ASSEMBLY BILL No. 2224

Introduced by Assembly Members Smyth and Conway
(Coauthors: Assembly Members Achadjian, Bill Berryhill, Donnelly, Fletcher, Garrick, Hagman, Harkey, Jeffries, Jones, Knight, Logue, Mansoor, Morrell, Nestande, Nielsen, Olsen, Silva, Valadao, and Wagner)

February 24, 2012

An act to amend Section 22826 of the Education Code, and to amend Sections 1243, 20090, 20899.5, 20909, 31486.35, and 31658 of, and to add Sections 1244, 1245, 7503.71, 7503.72, 7503.73, 7503.74, 7503.76, 7514.60, 7514.70, 7514.81, 22871.1, and 22874.2 to, the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.

legislative counsel's digest

AB 2224, as introduced, Smyth. Public employees' retirement.

(1) Existing law establishes the Public Employees' Retirement System (PERS) and the State Teachers' Retirement System (STRS) for the purpose of providing pension benefits to their employees. Existing law also establishes the Judges' Retirement System II which provides pension benefits to elected judges and the Legislators' Retirement System which provides pension benefits to elective officers of the state other than judges and to legislative statutory officers. The County Employees Retirement Law of 1937 authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to county, city, and district employees. The Regents of the University of California have established the University of California Retirement System as a trust for this purpose.

Existing law permits members of PERS, STRS, and county, city, and district retirement systems that have adopted specified provisions, to purchase up to 5 years of additional retirement service credit by making specified contributions to the system. Existing law authorizes retirement benefits to be increased.

This bill, on and after January 1, 2013, would prohibit a public retirement system from allowing the purchase of additional retirement service credit, as described above. The bill would except from this prohibition an official application to purchase this type of service credit received by the retirement system prior to January 1, 2013. The bill would prohibit any member who does not have at least 5 years of service credit before the operative date of this bill, or any person hired on or after that date, from purchasing additional retirement service credit.

This bill would provide that any enhancement to a public retirement system's retirement formula or benefit that is adopted on or after January 1, 2013, would apply only to service performed on or after the operative date of the enhancement, except under specified circumstances. The bill would also provide that, if a change to a member's classification or employment results in an increase in the retirement formula or benefit applicable to that member, the increase would apply only to service performed on or after the operative date of the change.

This bill would require a public employer to offer to its employees first hired on or after July 1, 2013, a hybrid pension plan or alternative pension plan option, as specified. The bill would require that each hybrid pension plan be designed with the goal of providing at normal retirement age, based upon a full career in public service of 30 years for safety employees and 35 years for all other public employees, replacement income of 75% of a public employee's final compensation.

(2) Existing law provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This bill would require that a public employee, as defined, who is convicted of any state or federal felony for conduct arising out of, or in the performance of, his or her official duties in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, or service retirement, or other benefits, forfeit retirement benefits earned or accrued from the earliest date of the commission of the felony to the forfeiture date, as specified. The bill would also require any contributions to the public retirement system made by the public employee on or after the earliest date of commission of the felony to be returned, without interest, to the public employee upon the occurrence of a distribution event, as defined, unless otherwise ordered by a court or determined by the pension administrator. The bill would also make related, conforming changes.

(3) Existing law defines final compensation for various employment classifications in connection with the benefits provided by the retirement systems.

The bill, for the purposes of determining a retirement benefit paid to a person who first becomes a member of a public retirement system on or after January 1, 2013, would require that final compensation be calculated by multiplying the member's years of service credit by a percentage of the member's final compensation based on age at retirement using the member's payrate during a period of at least 36 consecutive months, as specified.

(4) Existing state and local public employee retirement systems are funded by investment returns and employer and employee contributions. The California Constitution provides that the retirement board of a public pension or retirement system has the exclusive power to provide for actuarial services in order to ensure the competency of the assets of the system. Existing law, with respect to PERS, requires the Governor to include in the annual Budget Act the contribution rates submitted by the system actuary of the liability on account of employees of the state.

This bill would require public employees who contribute to a defined benefit plan or component to contribute at least $\frac{1}{2}$ of the annual actuarially determined normal costs, and would prohibit a public employer from contributing in any fiscal year, in combination with employer contributions, less than the plan normal cost. The bill would also prohibit an employer from paying the member's share of the employee contribution, except as specified.

