

AMENDED IN SENATE JUNE 20, 2016

AMENDED IN ASSEMBLY MARCH 9, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2376

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

February 18, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

with the county, compensation received, and other information as is required by the board.

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

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

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

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 31494.2 of the Government Code is
2 amended to read:
3 31494.2. (a) A general member whose benefits are governed
4 by Retirement Plan D may, during a period of active employment,
5 elect to change plan membership and become a member,
6 prospectively, in Retirement Plan E. The election shall be made
7 upon written application signed by the member and filed with the
8 board, pursuant to enrollment procedures and during an enrollment
9 period established by the board, which enrollment period shall not
10 occur more frequently than once every three years for that member.
11 The change in plan membership shall be effective as of the transfer
12 date, as defined in subdivision (d). Except as otherwise provided
13 in this section, the rights and obligations of a member who elects
14 to change membership under this section shall be governed by the
15 terms of this article on and after the transfer date. Prior to the
16 transfer date, the rights to retirement, survivors’, or other benefits

1 payable to a member and his or her survivors or beneficiaries shall
2 continue to be governed by Retirement Plan D.

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

26 (c) Notwithstanding any other provision of Retirement Plan D
27 or Retirement Plan E:

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

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

37 (d) As used in this section:

38 (1) "Period of active employment" means a period during which
39 the member is actively performing the duties of a full-time or
40 part-time employee position or is on any authorized paid leave of

1 absence, except a leave of absence during which the member is
2 totally disabled and is receiving, or is eligible to receive, disability
3 benefits, either during or after any elimination or qualifying period,
4 under a disability plan provided by the employer.

5 (2) “Retirement Plan D” means the contributory retirement plan
6 otherwise available to members of the system between June 1,
7 1979, and December 31, 2012, inclusive.

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

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

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

17 SEC. 2. Section 31494.5 of the Government Code is amended
18 to read:

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

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

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

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

35 (2) For the purposes of this subdivision, a member's entry age
36 shall be deemed to be the member's age at his or her birthday
37 nearest the date on which begins the most recent period of
38 unbroken service credited under Retirement Plan D following
39 completion of the service exchange under this subdivision. A
40 member may receive credit for a period of service under only one

1 plan and in no event shall a member receive credit for the same
2 period of service under both Retirement Plan D and Retirement
3 Plan E.

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

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

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

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

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

35 (g) As used in this section:

36 (1) “Active service” means time spent on active, on-the-job
 37 performance of the duties of a full-time or part-time position and
 38 on any authorized paid leaves of absence; provided, however, that
 39 any authorized paid leave of absence or part-time service shall not
 40 constitute active service if the leave of absence or part-time service

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

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

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

18 (4) "Retirement Plan D" means the contributory retirement plan
19 otherwise available to members of the system between June 1,
20 1979, and December 31, 2012, inclusive.

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

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

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

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

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

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

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

1 in the event both the second and third, or both the second and
2 seventh, or both the third and seventh members are absent for any
3 cause.

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

6 31526. The regulations shall include provisions:

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

9 (b) For one of the following:

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

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

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

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

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

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

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

O