

SAN RAMON VALLEY FIRE PROTECTION DISTRICT
Board of Directors Regular Board Meeting

Wednesday, May 27, 2009 – 7:00 p.m.

Nick Dickson, President, ~ Thomas J. Linari, Director
Roxanne W. Lindsay, Director ~ Jennifer G. Price, Director ~ Kenneth W. Sandy, Director

~MISSION STATEMENT~

In the spirit of our tradition, we strive for excellence, respectfully serving all with pride, honor and compassion

Meeting location: **S.R.V.F.P.D. Administrative Offices**
1500 Bollinger Canyon Road, San Ramon, CA 94583

AGENDA

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. DETERMINATION OF QUORUM AND CONFIRMATION OF AGENDA**
- 4. CONSENT CALENDAR**

Consent calendar items are considered routine and are acted upon by the Board with a single action. Members of the audience wishing to provide public input may request that the Board remove the item from the Consent Calendar. Please complete a "Request to Speak" form and submit it to the District Clerk. Comments may be limited to three (3) minutes.

- 4.1 Approve the salaries, payroll taxes and retirement contributions for the month of April, 2009 in the amount of \$3,245,812.32.
- 4.2 Approve the demand register for the period April 15, 2009 through May 15, 2009 in the amount of \$1,695,736.49.
- 4.3 Approve the minutes from the April 22, 2009 regular board meeting including District Counsel's closed session report; and the minutes from the May 12, 2009 budget workshop including District Counsel's closed session report.
- 4.4 Authorization for payment of \$29,100 to W.A. Thomas Co., Inc. for Progress Payment No. 15 for the construction of Fire Station No. 36.
- 4.5 Authorization for payment of \$181,322 to W.A. Thomas Co., Inc. for Progress Payment No. 16 for the construction of Fire Station No. 36 (partial release of retention).
- 4.6 Personnel Actions:
 1. Confirmation of Employment (Gloriann Sasser, Finance Supervisor). Approve staff's recommendation to hire Gloriann Sasser at Step 1, effective May 1, 2009, subject to a 12-month probationary period.
 2. Confirmation of Employment (Phillip Duncan, Information Systems Technician). Approve staff's recommendation to hire Phillip Duncan at Step 1, effective May 1, 2009, subject to a 12-month probationary period.

3. Approve a merit salary increase to Fire Chief Richard Price, to Step 4, effective May 1, 2009.
4. Approve staff's recommendation to award a merit salary increase to Assistant Chief Bryan Collins to Step 4, effective May 1, 2009.
5. Approve staff's recommendation to award a merit salary increase to Technology Systems Manager Steve Call, to Step 4, effective April 23, 2009.
6. Approve staff's recommendation to award a merit salary increase to Firefighter/Paramedics Christopher Cunningham, David Gery, Megan O'Connor, and Christopher Parsons to Step 4, effective May 1, 2009.

5. PUBLIC COMMENT

Any person may address the District Board on any subject pertaining to District business, which is not listed on the agenda. This comment is provided by the Ralph M. Brown Open Meeting Act (Government Code § 54950 *et seq.*) and may be limited to three minutes for any person addressing the Board.

6. SPECIAL ANNOUNCEMENTS/GENERAL BUSINESS

- 6.1 Introduction of and Administration of Oath to New Employees:
Finance Supervisor, Gloriann Sasser and Information Systems Technician, Phillip Duncan
- 6.2 Proclamation of the Board of Directors of the San Ramon Valley Fire Protection District Proclaiming June 1-7, 2009 as National Cardiopulmonary Resuscitation (CPR) and Automated External Defibrillator (AED) Awareness Week and Commitment to a Heart Safe Community.
- 6.3 Recognition of Assistant Chief Collins on obtaining his Masters Degree from California State University at Long Beach.
- 6.4 Recognition of Fire Marshal Jamison for her Appointment to the International Building Code Committee.

****At this time in the meeting, the Board will take a 10-minute recess****

7. OLD BUSINESS

- 7.1 Open Public Hearing as set forth in the annual exterior hazard abatement notices mailed April 7, 2009 stipulating May 27, 2009 at 7:00 p.m. as the date, time and place as provided for the purpose of receiving public comment to show cause why exterior hazard abatement orders dated April 7, 2009 should not be enforced.
- 7.2 Discussion and possible action on Contra Costa County Employees Retirement Association (CCCERA) Terminal Pay Items.
- 7.3 Discussion and possible action on Reclassification of Fire Marshal Position.

8. NEW BUSINESS

- 8.1 Adoption of Resolution No. 2009-02 Authorizing Investment of Monies in the Local Agency Investment Fund (LAIF).
- 8.2 Adoption of Resolution No. 2009-03 confirming the transfer of Certificates of Participation (COP) funding in the amount of \$1,200,000 to 08/09 District budget for the purchase of real property designated as APN 193-130-025.
- 8.3 Adoption of Resolution No. 2009-04 Authorizing Delegation of Authority to Request Disbursements from the Other Post Employment Prefunding Plan, and Adoption of Resolution No. 2009-05 Authorizing Agreement and Election of San Ramon Valley Fire Protection District to Pre-fund Other Post Employment Benefits (OPEB) through CalPERS.
- 8.4 Consider staff's recommendation to award the bid for the purchase of two ambulances from Leader Industries in the amount of \$361,936.

9. CORRESPONDENCE FOR POSSIBLE BOARD ACTION AND/OR REVIEW

10. MONTHLY ACTIVITY REPORTS FOR APRIL, 2009

- 10.1 Operations – Assistant Chief Collins
Incident Report responded to by type, i.e., fire, medical and the response time
- 10.2 Support Services – Assistant Chief Hart
Support Services Report of monthly activities.
- 10.3 Training – Division Chief Krause
Training Report of monthly activities.
- 10.4 Fire Prevention – Fire Marshal/Division Chief Jamison
Fire Prevention Report of monthly activities.
- 10.5 Administrative Services-Administrative Services Director Leete
 - a. Monthly Finance Reports
 - b. Monthly Human Resources Activities/Reports
- 10.6 Fire Chief – Chief Price
Verbal report on monthly meetings, seminars, committee meetings, and other District related activities.

