

ASSEMBLY BILL

No. 2149

Introduced by Assembly Member Furutani

February 18, 2010

An act to amend Sections 31470.4, 31470.5, 31470.6, 31720.5, 31801, 31887, 31904, 32204, 32204.5, 32206, 32207, 32208, 32234, 32235, 32300, 32327, 32328, 32337, 32338, 32339, 32350, 32352, and 33003 of the Government Code, relating to county retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2149, as introduced, Furutani. County retirement.

The County Employees Retirement Law of 1937, County Peace Officers' Retirement Law, County Fire Service Retirement Law, and County Peace Officer and Fire Service Retirement Plan Law set forth a comprehensive system of retirement benefits for specified firemen.

This bill would replace the term "firemen" with "firefighters" and make other related technical changes.

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 31470.4 of the Government Code is
2 amended to read:
3 31470.4. All county foresters, county firewardens, deputies or
4 assistant county foresters, deputies or assistant county firewardens,
5 firefighters, fire apparatus engineers, fire prevention inspectors,
6 forest ~~firemen~~ *firefighters*, fire patrolmen, aircraft pilots, and
7 foremen assigned to fire suppression crews, all other personnel

1 assigned to active fire suppression in any county forester’s or
2 county firewarden’s department and all officers, engineers, and
3 ~~firemen~~ *firefighters* of any county fire protection district, and all
4 other personnel assigned to active fire suppression in any county
5 fire protection district are eligible.

6 SEC. 2. Section 31470.5 of the Government Code is amended
7 to read:

8 31470.5. Bookkeepers, stenographers, cooks, laborers, county
9 fire protection district fire foremen, call ~~firemen~~ *firefighters*, and
10 firefighters whose principal duties clearly do not fall within the
11 scope of active fire suppression, even though the person is subject
12 to occasional call, or is occasionally called upon, to perform duties
13 within the scope of active fire suppression, and volunteer
14 employees, honorary deputy county foresters, honorary deputy
15 county firewardens, and voluntary firewardens holding
16 appointments as such who receive no compensation therefor and
17 who do not regularly perform official duties, are ineligible.

18 SEC. 3. Section 31470.6 of the Government Code is amended
19 to read:

20 31470.6. (a) A permanent employee of a county having a
21 population in excess of 500,000 whose principal duties consist of
22 active protection, rescue, and rendition of aid or assistance to
23 persons injured or imperiled in water areas at beaches and lakes,
24 streams, dams, reservoirs, or other bodies of open water (not
25 including swimming pools) or in small craft or airplanes at sea
26 near the shoreline and the recovery from water areas of submerged
27 objects and bodies of persons drowned or believed to have drowned
28 in those areas, or the immediate supervision thereof, including
29 persons employed to perform the duties now performed under the
30 titles of director of beaches, assistant director of beaches, deputy
31 director of beaches, chief lifeguard, assistant chief lifeguard,
32 captain lifeguards, lieutenant rescue boat, lieutenant lifeguards,
33 beach lifeguard, but who performs additional duties, some of which
34 (including the maintenance of peace and order and the apprehension
35 of law violators) are customarily performed by police or peace
36 officers, and whose other duties (such as resuscitation work
37 involving the use of special equipment in cases having no
38 connection with their principal duties) which in other areas are
39 customarily performed by ~~firemen~~ *firefighters*, and other and
40 further duties (such as the rescue of persons from disabled aircraft

1 and small boats in inshore or inland waters and the removal of
2 dangerous obstructions from waters) which do not come directly
3 within any of the aforesaid classifications but are essential to the
4 safety and security of the public, excluding those whose principal
5 duties are those of a telephone operator, clerk, stenographer,
6 machinist, mechanic, or otherwise clearly do not fall within the
7 scope of active lifeguarding or lifesaving service, even though a
8 person is subject to occasional call, or is occasionally called upon,
9 to perform duties within the scope of active lifeguarding or
10 lifesaving service, shall be considered and is hereby classified as
11 an employee whose principal duties consist in “active law
12 enforcement.”

13 Persons employed to perform the duties of director of beaches,
14 assistant director of beaches, or deputy director of beaches shall
15 not be within the classification of “active law enforcement”
16 employee, unless those persons have previously been included
17 within that classification, or have performed duties which would
18 have qualified such person as an “active law enforcement”
19 employee under this section.

20 (b) In a county with a population in excess of four million, the
21 provisions of subdivision (a) shall also apply to persons employed
22 under the titles and to perform the duties of division chief-public
23 safety, assistant division chief-public safety, or district
24 manager-public safety.