(5) Existing law generally prohibits any person who has been retired from being employed in any capacity with the same public employer unless he or she is first reinstated from retirement, except as authorized.

This bill would prohibit a person who retires from a public employer from serving without reinstatement, except during an emergency to prevent stoppage of public business or because the retired employee has skills needed to perform work of limited duration, as specified.

(6) The California Constitution prohibits changing the composition of the retirement board of certain public pension systems, including the number, terms, and method of selection and removal of members, unless the change is ratified by a majority vote of the electors of the jurisdiction in which the participants of the pension system are or were prior to retirement, employed. Existing law creates the Board of Administration of PERS for the purpose of governing the system and prescribes the composition of the board. Existing law requires that one member of the board of administration be a member of the State Personnel Board, serving at the pleasure of the State Personnel Board, and that a member representing the public be chosen jointly by the Speaker of the Assembly and the Senate Committee on Rules. Existing law further requires that an official of a life insurer be appointed to the board of administration by the Governor.

This bill would revise the composition of the Board of Administration of PERS. The bill would eliminate the position of the member of the State Personnel Board and would replace that position with the Director of Finance. The bill would add to the board 2 persons, appointed at the pleasure of the Governor, who represent the public, have financial expertise, and are not interested in the system, as specified. The bill would also replace the official of a life insurer, whom the Governor is currently authorized to appoint, with a gubernatorial appointee who has expertise in health insurance and is not interested in the system.

(7) The Public Employee's Medical and Hospital Care Act (PEMHCA) requires the employer contribution, with respect to each employee or annuitant who is in employment or retired from state service, to be adjusted by the Legislature in the annual Budget Act, as specified. Those adjustments are required to be based on the principle that the employer contribution for each employee or annuitant shall be an amount equal to 100% of the weighted average of the health benefit plan premiums for an employee or annuitant enrolled for self-alone, during the benefit year to which the formula is applied, for the 4 health benefit plans that had the largest state enrollment, excluding family members, during the previous year. For each employee or annuitant with enrolled family members, the employer is required to contribute an additional 90% of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the 4 health benefit plans that had the largest state enrollment, excluding family members, during the previous year.

This bill, for employees first hired on or after January 1, 2013, would limit the employer contribution amount to no greater than the lowest premium formula paid for a current employee enrolled for self-alone health benefit coverage year during the benefit year to which the formula is applied multiplied by the weighted average of the health benefit plan premiums, as specified. The bill would further require an employer, for each enrolled family member of a retired employee, to contribute an additional percentage that is no higher than the lowest premium formula paid for enrolled family members multiplied by the weighted average of the additional health benefit plan premiums required for enrollment of those family members.

(8) Under PEMHCA, a state employee is required to have a certain number of years of state service, depending on hiring date and other factors, before he or she may receive any portion of the employer contribution payable for annuitants for postretirement health benefits.

This bill would prohibit a state employee who becomes a state member of the system on or after January 1, 2013, from receiving any portion of the employer contribution payable for annuitants unless the person is credited with 15 years of state service at the time of retirement. The bill would further specify that the percentage of the employer contribution payable for postretirement health benefits for an employee shall be based on the number of completed years of credited state service at retirement, with 50% after 15 credited years of service, and 100% after 25 or more years of service.

(9) The bill would also declare that ensuring the statewide integrity of local government pension systems and ensuring the sufficiency of local public safety services are matters of statewide concern and not a municipal affair, and that, therefore, all cities, including charter cities, would be subject to the provisions of the bill. The bill would also declare that these provisions apply to the University of California.

(10) The bill would delay the operation of its provisions until January 1, 2013, contingent on voter approval of an unspecified Assembly Constitutional Amendment by voters at the November 6, 2012, statewide election.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 22826 of the Education Code is amended to read:

22826. (a) A member, other than a retired member, may request to purchase up to five years of nonqualified service credit provided the member is vested in the Defined Benefit Program as provided in Section 22156.

(b) A member who requests to purchase nonqualified service credit as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan with respect to the Defined Benefit Program in effect on the date of the request, in accordance with subdivisions (a), (f), (g), and (h) of Section 22801.