11. GOOD OF THE ORDER

12. CLOSED SESSION

- 12.1 Conference with District Counsel – Potential Litigation
Possible exposure to litigation (two matters)
[Pursuant to Government Code §54956.9(b)(2) and 54954.5(e)]. Facts and circumstances that might result in litigation need not be disclosed. [Pursuant to Government Code § 54956(b) (3)(A)]

- 12.2 Conference with Real Property Negotiators
Negotiators: Assistant Chief Steve Hart/Chief Richard Price
Property Locations:
A). 6100 Camino Tassajara, Danville, CA
B). 1650 Finley Road, Pleasanton, CA
C). APN: 209-240-015 & 209-240-019
D). APN: 212-030-008-8
[Authorized under Government Code §54956.8 and 54954.5(e).]
- 12.3 Status of labor negotiations between the District and the San Ramon Valley Firefighters Association under the provisions [Authorized under Government Code §54957.6 and 54954.5(e).]
- 12.4 Conference with District Counsel-Potential Litigation
Workers' Compensation Claim No. SRV0010001567 dated 10/22/00; P. Severe v. San Ramon Valley Fire Protection District [Authorized under Government Code § 54954.6(b)]
- 12.5 Conference with District Counsel-Potential Litigation
Workers' Compensation Claim No. SRV0106001240 dated 6/28/01; J. Weston v. San Ramon Valley Fire Protection District [Authorized under Government Code § 54954.6(b)]

13. RETURN TO OPEN SESSION

14. REPORT UPON RETURN FROM CLOSED SESSION (if applicable)

15. ADJOURNMENT TO THE NEXT REGULAR BOARD MEETING SCHEDULED FOR TUESDAY, JUNE 23, 2009, AT 7:00 P.M.

Prepared by:



Susan F. Brooks, District Clerk

Agenda posted on May 21, 2009 at the District's Administration Building and the San Ramon Valley Fire Protection District's website at www.firedepartment.org

The San Ramon Valley Fire Protection District ("District"), in complying with the Americans with Disabilities Act ("ADA"), requests individuals who require special accommodations to access, attend and/or participate in District board meetings due to a disability, including but not limited to American Sign Language interpreters, assistive listening devices, transportation to and from the meeting site or other accommodations, may be requested by calling (925) 838-6661 no later than 72 hours in advance of the scheduled meeting time. In compliance with Government Code Section 54957.5, non-exempt writings that are distributed to a majority or all of the Board in advance of a meeting, may be viewed at 1500 Bollinger Canyon Road, San Ramon, California or at the scheduled meeting. In addition, if you would like a copy of any record related to an item on the agenda, please contact District Clerk Sue Brooks at (925) 838-6661.

**CONSENT
ITEMS**

**SAN RAMON VALLEY FIRE PROTECTION DISTRICT
BOARD OF DIRECTORS MEETING
Minutes – April 22, 2009**

MISSION STATEMENT

In the spirit of our tradition, we strive for excellence, respectfully serving all with pride, honor and compassion.

Location: 1500 Bollinger Canyon Road
Administrative Building-Boardroom
San Ramon, CA 94583

Board Members Present: Directors: Dickson, Linari, and Lindsay

Absent: Directors Price and Sandy

Others Present: Matt Stamey, Glenn Umont

Staff Present: Chief Price, Assistant Chief Collins, Assistant Chief Hart, Fire Marshal Jamison, Administrative Services Director Leete, Division Chief Krause, Technology Systems Manager Call, District Counsel Ross, Battalion Chief Barton, Captain Alex Ray, and District Clerk Brooks.

1. Call to Order

President Dickson called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

President Dickson led the Pledge of Allegiance.

3. Determination of Quorum and Confirmation of Agenda

There was a quorum.

4. Consent Calendar

Director Lindsay moved approval of the consent calendar items 4.1-4.4 (1-4). Director Linari seconded the motion. Motion carried.

5. Public Comment

Jan Conway, 325 David Drive, Alamo – asked if an Environmental Impact Report/Study would be considered. Both Assistant Chief Hart and Fire Marshal Jamison responded to Ms. Conway.

Ed Wolske, 2110 Stone Valley Road, Alamo – asked if a Traffic Study would be considered as the traffic on Stone Valley Road and Miranda Avenue is already congested due to heavy traffic from Monte Vista High School and Stone Valley Middle School.

Nanci Oberg-Wolske, 2110 Stone Valley Road, Alamo – read a letter with her concerns regarding Fire Station 32 being relocated to this site.

President Dickson stated that no action would be taken on public comment tonight, that these items may be considered for discussion at a future meeting.

The Board thanked the three residents for their comments and attendance at this board meeting.

6. Special Announcements/Presentations/General Business

None

7. Old Business

None

8. New Business

- 8.1 Adoption of Resolution No. 2009-01 approving the San Ramon Valley Fire Protection District's Investment Policy

Administrative Services Director Leete provided the background on this item, stating that it is an annual update for the District's Investment Policy. Motion by Director Lindsay to adopt Resolution No. 2009-01 approving San Ramon Valley Fire Protection District's Investment Policy. Director Linari seconded the motion. Motion approved by roll call vote.

- 8.2 Receive quarterly District Investment Report

Administrative Services Director Leete provided the background on the District Investment Report, referring to the graph stating that the investments are in compliance with the District's investment policy.

