
31 after the effective date of the resolution described in subdivision
32 (a).
33   (g) This section shall not apply to safety members.
34   (h) A resolution adopted by the board of supervisors under
35 subdivision (a) shall not apply to the employees of any district
36 within the county. The governing body of a district may elect, by
37 resolution adopted by majority vote, to make this section applicable
38 to the employees of the district irrespective of whether the board
39 of supervisors has made that election applicable to employees in
40 the county.

1   (i) Any person employed subsequent to the effective date of a
2 resolution adopted under subdivision (a) who would otherwise
3 qualify as a member shall not become a member until he or she
4 certifies his or her election, or otherwise as described above has
5 been deemed to have elected, to be covered by the pension
6 calculation stated in Section 31676.01 or the pension calculation
7 stated in Section 31676.19. Any employee who subsequently
8 otherwise becomes eligible for the pension calculation stated in
9 Section 31676.19 subsequent to the effective date of a resolution
10 adopted under subdivision (a) shall continue to be covered by any
11 immediately preceding retirement plan to which he or she was
12 entitled from the county or district until he or she certifies his or
13 her election to be covered by the pension calculation stated in
14 Section 31676.01 or the pension calculation stated in Section
15 31676.19.
16   (j) In the event that the final day to make an election or perform
17 an act described in this section falls on a weekend or on a county
18 or district holiday, a subsequent election or act shall be timely if
19 made or performed on the immediately following regular business
20 day of the county or district.
21   ~~SEC. 2. No reimbursement is required by this act pursuant to~~
22 ~~Section 6 of Article XIII B of the California Constitution because~~
23 ~~the only costs that may be incurred by a local agency or school~~
24 ~~district will be incurred because this act creates a new crime or~~
25 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
26 ~~for a crime or infraction, within the meaning of Section 17556 of~~
27 ~~the Government Code, or changes the definition of a crime within~~
28 ~~the meaning of Section 6 of Article XIII B of the California~~
29 ~~Constitution.~~
30   ~~SEC. 3.~~
31   *SEC. 2.*   This act is an urgency statute necessary for the
32 immediate preservation of the public peace, health, or safety within
33 the meaning of Article IV of the Constitution and shall go into
34 immediate effect. The facts constituting the necessity are:
35   In order that the terms of a memorandum of understanding
36 between the Orange County Employees Association and Orange
37 County regarding the implementation of a new, optional tier of
38 retirement benefits for new and incumbent employees take effect

1 as soon as possible, it is necessary that this act take effect
2 immediately.

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