(c) Notwithstanding any other law, any request to purchase nonqualified service credit pursuant to this section shall be made before, and any approval of a purchase shall be made only for the requests received before, the operative date of the act adding this subdivision.

SEC. 2. Section 1243 of the Government Code is amended to read:

1243. (a) This section shall apply to any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006*, and prior to the operative date of the act adding Sections 1244 and 1245*.

(b) If an elected public officer is convicted during or after holding office of any felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes arising directly out of his or her official duties as an elected public officer, he or she shall forfeit all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction.

(c) The elected public officer described in subdivision (b) shall forfeit only that portion of his or her rights and benefits that accrued on or after January 1, 2006, on account of his or her service in the elected public office held when the felony occurred.

(d) Any contributions made by the elected public officer described in subdivision (b) to the public retirement system that arose directly from or accrued solely as a result of his or her forfeited service as an elected public officer shall be returned, without interest, to the public officer *within 90 days after a nonappealable decision is final*.

(e) The public agency that employs an elected public officer described in subdivision (b) shall notify the public retirement system in which the officer is a member of the officer's conviction.

(f) An elected public officer shall not forfeit his or her rights and benefits pursuant to subdivision (b) if the governing body of the elected public officer's employer, including, but not limited to, the governing body of a city, county, or city and county, authorizes the public officer to receive those rights and benefits.

(g) For purposes of this section, "public officer" means an officer of the state, or an officer of a county, city, city and county, district, or authority, or any department, division, bureau, board, commission, agency, or instrumentality of any of these entities.

(h) This section applies to any person appointed to service for the period of an elected public officer's unexpired term of office.

SEC. 3. Section 1244 is added to the Government Code, to read:

1244. (a) This section shall apply to a public employee first hired by a public employer or first elected or appointed to an office on or after the operative date of this section and, on and after that date, Section 1243 shall not apply.

(b) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(c) (1) A public employee shall forfeit all the retirement benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The retirement benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the public employee's conviction. Retirement benefits attributable to service performed prior to the date of the first commission of the felony for which the public employee was convicted shall not be forfeited as a result of this section.

(2) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

(d) (1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.

(2) For the purposes of this subdivision, a "distribution event" means any of the following:

(A) Separation from employment.

(B) Death of the member.

(C) Retirement of the member.

(e) The public employer that employs a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of that public employee's conviction within 60 days of conviction in the trial court. The public employer's notification obligations shall not apply if the public employee's conviction occurs after the public employee separates from employment or office with that public employer. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) A public retirement system may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.

(g) If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to recover the forfeited retirement benefits as adjusted for the contributions received pursuant to subdivision (d).

(h) The definitions in Section 7514.60 shall apply to this section.

SEC. 4. Section 1245 is added to the Government Code, to read:

1245. (a) This section shall apply to a public employee first hired by a public employer or first elected or appointed to an office before the operative date of this section and, on and after that date, Section 1243 shall not apply.

(b) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member, to the extent provided in subdivision (c), and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(c) (1) A public employee shall forfeit the retirement benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The retirement benefits shall remain forfeited, notwithstanding any reduction in sentence or expungement of the conviction following the date of the public employee's conviction. Retirement benefits attributable to service performed prior to the first date of the commission of the felony for which the public employee was convicted shall not be forfeited as a result of this section.

(2) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

(d) (1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event, unless otherwise ordered by a court or determined by the pension administrator.

(2) For the purposes of this subdivision, a "distribution event" means any of the following:

(A) Separation from employment.

(B) Death of the member.

(C) Retirement of the member.

(e) The public employer that employs a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of the public employee's conviction within 60 days of the conviction. The public employer's notification obligations shall not apply if the public employee's conviction occurs after the public employee separates from employment or office with that public employer. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) A public retirement system may assess a public agency a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public agency failed to comply with this section.

(g) If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to recover the forfeited retirement benefits as adjusted for the contributions received pursuant to subdivision (d).

(h) The definitions in Section 7514.60 apply to this section.