- 8.3 Open Public Hearing as set forth in the annual weed abatement notices mailed March 30, 2009 stipulating April 22, 2009 at 7:00 p.m. as the date, time and place as provided for the purpose of receiving public comment to show cause why weed abatement orders dated March 31, 2009 should not be enforced.

President Dickson opened the Public Hearing. No one came forward. President Dickson closed the public hearing.

9. Correspondence

No comment.

10. Monthly Activity Reports

10.1 Operations – Assistant Chief Collins

Assistant Chief Collins provided the monthly Operations report, highlighting some of the significant fire loss in the District in March resulting in approximately \$1 million in damage.

10.2 Support Services – Assistant Chief Hart

Assistant Chief Hart provided the monthly Support Services report, highlighting again that the crews have officially moved in to new Station 36.

10.3 Training – Division Chief Krause

Division Chief Krause provided the monthly Training report, highlighting the upcoming L380 class, and the successful drills held at 95 Stephanie Lane in Alamo recently.

10.4 Fire Prevention – Fire Marshal Jamison

Fire Marshal Jamison provided the monthly Fire Prevention report highlighting what went well and reported that since the District Fire Line newsletter was mailed to residents, the Fire Prevention Division has received many calls for CERT and CPR classes.

10.5 Administrative Services-Administrative Services Director Leete

Administrative Services Director Leete provided the monthly update to the Board highlighting: assembly of budget materials, and that two new District employees have been hired, effective May 1, 2009. Director Leete also stated that information regarding GASB 45 will be brought before the Board at the May board meeting.

10.6 Fire Chief – Chief Price

Chief Price informed the Board of several meetings he attended this past month, highlighting speaking to the San Ramon Valley Rotary Club, a meeting with Legislative Analyst Ralph Simoni and meetings regarding PARS, PERS and GASB45.

11. Good of the Order

Director Lindsay stated that long time District resident, Armand Borel passed away earlier this week.

12. Closed Session

12.1 Conference with District Counsel – Potential Litigation

Possible exposure to litigation (two matters)

[Pursuant to Government Code §54956.9(b)(2) and 54954.5(c)]. Facts and circumstances that might result in litigation need not be disclosed. [Pursuant to Government Code § 54956(b) (3)(A)]

- 12.2 Conference with Real Property Negotiators
Negotiators: Assistant Chief Steve Hart/Chief Richard Price
Property Locations:
A). 6100 Camino Tassajara, Danville, CA
B). 1650 Finley Road, Pleasanton, CA
[Authorized under Government Code §54956.8 and 54954.5(e).]
- 12.3 Status of labor negotiations between the District and the San Ramon Valley Firefighters Association under the provisions [Authorized under Government Code §54957.6 and 54954.5(e).]

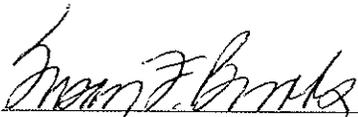
13. **Return to Open Session**

Regular session ended:	7:45 p.m.
Closed session began:	8:07 p.m.
Closed session ended:	9:14 p.m.
Regular session reconvened:	9:14 p.m.

14. **Adjournment**

The meeting adjourned at 9:15 p.m. to a Special Board Budget Workshop of May 12, 2009 at 1:00 p.m., at 12501 Alcosta Boulevard, San Ramon, and the next regular Board meeting of May 27, 2009 at 7:00 p.m.

Prepared by:



Susan F. Brooks
District Clerk

Approved by: _____

Nick Dickson
Board President

William D. Ross
Kypros G. Hostetter
Karin A. Briggs

Chirag Shah
Of Counsel

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William D. Ross**
A Professional Corporation
520 South Grand Avenue, Suite 300
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400 Lambert Street
Palo Alto, California 94306
Telephone: (650) 843-8080
Facsimile: (650) 843-8093

File No: 45/3

April 24, 2009

VIA ELECTRONIC MAIL

The Honorable Nick Dickson, President
and Members of the District Board of Directors
San Ramon Valley Fire Protection District
1500 Bollinger Canyon Road
San Ramon, CA 94583

Re: Report Upon Return From Closed Session; Regular District Board of Directors
Meeting, April 22, 2009

Dear President Dickson and Members of the District Board:

This communication sets forth reportable action, if any, of the District Board consistent with provisions of the Ralph M. Brown Opening Meeting Act (Government Code §54950 *et seq.*), specifically, Government Code §54957.1, in association with a properly noticed Closed Session of the Regular District Board Meeting of April 22, 2009.

There were three items agendized for Closed Session consideration:

- 12.1 Conference with District Counsel – Potential Litigation
Possible exposure to litigation (two matters) [Pursuant to Government Code §§54956.9(b)(2) and 54954.5(e)]. Facts and circumstances that might result in litigation need not be disclosed. [Pursuant to Government Code §54956.9(b)(3)(A)].

The Honorable Nick Dickson, President
and Members of the District Board of Directors
San Ramon Valley Fire Protection District
April 24, 2009
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- 12.2 Conference with Real Property Negotiators. Negotiators: Assistant Chief Steve Hart/Chief Richard Price

Property Locations:

- A) 6100 Camino Tassajara, Danville, CA
- B) 1650 Finley Road, Pleasanton, CA
[Authorized under Government Code §§ 54956.8 and 54954.5(e).]

- 12.3 Status of labor negotiations between the District and the San Ramon Valley Firefighters Association under the provisions [Authorized under Government Code §§54957.6 and 54954.5(e).]

After convening in Open Session at 7:00 p.m., the District Board completed Open Session matters at 7:45 p.m., and then adjourned to Closed Session at 8:07 p.m.

With respect to Agenda Item No. 12.1, one matter of potential litigation was considered with respect to which there was no reportable action under the common law attorney-client privilege and that provided by Government Code §54956.9(b).