25 SEC. 4. Section 31720.5 of the Government Code is amended
26 to read:

27 31720.5. If a safety member, a ~~fireman~~ *firefighter* member, or
28 a member in active law enforcement who has completed five years
29 or more of service under a pension system established pursuant to
30 Chapter 4 (commencing with Section 31900) or under a pension
31 system established pursuant to Chapter 5 (commencing with
32 Section 32200) or both or under this retirement system or under
33 the State Employees’ Retirement System or under a retirement
34 system established under this chapter in another county, and
35 develops heart trouble, such heart trouble so developing or
36 manifesting itself in such cases shall be presumed to arise out of
37 and in the course of employment. Such heart trouble so developing
38 or manifesting itself in such cases shall in no case be attributed to
39 any disease existing prior to such development or manifestation.

1 As used in this section, ~~fireman~~ “*firefighter* member” includes
2 a member engaged in active fire suppression who is not classified
3 as a safety member.

4 As used in this section, “member in active law enforcement”
5 includes a member engaged in active law enforcement who is not
6 classified as a safety member.

7 SEC. 5. Section 31801 of the Government Code is amended
8 to read:

9 31801. It is the intent of the Legislature that the enactment of
10 this article shall authorize persons in positions covered by a
11 retirement system pursuant to this chapter to participate in the
12 federal old age and survivors insurance provisions of the Social
13 Security Act without jeopardizing the continued maintenance of
14 their local system.

15 To this end and notwithstanding any other provisions of this
16 chapter, the provisions of this article, when made applicable by
17 resolution of the governing board, shall supersede or modify any
18 inconsistent provision in this chapter in its application to every
19 member whose position is included in an agreement between the
20 state and federal government for coverage under the old age and
21 survivors insurance provisions of the Social Security Act.

22 The provisions of this chapter are not repealed by this article,
23 however, and except as superseded or modified by this article in
24 their application to members who are covered by old age and
25 survivors insurance, they shall continue to be fully effective and
26 operative.

27 Nothing in this article shall authorize the extension of the federal
28 system to service in any policeman’s or ~~fireman’s~~ *firefighter’s*
29 position covered by a separate retirement system unless all of the
30 policemen or ~~firemen~~ *firefighters* are included as a unit without
31 any division of their separate retirement system.

32 When federal benefits are to be extended to any ~~fireman’s~~
33 *firefighter’s* or policeman’s position pursuant to this part they shall
34 vote separately from other members of such system in all cases
35 without regard to their classification as miscellaneous members
36 or otherwise, and notwithstanding Section 22009.1, such system
37 shall constitute a separate retirement system with respect to the
38 positions of policemen or ~~firemen~~ *firefighters*, or both, covered
39 by the system.

1 SEC. 6. Section 31887 of the Government Code is amended
2 to read:

3 31887. ~~“Fireman,”~~ “*Firefighter*,” as used in this article, means
4 any employee in a position designated as a ~~fireman’s~~ *firefighter’s*
5 position by the board; provided, such designation is not contrary
6 to any definition, ruling or regulation relating to the term “fireman”
7 issued by the federal agency for the purposes of Section
8 218(d)(5)(A) of the Social Security Act.

9 SEC. 7. Section 31904 of the Government Code is amended
10 to read:

11 31904. “County peace officers” includes:

12 (a) All sheriffs, undersheriffs, chief deputy sheriffs, jailers,
13 turnkeys, deputy sheriffs, bailiffs, process servers, constables,
14 deputy constables, motorcycle officers, its heads and assistant
15 heads of all divisions of the sheriff’s office, and all their regularly
16 appointed deputies. Clerks, bookkeepers, stenographers, and other
17 employees who may have been appointed as deputy sheriffs but
18 who do not perform the duties of any of the peace officers
19 enumerated and honorary deputy sheriffs or other persons holding
20 appointments as deputy sheriffs who receive no compensation
21 therefor and who do not regularly perform particular official duties
22 are not included.