SEC. 5. Section 7503.71 is added to the Government Code, to read:

7503.71. The following shall apply to all public employers, to public employees hired on or after the operative date of this section, and to all public employees hired by a public employer before the operative date of this section to the fullest extent permissible under the California Constitution and the United States Constitution:

(a) Notwithstanding any other law, any enhancement to a public employee's retirement formula or retirement benefit adopted on or after the operative date of this section shall apply only to service performed on or after the operative date of the enhancement and shall not be applied to any service performed prior to the operative date of the enhancement.

(b) Notwithstanding any other law, if a change to a member's classification or a change in employment results in an enhancement in the retirement formula or retirement benefit applicable to that member, that enhancement shall apply only to service performed on or after the operative date of the change and shall not be applied to any service performed prior to the operative date of the change.

(c) The definitions in Section 7514.60 apply to this section.

SEC. 6. Section 7503.72 is added to the Government Code, to read:

7503.72. The following shall apply to all public employers and public employees:

(a) In any fiscal year, a public employer's contribution to a defined benefit plan or component of a retirement plan, in combination with employee contributions to that defined benefit plan or component of that plan, shall be not less than the normal cost for that defined benefit plan or component of that plan for that fiscal year.

(b) The definitions in Section 7514.60 shall apply to this section.

SEC. 7. Section 7503.73 is added to the Government Code, to read:

7503.73. This section shall apply to all public employers, to public employees hired on or after the operative date of this section, and to all public employees hired by a public employer prior to the operative date of this section to the fullest extent permissible under the California Constitution and the United States Constitution.

(a) Public employees who contribute to a defined benefit plan or component shall contribute at least one-half of the annual actuarially determined normal costs for such defined benefit plan or component, subject to the limitations in subdivision (b). A public employer shall not pay, on behalf of a member of a public retirement system, any of the member's share of required employee contributions.

(b) If an employee's pension contribution is below 50 percent of the normal cost of the defined benefit plan or component on the operative date of this section, the increase to the employee's contribution shall be phased in to at least 50 percent over a period not to exceed three years. The terms of the phase-in shall be determined through collective bargaining or, for those employees not subject to collective bargaining, by the employer.

(c) If the normal cost of an employee's defined pension benefit plan or component declines, the amount of the employee's contribution may be reduced to not less than 50 percent of the normal cost of that benefit through collective bargaining or, for those employees not subject to collective bargaining, by the employer.

(d) Employee contributions described in this section shall be considered employer contributions for the purposes of federal tax law.

(e) The definitions in Section 7514.60 apply to this section.

SEC. 8. Section 7503.74 is added to the Government Code, to read:

7503.74. (a) On and after the operative date of this section, a public retirement system shall not allow the purchase of nonqualified, additional retirement service credit, however that service credit may be denominated.

(b) The prohibition of this section does not apply to an official application to purchase additional retirement service credit that was received by the public retirement system prior to the operative date of this section.

(c) For the purposes of this section, “additional retirement service credit” means service credit for time that does not otherwise qualify as public service, military service, leave of absence, or other time recognized for service by a public retirement system.

(d) The definitions in Section 7514.60 apply to this section.

SEC. 9. Section 7503.76 is added to the Government Code, to read:

7503.76. (a) Notwithstanding any other law, a person who retires from a public employer on or after the operative date of this section shall not serve, be employed by, or be hired through a contract either directly or through a third party by, a public employer without reinstatement from retirement, except as permitted by this section.

(b) A person who retires from a public employer on or after the operative date of this section may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment by the appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed to perform work of limited duration.

(c) Appointments authorized under this section shall not exceed a total for all employers in that public retirement system of 960 hours or 120 full-time days or other equivalent limit, in a consecutive 12-month period. The rate of pay for the employment shall not be less than the minimum, nor exceed the maximum, paid by the employer to other employees performing comparable duties. A retired person whose employment without reinstatement is authorized by this section, including, but not limited to, service on a public board or commission, shall acquire no service credit or retirement rights under this section with respect to the employment unless he or she reinstates from retirement.

(d) (1) Subdivision (b) does not apply to any retired person otherwise eligible to serve or be employed by a public employer, if, during the 12-month period prior to an appointment described in this section, the retired person received any unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(e) The definitions in Section 7514.60 apply to this section.