With respect to Agenda Item No. 12.2, there was no reportable action with respect to the designated parcels of real property under the provisions of Government Code §§54956.8 and 54954.5(e).

With respect to Agenda Item No. 12.3, there was no reportable action under the provisions of Government Code §§54957.6 and 54954.5(e).

The District Board returned from Closed Session at 9:14 p.m. where it was indicated that a written report of reportable action, where applicable, would be prepared consistent with the provisions of Government Code §54957.1.

The Honorable Nick Dickson, President
and Members of the District Board of Directors
San Ramon Valley Fire Protection District
April 24, 2009
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Should you have questions, this office may be contacted in the interim, or the matter may be taken off consent at your next Regular or Special Meeting for inquiry and response.

Very truly yours,

A handwritten signature in black ink, appearing to read "William D. Ross", with a stylized flourish at the end.

William D. Ross

WDR:lla

**SAN RAMON VALLEY FIRE PROTECTION DISTRICT
BOARD OF DIRECTORS BUDGET WORKSHOP
Minutes – May 12, 2009**

MISSION STATEMENT

In the spirit of our tradition, we strive for excellence, respectfully serving all with pride, honor and compassion.

Location: San Ramon Community Center
12501 Alcosta Boulevard
San Ramon, CA

Board Members Present: Directors: Dickson, Linari, Lindsay, Price, and Sandy

Staff Present: Chief Price, Assistant Chief Hart, Assistant Chief Collins, Fire Marshal Jamison, Administrative Services Director Leete, Finance Supervisor Philapil, Finance Supervisor Sasser, Training Chief Krause, Special Operations Battalion Chief Picard; Technology Systems Manager Call, Legal Counsel Ross, Union President Keel, Code Compliance Officer Stevens and District Clerk Brooks.

1. Call to Order

Vice-President Lindsay called the meeting to order at 1:15 p.m.

2. Pledge of Allegiance

Vice-President Lindsay led the Pledge of Allegiance.

3. Determination of Quorum and Confirmation of Agenda

There was a quorum, and there were no changes to the agenda.

4. Public Comment

There was no public comment.

5. New Business

5.1 Discussion and selection of alternate dates for regular board meetings, June through December, 2009.

District Clerk Brooks discussed the reason for changing these upcoming regular board meeting dates as listed in the staff report. Motion by Director Price, seconded by Director Sandy to change the Board meeting dates (June, 2009-December, 2009) as listed in the staff report. Motion carried.

At this time in the meeting, President Dickson arrived.

6. BUDGET WORKSHOP

- 6.1 Review consolidated “pro-forma” for the proposed budget for Fiscal Year 09-10
- 6.2 Discussion (in detail) of basic operating budget for Fiscal Year 09-10
- 6.3 Discussion (in detail) of capital projects and equipment budgets, including the lease and COP debt components

Chief Price stated that he will be presenting the final 2009/10 budget to the Board at the June 23, 2009 regular board meeting which would include any changes from this budget workshop.

Chief Price proceeded to review the preliminary pro-forma stating that we are exceeding our reserve policy with having a balanced budget.

Chief Price then went through the Board of Directors and the Fire Chief budget followed by each Department Manager reviewing and highlighting their goals and objectives for 09/10. The Board had some questions which staff answered for them.

Chief Price then reviewed the capital, equipment/vehicle replacement funds. Administrative Services Director Leete then discussed the debt service funds.

In reviewing the Budget letter, Chief Price highlighted some of the personnel changes he is recommending. The Board requested some additional information regarding these suggested changes that staff would bring back to the May 27, 2009 regular board meeting.

In discussing the health coverage of last resort and increased compensation for Board members, the Board concluded that they do not wish to implement these changes at this time, but possibly at a later date.

Legal Counsel Ross stated that the Board would only be providing direction to staff at this budget workshop. The Board would be asked to adopt the 2009/2010 budget at the June 23, 2009 Board meeting.

Regarding the item relating to take home vehicles, the Board agreed with implementing the changes suggested by staff.

Chief Price stated that the District is aggressively pursuing grant funding with the firm of Randal Funding.

Chief Price concluded by stating that a staff report regarding the implementation of an OPEB Trust would be forthcoming at the May 27, 2009 Board meeting.

7. CORRESPONDENCE

No comment.

8. GOOD OF THE ORDER

Board President Dickson complimented staff on the hard work that went into putting the preliminary budget together and how professional it was and how professional our staff is.

9. CLOSED SESSION

- 9.1 Conference with District Counsel – Potential Litigation
Possible exposure to litigation (two matters)
[Pursuant to Government Code §54956.9(b)(2) and 54954.5(e)]. Facts and circumstances that might result in litigation need not be disclosed. [Pursuant to Government Code § 54956(b) (3)(A)]
- 9.2 Status of labor negotiations between the District and the San Ramon Valley Firefighters Association under the provisions [Authorized under Government Code §54957.6 and 54954.5(e).]

Return to Open Session

Regular Session ended	2:50 p.m.
Closed Session Began	3:10 p.m.
Closed Session Ended	4:10 p.m.
Regular Session Reconvened	4:15 p.m.

10. ADJOURNMENT

The Board Budget Workshop adjourned at 4:15 p.m. to a Regular District Board meeting of May 27, 2009, 7:00 p.m.

Prepared by: 
Susan F. Brooks, District Clerk

Approved by: _____
President Nick Dickson

William D. Ross
Kypros G. Hostetter
Karin A. Briggs

Chirag Shah
Of Counsel

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Facsimile: (650) 843-8093

File No: 45/3

May 15, 2009

VIA ELECTRONIC MAIL

The Honorable Nick Dickson, President
and Members of the District Board of Directors
San Ramon Valley Fire Protection District
1500 Bollinger Canyon Road
San Ramon, CA 94583

Re: Report Upon Return From Closed Session; District Board of Directors' Special Meeting, May 12, 2009

Dear President Dickson and Members of the District Board:

This communication sets forth reportable action, if any, of the District Board consistent with provisions of the Ralph M. Brown Opening Meeting Act (Government Code §54950 *et seq.*), specifically, Government Code §54957.1, in association with a properly noticed Closed Session of the District Board Special Meeting of May 12, 2009.