23 (b) All county foresters, county fire wardens, deputy or assistant
24 county foresters, deputy or assistant county fire wardens, heads
25 and assistant heads of all divisions of any county forester’s or
26 county fire warden’s department, and all fire apparatus engineers,
27 fire prevention inspectors, ~~forest firemen~~ *firefighters*, fire
28 patrolmen, fire observers and foremen assigned to fire suppression
29 crews, and all other personnel not specifically excluded, who are
30 assigned to fire prevention and suppression in any county forester’s
31 or county fire warden’s department, and the officers, engineers,
32 and ~~firemen~~ *firefighters* of any county fire protection district, and
33 all other personnel not specifically excluded, who are assigned to
34 fire prevention and suppression in any county fire protection
35 district. Clerks, bookkeepers, stenographers, cooks, laborers, county
36 fire protection district volunteer employees or persons who are not
37 employed for full time duty, or other employees not performing
38 the duties of any of the persons enumerated and any honorary
39 deputy county fire warden or honorary deputy county forester, or
40 voluntary fire warden holding appointment as such but receiving

1 no compensation therefor and not regularly performing particular
2 official duties are not included.

3 SEC. 8. Section 32204 of the Government Code is amended
4 to read:

5 32204. "County foresters, firewardens and ~~firemen~~
6 *firefighters*" include all county foresters, county firewardens,
7 deputy or assistant county foresters, deputy or assistant county
8 firewardens, fire apparatus engineers, fire prevention inspectors,
9 forest ~~firemen~~ *firefighters*, fire patrolmen, and foremen assigned
10 to fire suppression crews, and all other personnel not specifically
11 excluded who are assigned to active fire suppression in any county
12 forester's or county firewarden's department and all officers,
13 engineers, and ~~firemen~~ *firefighters* of any county fire protection
14 district, and all other personnel not specifically excluded who are
15 assigned to active fire suppression in any county fire protection
16 district. Bookkeepers, stenographers, cooks, laborers, county fire
17 protection district fire foremen, call ~~firemen~~ *firefighters*, and
18 volunteer employees, or persons who are not employed for full
19 time duty, or other employees not performing the duties of any of
20 the persons enumerated and any honorary deputy county firewarden
21 or honorary deputy county forester, or voluntary firewarden holding
22 appointment as such but receiving no compensation therefor and
23 not regularly performing particular official duties are not included.
24 In cases of doubtful eligibility, the Board of Retirement shall be
25 the deciding authority.

26 SEC. 9. Section 32204.5 of the Government Code is amended
27 to read:

28 32204.5. Any person who enters service as a "county forester,
29 firewarden, or ~~fireman~~" *firefighter*" and has reached ~~his fortieth~~
30 ~~birthday~~ *40 years of age*, shall be ineligible to become a member
31 under this chapter, except any person who is a member at the time
32 of the adoption of this amendment will retain his *or her*
33 membership.

34 SEC. 10. Section 32206 of the Government Code is amended
35 to read:

36 32206. "Board" and "board of retirement" mean the County
37 Foresters, Firewardens, and County Fire Protection District
38 ~~Firemen's~~ *Firefighter's* Retirement Board.

39 SEC. 11. Section 32207 of the Government Code is amended
40 to read:

1 32207. “Fund” means the County Foresters, Firewardens, and
2 ~~Firemen’s~~ *Firefighter’s* Retirement Fund.

3 SEC. 12. Section 32208 of the Government Code is amended
4 to read:

5 32208. “System” means the retirement system provided for in
6 this chapter or its predecessor.

7 The retirement system for county foresters, fire wardens, and
8 county fire protection district ~~firemen~~ *firefighters* created by
9 Chapter 174 of the Statutes of 1939, as amended, is continued in
10 existence under this chapter.

11 SEC. 13. Section 32234 of the Government Code is amended
12 to read:

13 32234. Except as provided in this article, all county foresters,
14 firewardens, and ~~firemen~~ *firefighters* shall be included in and be
15 subject to this chapter on the first day of the calendar month
16 following the expiration of 30 days after it becomes operative in
17 any county or on the first day of the calendar month following the
18 expiration of 30 days after their entrance into the service, whichever
19 is later.

20 SEC. 14. Section 32235 of the Government Code is amended
21 to read:

22 32235. Any county forester, firewarden, or ~~fireman~~ *firefighter*
23 may elect to be excluded from this chapter at any time within 30
24 days after it becomes operative in any county. Any employee who
25 elects to be excluded shall not thereafter be included in or
26 participate in this system.

27 SEC. 15. Section 32300 of the Government Code is amended
28 to read:

29 32300. For the purpose of providing and maintaining a fund
30 to meet the payments of demands drawn for the payment of
31 pensions and the expenses of the board, a trust fund account to be
32 known as “county foresters, firewardens, and ~~firemen’s~~ *firefighter’s*
33 retirement fund” shall be opened upon the books of the auditor
34 and treasurer of any county adopting a system under this chapter.
35 The contributions of the members and the sums made available
36 by the board of supervisors for the purpose shall be credited to the
37 fund.