SEC. 10. Section 7514.60 is added to the Government Code, to read:

7514.60. As used in Section 12 of Article VII of the California Constitution and the statutory references contained therein, the following terms have the following meanings:

(a) “Employee contributions” means the contributions to a public retirement system required to be paid by a member of the system, as fixed by law, regulation, administrative action, contract, contract amendment, or other agreement.

(b) “Final compensation” means the member’s highest average payrate during a period of at least 36 consecutive months immediately preceding his or her retirement, or last separation from service if earlier, or during any other period of at least 36 consecutive months during his or her public retirement system membership that the member designates on the application for retirement.

(c) “Member” means a public employee who is a member of any type of a public retirement system.

(d) “Normal cost” means the portion of the present value of defined benefits that is attributable to the current year of service, as determined by the public retirement system’s actuary according to the most recently completed valuation.

(e) (1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours.

(2) "Payrate" shall include an amount deducted from a member's salary or wages for any of the following:

(A) Participation in a deferred compensation plan.

(B) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(C) Payments into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(D) Participation in a flexible benefits program.

(3) "Payrate" shall not include any of the following:

(A) Accrued vacation, sick, or other leave of any form.

(B) Severance pay.

(C) Overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code and as set forth in collective bargaining agreement provisions as of the operative date of the act adding this section, and any renewal of those collective bargaining provisions.

(D) The monetary value of any in-kind remuneration.

(E) Supplemental payments for items, including, but not limited to, uniform allowances, vehicle allowances, housing allowances, employer contributions to deferred compensation or defined contribution plans, and bonuses.

(f) "Public employee" means an officer, including those elected or appointed, or an employee of a public employer.

(g) "Public employer" means:

(1) The state and every state entity, including, but not limited to¸ the Legislature, the courts, the California State University, and the University of California.

(2) Any political subdivision of the state, including, but not limited to, a city, county, city and county, charter city, charter county, charter city and county, school district, community college district, joint powers authority, joint powers agency, and any public agency, authority, board, commission, district, or other entity.

(h) "Public retirement system" means any pension or retirement system of a public employer.

(i) "Safety member" means a public employee whose principal duties consist of active law enforcement service and who is authorized to carry firearms under terms and conditions specified by his or her employing agency, or a firefighter whose principal duties consist of active firefighting or fire suppression.

SEC. 11. Section 7514.70 is added to the Government Code, to read:

7514.70. (a) (1) A hybrid pension plan provided by Section 12 of Article VII of the California Constitution shall reduce employer and taxpayer risk and cost.

(2) A hybrid pension plan shall consist of a defined benefit component, a defined contribution component or alternative plan component, and, when applicable, benefits under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.). The hybrid pension plan shall be designed with the goal of providing annually during retirement replacement income of 75 percent of a public employee's final compensation, based on a full career in public service. The hybrid pension plan design shall also target a cap on the combined defined benefit and defined contribution benefit at the amount of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code, or its successor, for those receiving social security benefits or 120 percent of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code, or its successor, for those not receiving social security benefits. As used in this paragraph, "full career in public service" means 30 years of service and a normal retirement age of 57 for public employees in safety member classifications and 35 years of service and a normal retirement age of 67 for all other public employees.

(b) (1) A public employer shall offer to its public employees first hired on and after July 1, 2013, a hybrid pension plan made available by the public retirement system pursuant to this section, or an alternative pension plan option that is determined and certified by the system's chief actuary and by the system's board to have no greater risk and no greater costs to the employer than any available hybrid plans provided by this section.

(2) An action to obtain a judgment or writ restraining and preventing the implementation or continued implementation of

the alternate plan may be maintained against the retirement system actuary, the board of the retirement system, the retirement system, or the employer challenging any of the following: (A) the determination that the alternate plan is of no greater risk and of no greater cost to the employer; (B) the authorization to offer the alternative plan; or (C) the actual offer of the alternate plan to employees. An action may be brought by any resident or corporation that is assessed for and is liable to pay, or within one year before the commencement of the action, has paid a tax within the jurisdiction or geographical boundaries of the public employer. The right to maintain an action described in this paragraph is in addition to and does not limit any other right of action otherwise provided in law.