Your Board convened in Open Session at 1:15 p.m. to address matters on the Open Session portion of the Agenda, concluding at 2:52 p.m. and adjourning to Closed Session 3:07 p.m.

There were two matters agendized for Closed Session consideration:

- 9.1 Conference with District Counsel – Potential Litigation
Possible exposure to litigation (two matters) [Pursuant to Government Code §§54956.9(b)(2) and 54954.5(e)]. Facts and circumstances that might result in litigation need not be disclosed. [Pursuant to Government Code §54956.9(b)(3)(A)].

The Honorable Nick Dickson, President
and Members of the District Board of Directors
San Ramon Valley Fire Protection District
May 15, 2009
Page 2

9.2 Status of Labor Negotiations between the District and the San Ramon Valley Firefighters Association. [Authorized under Government Code §§54957.6 and 54954.5(e).]

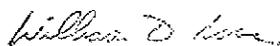
Your Board returned from Closed Session at 4:12 p.m. and indicated that a written report of reportable action, where applicable, would be prepared consistent with the provisions of Government Code §54957.1.

With respect to Agenda Item No. 9.1, there was no reportable action under the common law attorney-client privilege and that provided by Government Code §54956.9(b).

With respect to Agenda Item No. 9.2, there was no reportable action under the provisions of Government Code §54957.6.

Should you have questions, this office may be contacted in the interim, or the matter may be taken off consent at your next Regular or Special Meeting for inquiry and response.

Very truly yours,



William D. Ross

WDR:lla

cc: Richard Price, District Chief

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfpd.dst.ca.us

**1500 Bollinger Canyon Road
San Ramon, California 94583**

Fire Prevention
Phone: 925-838-6680
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Steven J. Hart, Assistant Fire Chief
Subject: Purchasing Authority per District Ordinance 20

Section 5.3 of District Ordinance requires that purchases in excess of \$25,000 have specific approval by the Board of Directors. Tonight's Consent Calendar contains one item requiring such authorization. This item is contained in the C.O.P. budget.

Consent Calendar Item No. 4.4

\$29,100 to W.A. Thomas Co., Inc. for Progress Payment #15 for the construction of Fire Station No. 36.

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfpd.dst.ca.us

1500 Bollinger Canyon Road
San Ramon, California 94583

Fire Prevention
Phone: 925-838-6680
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Steven J. Hart, Assistant Fire Chief
Subject: Purchasing Authority per District Ordinance 20

Section 5.3 of District Ordinance requires that purchases in excess of \$25,000 have specific approval by the Board of Directors. Tonight's Consent Calendar contains one item requiring such authorization. This item is contained in the C.O.P. budget.

Consent Calendar Item No. 4.5

\$181,322 to W.A. Thomas Co., Inc. for Progress Payment #16 for the construction of Fire Station No. 36.

**SPECIAL ANNOUNCEMENTS/
PRESENTATIONS/
GENERAL BUSINESS**

**A Proclamation of the San Ramon Valley Fire Protection District
Proclaiming June 1-7, 2009 As
National Cardiopulmonary Resuscitation and
Automated External Defibrillator Awareness Week and
Commitment to a Heart Safe Community**

WHEREAS, heart disease remains the leading cause of death in the United States affecting men, women, and children of every age and race regardless of where they live; and

WHEREAS, approximately 325,000 coronary heart disease deaths occur annually outside a hospital or emergency room and approximately 95 percent of sudden cardiac arrest victims die before arriving at the hospital; and

WHEREAS, prompt delivery of cardiopulmonary resuscitation (CPR) increases the chance of survival from sudden cardiac arrest by helping maintain vital blood flow to the heart and brain and increasing the amount of time a defibrillator can be effective; and

WHEREAS, an automated external defibrillator (AED), even when used by a bystander, is safe, easy to operate and highly effective in restoring a normal heart rhythm and increasing the chance of survival for many of sudden cardiac arrest; and

WHEREAS, the interval between the 911 call and the arrival of emergency medical services personnel is typically longer than five minutes and death or severe brain injury is likely to occur within ten minutes after the onset of sudden cardiac arrest. Therefore, achieving high survival rates depends on a public trained in cardiopulmonary resuscitation and automated external defibrillator use; and

WHEREAS, the American Heart Association, the American Red Cross, and the National Safety Council are preparing related public awareness and training campaigns on cardiopulmonary resuscitation and automated external defibrillation to be held during the first week of June each year; and

WHEREAS, the San Ramon Valley Fire Protection District promotes a Heart Safe Community in partnership with the City of San Ramon, the Town of Danville, the San Ramon Valley Unified School District, and the Contra Costa County Emergency Medical Services, where the public is educated on heart healthy lifestyles of exercise, nutrition and knowing how to use CPR and AED; and

WHEREAS, the San Ramon Valley Fire Protection District recognizes the Heart Safe Community program will work in coordination with San Ramon Valley Emergency Preparedness Citizen Corps Council.

NOW, THEREFORE, BE IT RESOLVED, that the San Ramon Valley Fire Protection District does hereby proclaim June 1-7, 2009, as National Cardiopulmonary Resuscitation and Automated External Defibrillator Awareness Week, and supports the creation and efforts of a Heart Safe Community.