38 SEC. 16. Section 32327 of the Government Code is amended
39 to read:

1 32327. Any person electing to come within this chapter who
 2 elects to secure credit for prior service as a forester, firewarden,
 3 or ~~fireman~~ *firefighter* under this chapter, if ~~he~~ *that person* has ~~to~~
 4 ~~his~~ credit in any other pension system a sum exceeding that
 5 necessary to ~~entitle him~~ *be entitled* to credit for ~~such~~ *that* prior
 6 service shall have refunded to him *or her* only the amount by which
 7 his *or her* credit in the other pension system exceeds that necessary
 8 to ~~entitle him~~ *be entitled* to credit claimed for prior service. The
 9 amount necessary for ~~such~~ *that* credit shall be determined on a 2
 10 percent basis applied to the aggregate salary or wages paid during
 11 the period of prior service claimed.

12 SEC. 17. Section 32328 of the Government Code is amended
 13 to read:

14 32328. Any person electing to secure credit for prior service
 15 as a forester, firewarden, or ~~fireman~~ *firefighter* under this chapter
 16 who has ~~to~~ ~~his~~ credit in any other pension system a sum less than
 17 that necessary to ~~entitle him~~ *be entitled* to credit for ~~such~~ *that* prior
 18 service, shall deposit in the retirement fund a sum equal to the
 19 amount necessary to ~~entitle him~~ *be entitled* to the credit claimed
 20 for prior service, and the amount ~~he~~ *that person* has to his *or her*
 21 credit in the other pension system shall be transferred from ~~such~~
 22 *that* other system to the retirement fund of this system, to his *or*
 23 *her* credit. The amount necessary for ~~such~~ *that* credit shall be
 24 determined on a 2 percent basis applied to the aggregate salary or
 25 wages paid during the period of prior service claimed.

26 SEC. 18. Section 32337 of the Government Code is amended
 27 to read:

28 32337. Any member who enters the ~~armed forces~~ *Armed Forces*
 29 of the United States during war or national emergency proclaimed
 30 by the President or an act of Congress providing for peacetime
 31 induction or conscription and thereafter returns to active service
 32 as a forester, firewarden, or ~~fireman~~ *firefighter* within 90 days after
 33 the termination of military service during the war or emergency
 34 is deemed to have been in continuous service as a forester,
 35 firewarden, or ~~fireman~~ *firefighter* during the time ~~he~~ *that person*
 36 was in the ~~armed forces~~ *Armed Forces* of the United States if,
 37 during the period of ~~his~~ *an* absence from active duty or within one
 38 year after ~~his~~ *that person's* return from military service and such
 39 further time not exceeding an additional two years as the board
 40 determines, ~~he~~ *that person* pays into the fund an amount equal to

1 the contributions which he *or she* would have made had he
2 remained on active duty.

3 SEC. 19. Section 32338 of the Government Code is amended
4 to read:

5 32338. If any member is compelled to be absent from ~~his~~
6 employment because temporarily incapacitated for the performance
7 of duty as the result of injury or disease occurring in and arising
8 out of ~~his~~ employment, because of which ~~he~~ *the member* becomes
9 entitled to ~~workmen's~~ *workers'* compensation, within 90 days after
10 ~~his~~ a return to active employment, or within 90 days after the
11 effective date of this section, whichever first occurs, or within such
12 further time as may be granted by the board, ~~he~~ *the member* may
13 pay into the fund an amount equal to that which would have been
14 deducted had ~~he~~ *the member* remained in active employment. Upon
15 the making of ~~such~~ *the* payment, ~~such~~ *the* time, whether before or
16 after the effective date of this section, shall be considered as time
17 served as a county forester, firewarden, or ~~fireman~~ *firefighter*.

18 SEC. 20. Section 32339 of the Government Code is amended
19 to read:

20 32339. Notwithstanding the provisions of this article, the board
21 of supervisors and the board of supervisors as a governing body
22 of the fire protection districts, may elect to contribute for each
23 member of this system who has entered the ~~armed forces~~ *Armed*
24 *Forces* of the United States after June 1, 1940, during war or
25 national emergency proclaimed by the President or an act of
26 Congress providing for peacetime induction or conscription and
27 thereafter returns to active duty as a county forester, fire warden,
28 or county fire protection district ~~fireman~~ *firefighter* within ~~ninety~~
29 *90* days after the termination of ~~such~~ military service, in addition
30 to the contributions required by Sections 32330 and 32331, an
31 amount equal to twice the amount ~~such~~ *the* member would have
32 contributed had ~~he~~ *the member* remained in service as a county
33 forester, fire warden, or county fire protection district ~~fireman~~
34 *firefighter* and received the full salary of the position or positions
35 which he *or she* held during the time of ~~such~~ *his or her* military
36 service.