(3) (A) To the extent that a public retirement system determines that employee contributions to a defined benefit plan, or to a defined benefit portion of a hybrid pension plan, may be considered employer contributions for purposes of federal tax law, on or after July 1, 2013, the public employer shall provide to any public employee who is a member of the defined benefit pension plan the option to elect to participate prospectively in a hybrid pension plan, and that election shall be irrevocable.

(B) Any election to participate in a hybrid pension plan as authorized by subparagraph (A) shall be on a prospective basis only and shall not affect pension benefits previously earned. A defined benefit pension plan and a defined benefit portion of the hybrid pension plan may, to the extent applicable under the particular plan, take into account in calculating the amount of any previously earned pension benefits pensionable compensation earned after the date the public employee moves between those plans.

(c) The definitions in Section 7514.60 shall apply to this section.

SEC. 12. Section 7514.81 is added to the Government Code, to read:

7514.81. (a) This section applies to public employees first hired on and after the operative date of this section. The limitations contained in this section are in addition to other limitations and shall not provide a public employee any additional benefits or rights beyond those granted to the public employee by other provisions of law.

(b) A defined benefit for retirement shall be calculated by multiplying the member's years of service credit by a percentage of the member's final compensation based on age at retirement.

(c) To be entitled to make an application for service retirement, a member shall first be credited with five years of service and attain 52 years of age for safety member classifications and 57 years of age for all other public employees. If the minimum age requirements for eligibility are increased under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), the age requirements of this section shall increase by an equal number of years for any new employee hired after the operative date of the change in federal law.

(d) The definitions in Section 7514.60 apply to this section.

SEC. 13. Section 20090 of the Government Code is amended to read:

20090. The Board of Administration of the Public Employees' Retirement System is continued in existence. It consists of:

~~(a) One member of the State Personnel Board, selected by and serving at the pleasure of the State Personnel Board.~~

(a) The Director of Finance.

(b) The Director of the Department of Personnel Administration.

(c) The Controller.

(d) The ~~State~~ Treasurer.

(e) ~~An official of a life insurer and~~ *Two persons, appointed by the Governor, one of whom has expertise in health insurance and is not interested in a public pension or retirement system, as described in subdivision (i), and one of whom is* an elected official of a contracting agency~~, appointed by the Governor~~.

~~(f) One person representing the public,~~

(f) Two persons, appointed by, and to serve at the pleasure of, the Governor, who represent the public, have financial expertise, and are not interested in a public pension or retirement system, as described in subdivision (i).

(g) One person representing the public, appointed jointly by the Speaker of the Assembly and the Senate Committee on Rules.

~~(g)~~

(h) Six members elected under the supervision of the board as follows:

(1) Two members elected by the members of this system from the membership thereof.

(2) A member elected by the active state members of this system from the state membership thereof.

(3) A member elected by and from the active local members of this system who are employees of a school district or a county superintendent of schools.

(4) A member elected by and from the active local members of this system other than those who are employees of a school district or a county superintendent of schools.

(5) A member elected by and from the retired members of this system.

(i) For purposes of this section, a person is interested in a public pension or retirement system if the person or any member of the person's immediate family (1) is a member of the system, (2) is eligible to receive or is receiving pension benefits or retirement benefits from the system, (3) is a member of, or affiliated with, any employee organization that represents employees who are eligible to receive or are receiving pension or retirement benefits from the system, or (4) has any material financial interest in an entity that contracts with the system.

SEC. 14. Section 20899.5 of the Government Code is amended to read:

20899.5. ~~(a)~~ An elective officer of a contracting agency that is a city, county, or city and county shall not receive credit for service or contributions for credit for service in violation of the prohibitions provided in Section 23007.5, 34095, or 50033.

~~(b) Nothing in this section shall prohibit an elective officer from purchasing service credit pursuant to Section 20909.~~

SEC. 15. Section 20909 of the Government Code is amended to read:

20909. (a) A member who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of additional retirement service credit in the retirement system.

(b) A member may elect to receive this additional retirement service credit at any time prior to retirement by making the contributions as specified in Sections 21050 and 21052. A member may not elect additional retirement service credit under this section more than once.

(c) For purposes of this section, "additional retirement service credit" means time that does not qualify as public service, military service, leave of absence, or any other time recognized for service credit by the retirement system.