Dated: May 27, 2009

Nick Dickson, Board President



OLD BUSINESS

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfire.ca.gov

1500 Bollinger Canyon Road
San Ramon, California 94583

Fire Prevention
Phone: 925-838-6680
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Richard Price, Fire Chief
Subject: Terminal Pay

Background

Terminal pay is the phrase used to describe dollar amounts paid for unused vacation accruals, admin leave, floating holiday hours, etc. at time of retirement. Some terminal pay amounts become part of the final average salary (FAS) calculation for retirement benefits. Terminal pay was the main focus of the recent article by Dan Borenstein.

At the request of the Board of Directors an initial analysis of all terminal pay items for management personnel was conducted. Although the information below is believed to be correct, the reference documents that led to the conclusions are very complex. A legal review is appropriate to confirm the Board's obligations and options relative to terminal pay.

The actions of the Board of Directors in regards to retirement benefits, including terminal pay, are bound by retirement law and various legal precedents. They are attached for your reference and indicated below.

- County '37 Act (1937)
- Ventura Decision I (1997)
- Paulson and Walden Settlement (1999)
- 3% @ 50 (2001)
- Ventura Decision II (2003)

These legal and legislative acts serve to define the authority of the Board to effect change and serve as the basis for the analysis below.

Present Situation

Vacation Leave

Ventura requires the inclusion of the cash value for vacation both earned and received in the final average salary (FAS) period. Under the decision, only such amount as can be accrued (earned) in the final compensation period (12 months) is included in the calculation of final compensation.

The District's 40-hour accrual rates are as follows:

<u>Length of service</u>	<u>Monthly</u>	<u>Max</u>
Less Than 5 years	10.00	240
Over 5 - Less Than 10 years	12.00	288
Over 10 - Less Than 15 years	14.28	343
Over 15 - Less than 20 years	17.14	411
Over 20 - Less than 25 years	18.56	445
Over 25 - Less than 30 years	20.00	480
Over 30 years	21.42	514

Board Discretion

Monthly accrual rates and maximum accrual limits are subject to collective bargaining.

Management Pay

Ventura requires the inclusion of Management Pay in the final average salary calculation. Management personnel currently receive a Management Pay differential after one year of service as a manager.

Board Discretion

The Board determines the amount of the Management Pay differential and establishes the policy surrounding its payment (time in grade for example). The Board could negotiate to eliminate or reduce the Management Pay differential.

Admin Leave

Ventura requires the inclusion of the value of Admin Leave earned and sold back during the FAS period. In lieu of overtime, management personnel currently receive 80 hours of Admin Leave each year.

Board Discretion

The Board determines the amount of Admin Leave accrued by managers and establishes the policy surrounding its use. The Board could negotiate to eliminate or reduce Admin Leave, prevent the sell-back of Admin Leave, or change policy preventing the "straddling" of Admin Leave sell back across two years in the final twelve months.

On-call/Standby Pay

Ventura requires the inclusion of On-call/Standby Pay earned during the FAS period in the final average salary calculation. Chief Officers currently receive a 5% pay differential to carry a District pager 24/7 and respond to after hour emergencies when so notified.

Board Discretion

The Board has broad authority to implement changes to On-call/Standby Pay. The Board could consider conducting a survey to evaluate its standby pay level along with studying the operational ramification of a policy change in this area.

Sick Leave

'37 Act (31641.01); CCCERA. At retirement all accumulated sick leave is converted to service credit.

Forty (40) hour employees accrue a sick leave credit of eight (8) hours per month for each completed calendar month of service. All sick leave credits accrued, but not used, shall be accumulated. At the time of retirement, an employee may apply any unused sick leave credits toward retirement as provided for under the Contra Costa County Employees' Retirement Plan (MOU).

Board Discretion

Monthly sick leave accrual rates and maximum accrual limits are subject to collective bargaining.

Vehicle Allowance

The District currently offers a vehicle allowance for select personnel rather than supplying a District vehicle. The purpose of a vehicle allowance in lieu of an issued vehicle is primarily cost savings and reduced liability to the District. Reduced restrictions offered by the allowance also improve operational readiness by allowing key personnel to be in their vehicle more often than is currently possible under the necessary restrictions of District owned vehicles. The policy was modeled after Contra Costa County Resolution 2006/743.

IRS requires that the entire allowance be considered as income and CCCERA considers it regular and recurring income. Thus, the allowance is fully taxed and is included in CCCERA contribution calculations.

Board Discretion

The Board has broad authority to implement changes to the vehicle allowance policy.

Recommendation

1. The Board should consider retaining specialized counsel with expertise in public retirement law to verify the accuracy and soundness of the analysis contained in this report and to serve as a resource to the Board on an as needed basis.
2. The Board should consider commissioning a comparative study of all terminal pay items identified above.

Completion of these two recommendations will provide the Board with the information and resources it needs to evaluate and confer on benefit level changes during collective bargaining periods and other future contract negotiations.

37 ACT - JANUARY 2008

CALIFORNIA GOVERNMENT CODE

TITLE 3. GOVERNMENT OF COUNTIES

DIVISION 4. EMPLOYEES

PART 3. RETIREMENT SYSTEMS

CHAPTER 3. COUNTY EMPLOYEES RETIREMENT LAW OF 1937

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CHAPTER 3. COUNTY EMPLOYEES RETIREMENT LAW OF 1937

Article 1. General - 31450-31485.12

31450. This chapter may be cited as the County Employees Retirement Law of 1937.

31451. The purpose of this chapter is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employees removed.

31452. The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district. They are not subject to execution or any other process of court whatsoever except to the extent permitted by Section 31603 of this code and Section 704.110 of the Code of Civil Procedure, and are unassignable except as specifically provided in this chapter.