37 SEC. 21. Section 32350 of the Government Code is amended
38 to read:

39 32350. Whenever this chapter becomes operative in any county,
40 the board shall order that any person who has been duly appointed,

1 selected, or elected and qualified and has served as a forester,
2 firewarden, or ~~fireman~~ *firefighter* for 20 years or more in the
3 aggregate for which contributions provided for in this chapter have
4 been made, and who has reached age 60, or who thereafter
5 completes such service and attains age 60, shall be retired as of
6 the first day of the succeeding calendar month.

7 SEC. 22. Section 32352 of the Government Code is amended
8 to read:

9 32352. Any member shall be retired for disability regardless
10 of age or amount of service, if incapacitated for the performance
11 of duty as the result of an injury or disease occurring in and arising
12 out of the course of ~~his~~ employment. Any member otherwise
13 incapacitated for the performance of duty shall be retired regardless
14 of age, but only after 10 years of service. Incapacity for
15 performance of duty shall be determined by the board. As used in
16 this section, "service" means only service for which contribution
17 provided for in this chapter has been made as a county forester,
18 firewarden, or ~~fireman~~ *firefighter*.

19 SEC. 23. Section 33003 of the Government Code is amended
20 to read:

21 33003. For the purposes of this chapter, the following words
22 and phrases shall have the meaning ascribed to them in this section,
23 unless a different meaning is clearly indicated by the context:

24 "County peace officers" shall comprehend and include all
25 persons duly and regularly appointed under civil service rules and
26 regulations and sworn in as provided by law to perform the duties
27 of undersheriff, chief deputy sheriff, jailers, turnkeys, deputy
28 sheriffs, bailiffs, process servers, constables, deputy constables,
29 motorcycle officers, the head and assistant heads of all divisions
30 of the sheriff's office, and all their regularly appointed deputies,
31 detectives and investigators in the office of the district attorney
32 whose duties are substantially similar to those of peace officers
33 and marshals and deputy marshals. Clerks, bookkeepers,
34 stenographers, and other employees who may have been appointed
35 as deputy sheriffs or deputy marshals but who do not perform the
36 duties of any of the peace officers enumerated and honorary deputy
37 sheriffs or deputy marshals or other persons holding appointments
38 as deputy sheriffs or deputy marshals who receive no compensation
39 therefor and who do not regularly perform particular official duties
40 are not included.

1 The duly elected, qualified and acting sheriff of any county shall
2 also be included in the phrase “county peace officers.”

3 “County foresters, fire wardens and ~~firemen~~ *firefighters*” shall
4 comprehend and include all persons duly and regularly appointed
5 under civil service rules and regulations to perform the duties of
6 county forester, deputy or assistant county fire wardens, heads and
7 assistant heads of all divisions of any county forester’s or county
8 fire warden’s department, and all fire apparatus engineers, fire
9 prevention inspectors, forest ~~firemen~~ *firefighters*, fire patrolmen,
10 fire observers and foremen assigned to fire suppression crews, and
11 all other personnel not specifically excluded, who are assigned to
12 fire prevention and suppression in any county forester’s or county
13 fire warden’s department and the officers, engineers and ~~firemen~~
14 *firefighters* of any county fire protection district, and all other
15 personnel not specifically excluded, who are assigned to fire
16 prevention and suppression in any fire protection district. Clerks,
17 bookkeepers, stenographers, cooks, laborers, county fire protection
18 district volunteer employees or persons who are not employed for
19 full time duty, or other employees not performing the duties of
20 any of the persons enumerated and any honorary deputy county
21 fire warden or honorary deputy, county forester, or voluntary fire
22 warden holding appointment as such but receiving no compensation
23 therefor and not regularly performing particular official duties are
24 not included.

25 “City police officers” shall comprehend and include all persons
26 duly and regularly appointed under civil service rules and
27 regulations and sworn in as provided by law to perform the duties
28 of a regular police officer in the organized police department of a
29 municipal corporation.

30 “City ~~firemen~~ *firefighters*” shall comprehend and include all
31 persons duly and regularly appointed under civil service rules and
32 regulations to perform the duties of a regular ~~fireman~~ *firefighter*
33 in the organized fire department of a municipal corporation.

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