(d) Additional retirement service credit elected pursuant to this section may not be counted to meet the minimum qualifications for service or disability retirement or for health care benefits, or any other benefits based upon years of service credited to the member.

(e) This section only applies to the following members:

(1) A member while he or she is employed in state service at the time of the additional retirement service credit election.

(2) A member of the system defined in Section 20324.

(f) For purposes of this section, "state service" means service as defined in Section 20069.

(g) Notwithstanding any other law, no request to purchase nonqualified service credit pursuant to this section may be made after, and no purchase may be made for the requests received after, the operative date of the act that adds this subdivision.

SEC. 16. Section 22871.1 is added to the Government Code, to read:

22871.1. Notwithstanding Section 22871, an employee first hired on or after the operative date of this section, including academic positions with the California State University, and survivors of any of those employees shall have an employer contribution amount in retirement no greater than the last three-year average of the premium formula paid on his or her behalf as an active employee enrolled for self-alone health benefit coverage during the benefit year to which the formula is applied multiplied by the weighted average of the health benefit plan premiums. For each enrolled family member of a retired employee, the employer shall contribute an additional percentage that shall be no greater than the last three year average of the premium formula paid for enrolled family members when the employee was an active member, multiplied by the weighted average of the additional health benefit plan premiums required for enrollment of those family members. These contribution rates shall be adjusted annually for all retired employees. "Weighted average" as used in this section shall consist of the four health benefit plans that had the largest state enrollment, excluding family members, during the previous benefit year. Only the enrollment of, and premiums paid by, state employees and annuitants enrolled in a basic health benefit plan shall be counted for purposes of calculating the employer contribution under this section.

SEC. 17. Section 22874.2 is added to the Government Code, to read:

22874.2. (a) Notwithstanding Sections 22870, 22871, 22873, and 22874, a state employee, as defined in subdivision (c) of Section 3513, who is employed by the state for the first time, and who becomes a state member of the system on or after January 1, 2013, may not receive any portion of the employer contribution payable for annuitants unless the person is credited with 15 years of state service at the time of retirement.

(b) The percentage of the employer contribution payable for postretirement health benefits for an employee subject to this section shall be based on the completed years of credited state service at retirement as shown in the following table:

Credited Years	Years of Service Percentage Contribution of Employer
15	50
16	55
17	60
18	65
19	70
20	75
21	80
22	85
23	90
24	95
25 or more	100

(c) For employees who retire prior to the normal retirement age the percentage of employer contribution shall be reduced by an actuarially equivalent amount for each year between the age at retirement and the applicable normal retirement age.

(d) This section shall apply only to state employees who retire from state service. For purposes of this section, “state service” means service rendered as an employee of the state or an appointed or elected officer of the state for compensation. Notwithstanding

Section 22826, for purposes of this section, credited state service includes service to the state for which the employee, pursuant to Section 2081.5 did not receive credit.

(e) This section does not apply to:

(1) State employees previously employed before January 1, 2013, who return to state employment on or after January 1, 2013.

(2) State employees hired prior to January 1, 2013, who were subject to Section 20281.5 during the first 24 months of state employment.

(3) State employees on an approved leave of absence employed before January 1, 2013, who return to active employment on or after January 1, 2013.

(f) Notwithstanding Section 22875, this section shall also apply to a related state employee who is exempted from the definition of “state employee” in subdivision (c) of Section 3513, and an officer or employee of the executive branch of state government who is not a member of the civil service who met the requirements of this section when employed by the state for the first time.

(g) If the terms of a contract, including a memorandum of understanding, between a public employer and its public employees, that is in effect on the operative date of this section, would be impaired by any provision of this section or by any statutory provision referenced in this section, that provision shall not apply to the public employer and public employees subject to that contract until the expiration of that contract. A renewal, amendment, or any other extension of that contract shall be subject to the requirements of this section and the statutory provisions referenced in this section.

SEC. 18. Section 31486.35 of the Government Code is amended to read:

31486.35. (a) An active member may elect, by written notice filed with the board *before the operative date of the act that adds subdivision (h),* to make contributions pursuant to this section and to receive up to five years of service credit in the retirement system for additional retirement credit, if the member has completed at least five years of credited service with that retirement system.

(b) As used in this section, “additional retirement credit” means time that does not otherwise qualify as county service, public service, military service, medical leave of absence, or any other time recognized for service credit by the retirement system.