31452.5. The board may comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter, authorizing the treasurer or other entity authorized by the board to deduct a specified amount from the retirement allowance or benefit payable to any retired member or beneficiary of a retired member for the purpose of paying premiums on any policy or certificate of group life insurance or group disability insurance issued by an admitted insurer, for any prepaid group medical or hospital service plan, or both, for any vision care program or dental plan, approved by the board, for the benefit of the retired member or his or her dependents, for the payment of premiums on national service life insurance or United States government converted insurance, for the purchase of shares in or the payment of money to any regularly chartered credit union, for charitable organizations or federally chartered veterans' organizations as approved by both the board of retirement and the board of supervisors, or for the purchase of United States Savings Bonds, or for the payment of personal income taxes to the government of the United States or of the State of California, and each month shall draw his or her order in favor of the insurer, institution, credit union, or government named in the written authorization for an amount equal to the deductions so

authorized and made during the month. The board may charge a reasonable fee for the making of the deductions and payments.

31452.6. (a) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, or credit union to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

31452.65. Upon receipt of proof, satisfactory to the board, that a warrant or check drawn in payment of a retirement allowance or in payment of any other account due from the retirement system has been lost or destroyed, the treasurer or other entity authorized by the board upon request of the board of retirement shall as provided by Section 31590 issue a duplicate warrant or check bearing the same date as the original in payment of the same amount, without requiring a bond from the payee, and the treasurer or other entity authorized by the board shall pay the duplicate in lieu of the original warrant or check and any losses incurred by reason of the issuance of duplicate warrants or checks shall be a charge against the account from which the payment is derived.

This section shall not be operative in any county until the time as the board of supervisors shall, by resolution, make this section applicable in the county.

31452.7. (a) Upon the death of any member after retirement, any retirement allowance earned but not yet paid to the member shall, notwithstanding any other provision of law, be paid to the member's designated beneficiary.

(b) Upon the death of any person receiving a survivor's allowance under this chapter, any allowance earned but not yet paid to the survivor shall, notwithstanding any other provision of law, be paid to the survivor's designated beneficiary.

31453. (a) An actuarial valuation shall be made within one year after the date on which any system established under this chapter becomes effective, and thereafter at intervals not to exceed three years. The valuation shall be conducted under the supervision of an actuary and shall cover the mortality, service, and compensation experience of the members and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 45 days prior to the beginning of the succeeding fiscal year, recommend to the board of supervisors the changes in the rates of interest, in the rates of contributions of members, and in county and district appropriations as are necessary. With respect to the rates of interest to be credited to members and to the county or district, the board may, in its sound discretion, recommend a rate that is higher or lower than the interest assumption rate established by the actuarial survey. No adjustment shall be included in the new rates for time prior to the effective date of the revision.

(b) (1) Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 45 days prior to the beginning of the succeeding fiscal year, recommend to the governing body of a district within the county system that is not governed by the board of supervisors the changes in the rates of contributions of district members and in district appropriations as are necessary.

(2) This subdivision shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes the provision applicable in that county.

31453.5. Notwithstanding Section 31587, and in accordance with Section 31453 or 31510.1, the board may determine county or district contributions on the basis of a normal contribution rate which shall be computed as a level percentage of compensation which, when applied to the future compensation of the average new member entering the system, together with the required member contributions, will be sufficient to provide for the payment of all prospective benefits of such member. The portion of liability not provided by the normal contribution rate shall be amortized over a period not to exceed 30 years.

31453.6. Notwithstanding any other provision of this chapter, the board of retirement may, at the request of the board of supervisors, adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations, as determined by their actuary or by an actuary employed by the board of investments, for benefits applicable to all membership categories for the purpose of determining employer contribution rates for counties and districts. The board of retirement shall approve a new amortization period based upon a request from the board of supervisors that demonstrates a financial necessity. The board of retirement may deny a request when the request would subject the fund to an unsound financial risk.

A board of retirement may take an action pursuant to this section only once.

31454. (a) The board of supervisors shall, not later than 90 days after the beginning of the immediately succeeding fiscal year, adjust the rates of interest, the rates of contributions of members, and county and district appropriations in accordance with the recommendations of the board, but shall not fix them in amounts that reduce the individual benefits provided in this chapter.

(b) (1) The governing body of a district within the county system that is not governed by the board of supervisors shall, not later than 90 days after the beginning of the immediately succeeding fiscal year, adjust the rates of contributions of district members and in district appropriations in accordance with the recommendations of the board, but shall not fix them in amounts that reduce the individual benefits provided in this chapter.

(2) This subdivision shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes the provision applicable in that county.

31454.1. (a) The independent assumptions and calculations of an actuary contained in the actuarial valuation required by Section 31453 shall not be subject to the "meet and confer" provisions of the Meyers-Milias-Brown Act; however, it is recognized that those provisions require that the board or the board of supervisors meet and confer with representatives of recognized employee organizations prior to determining a course of action with respect to the recommendations contained in the actuarial valuation.

(b) (1) The independent assumptions and calculations of an actuary contained in the actuarial valuation required by Section 31453 shall not be subject to the "meet and confer" provisions of the Meyers-Milias-Brown Act; however, it is recognized that those provisions require that the governing body of a district within the county system that is not governed by the board of supervisors meet and confer with representatives of recognized employee organizations prior to determining a course of action with respect to the recommendations contained in the actuarial valuation.

(2) This subdivision shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes the provision applicable in that county.

(c) The intent of the Legislature, in enacting this section, is to insure the solvency and actuarial soundness of the retirement systems governed by this chapter by preserving the independent nature of the actuarial evaluation process.

31454.5. In any county subject to the provisions of Section 31676.1, 31676.11, 31676.12, or 31695.1 the board of supervisors may, by vote entered in the minutes of the board, make an additional appropriation sufficient to fund over a period of 30 years any deficit which may result to the system because of the adoption of Section 31676.1, 31676.11, 31676.12, or 31695.1 or by the adoption of Articles 6.8, 7.5 and 8.7. The board of supervisors may make such additional appropriation whether recommended by the board or not.