(c) Notwithstanding any other provision of this chapter, service credit for additional retirement credit may not be counted to meet the minimum qualifications for service retirement or for purposes of establishing eligibility for benefits based on 30 years of service, additional ad hoc cost-of-living benefits based on service credit, health care benefits, or any other benefits based upon service credit.

(d) A member who elects to make contributions and receive service credit for additional retirement credit shall contribute to the retirement fund, prior to the effective date of his or her retirement, by lump-sum payment or by installment payments over a period not to exceed 10 years, an amount that, at the time of commencement of purchase, in the opinion of the board and the actuary, is sufficient to not place any additional financial burden upon the retirement system.

(e) No member may receive service credit under this section for additional retirement credit that he or she has not completed payment pursuant to subdivision (d) before the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.7. Subject to the limitations of United States Internal Revenue Service regulations, a member who has elected to make payment in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

(f) Sums paid by a member pursuant to this section shall be considered to be and administered as contributions by the member.

(g) This section is not operative in a county until the board of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

(h) No member without at least five years of credited service before the operative date of the act that adds this subdivision, or a person first hired on or after that date, shall be permitted to make an election to receive additional retirement credit.

SEC. 19. Section 31658 of the Government Code is amended to read:

31658. (a) An active member may elect, by written notice filed with the board *before the operative date of the act that adds subdivision (h)*, to make contributions pursuant to this section and to receive up to five years of service credit in the retirement system for additional retirement credit, if the member has completed at least five years of credited service with that retirement system.

(b) As used in this section, “additional retirement credit” means time that does not otherwise qualify as county service, public service, military service, medical leave of absence, or any other time recognized for service credit by the retirement system.

(c) Notwithstanding any other provision of this chapter, service credit for additional retirement credit may not be counted to meet the minimum qualifications for service or disability retirement or for purposes of establishing eligibility for any benefits based on 30 years of service, additional ad hoc cost-of-living benefits based on service credit, health care benefits, or any other benefits based upon service credit.

(d) Any member who elects to make contributions and receive service credit for additional retirement credit shall contribute to the retirement fund, prior to the effective date of his or her retirement, by lump-sum payment or by installment payments over a period not to exceed 10 years, an amount that, at the time of commencement of purchase, in the opinion of the board and the actuary, is sufficient to not place any additional financial burden upon the retirement system.

(e) No member may receive service credit under this section for any additional retirement credit for which he or she has not completed payment pursuant to subdivision (d) before the effective date of his or her retirement. Subject to the limitations of United States Internal Revenue Service regulations, a member who has elected to make payment in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

(f) Any sums paid by a member pursuant to this section shall be considered to be and administered as contributions by the member.

(g) This section is not operative in any county until the board of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

(h) No member without at least five years of credited service before the operative date of the act that adds this subdivision, or a person first hired on or after that date, shall be permitted to make an election to receive additional retirement credit.

SEC. 20. The Legislature finds and declares the following:

(a) The security of public moneys is important to all residents of the state, therefore it is necessary for this act to apply to the University of California.

(b) The security of public moneys and the fiscal integrity of local governmental agencies in this state, including charter cities, have a direct impact on the long-term well-being of all residents of this state. Further, local governments that are impacted by unsustainable pension obligations have difficulty providing sufficient public safety services and place additional financial burdens on the state. Accordingly, the Legislature finds and declares that ensuring the statewide integrity and security of local government pension systems and ensuring the sufficiency of local public safety services are matters of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities, including charter cities.

SEC. 22. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 23. If any section of this act is in conflict with a memorandum of understanding that is current and in effect on the date of the enactment of this section, the memorandum of understanding shall be controlling while it remains in effect. Upon expiration of the memorandum of understanding that is in effect and current on the enactment date of this act, this act shall be controlling and may not be superseded by a subsequent memorandum of understanding.

SEC. 24. This act shall become operative on January 1, 2013, and only if Assembly Constitutional Amendment ____ is approved by the voters at the November 6, 2012, statewide general election.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible for the 2012–13 fiscal year, and thereby facilitate the orderly administration of state government at the earliest time possible, it is necessary that this act take effect immediately.

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