31454.6. Whenever, in any county subject to the provisions of Section 31676.1 the board of supervisors makes any additional

appropriations pursuant to Section 31454.5, the governing body of every district, including the board of supervisors where it is the governing body, also shall make an additional appropriation in the amount to which it has agreed, otherwise in the same proportion as the total pay roll deductions from the salaries of all members employed by such district for the latest pay roll period bear to the total pay roll deductions from the salaries of all members employed by the county for the same pay roll period.

31455. Unless the context otherwise requires, the definitions and general provisions contained in this article govern the construction of this chapter.

31456. "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted by the board of supervisors and regular interest thereon.

31457. "Annuity" means payment for life derived from contributions made by a member.

31458. "Beneficiary" means any person in receipt of a pension, annuity, retirement allowance, death benefit, or any other benefit.

31458.2. If, after December 31, 1957, and either before or after retirement a member dies leaving a spouse and has not designated a beneficiary, and, prior to the payment of any portion of the death benefit, such spouse files with the board written evidence, satisfactory to the board, that she or he is the surviving spouse and the date of the marriage, such surviving spouse shall be deemed, for the purposes of this chapter, to have been nominated as the beneficiary by such member.

31458.3. A member's ex-spouse who is receiving or is entitled to receive payments from the system, including a portion of the surviving spouse's allowance, pursuant to an order of the court dividing the community property interest in the member's retirement allowance may designate one or more beneficiaries who shall receive those payments following the death of the ex-spouse. Those payments shall terminate upon the death of the member or the surviving spouse.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31458.4. A member's ex-spouse who is receiving or is entitled to receive payments from the system, including a portion of the surviving spouse's allowance, pursuant to an order of the court dividing the community property interest in the member's retirement allowance may designate one or more beneficiaries who shall receive

those payments following the death of the ex-spouse. Those payments shall terminate upon the death of the member or the surviving spouse.

This section shall not be operative in any county until the board of supervisors, by resolution, makes this section applicable in the county.

31459. (a) In a county in which a board of investments has been established pursuant to Section 31520.2:

(1) As used in Sections 31453, 31453.5, 31454, 31454.1, 31454.5, 31472, 31510.1, 31510.3, 31510.6, 31588.1, 31589.1, 31591, 31592.3, 31594, 31595.1, 31595.9, 31596, 31596.1, 31601.1, 31607, 31625, 31784, and 31872, "board" means a board of investments.

(2) As used in the first paragraph of Section 31592.2, "board" means a board of investments.

(3) Sections 31510, 31510.4, 31510.8, 31522, 31523, 31524, 31525, 31528, 31529, 31529.5, 31595, 31680, and 31680.1 apply to both the board of retirement and board of investments, and "board" means both "board of retirement" and "board of investments."

(b) In Article 17 (commencing with Section 31880) of this chapter, "board" means the Board of Administration of the Public Employees' Retirement System.

(c) In all other cases, "board" means the board of retirement.

31459.1. (a) In a county in which a board of investments has been established pursuant to Section 31520.2:

(1) As used in Sections 31453, 31453.5, 31454, 31454.1, 31454.5, 31472, 31588.1, 31589.1, 31591, 31592.3, 31594, 31595.1, 31595.9, 31596, 31596.1, 31601.1, 31607, 31610, 31611, 31612, 31613, 31616, 31618, 31621.11, 31625, 31639.26, 31784, and 31872, "board" means board of investments.

(2) As used in the first paragraph of Section 31592.2 and the first paragraph and subdivision (c) of the second paragraph of Section 31595, "board" means a board of investments.

(3) Sections 31521, 31522, 31522.1, 31522.2, 31523, 31524, 31525, 31528, 31529, 31529.5, 31580.2, 31614, 31680, and 31680.1, apply to both the board of retirement and board of investments, and "board" means either or both the board of retirement and board of investments.

(4) Subdivision (a) of Section 31526 and subdivisions (a) and (b) of the second paragraph of Section 31595 apply to both the board of retirement and board of investments, and "board" means either or both the board of retirement and board of investments.

(b) In Article 17 (commencing with Section 31880) of this chapter, "board" means the Board of Administration of the Public Employees' Retirement System.

(c) In all other cases, "board" means the board of retirement.

(d) This section shall apply only in a county of the first class, as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31460. "Compensation" means the remuneration paid in cash out of

county or district funds, plus any amount deducted from a member's wages for participation in a deferred compensation plan established pursuant to Chapter 8 (commencing with Section 18310) of Part 1 of Division 5 of Title 2 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to a member.

31461. "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

31461.1. (a) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) Notwithstanding Sections 31460 and 31461, neither "compensation" nor "compensation earnable" shall include any of the following: cafeteria or flexible benefit plan contributions, transportation allowances, car allowances, or security allowances, as enumerated in a resolution adopted pursuant to subdivision (c).

(c) Except as provided in subdivision (d), this section shall not be operative until the board of supervisors, by resolution adopted by a majority vote, makes this section operative with respect to any employee who becomes a member after the effective date of the resolution.

(d) Regardless of whether it has acted pursuant to subdivision (c), at any time the board of supervisors, by separate resolution adopted by a majority vote, may make this section operative with respect to any member not represented by a certified employee organization who makes an irrevocable election to become subject to this section.

(e) Nothing in this section shall be construed to affect any determination made by the board of retirement, pursuant to Section 31461, prior to the effective date of this section.

(f) Nothing in this section shall be construed to affect the validity of any memorandum of understanding or similar agreement that has been executed prior to the effective date of this section.

31461.2. "Compensation earnable" by a public administrator, coroner or coroner-public administrator member compensated by means of fees means the average compensation as determined by the board, for the period under consideration, upon the basis of the average amount of fees received each month by such member.

31461.3. (a) The average compensation during any period of service

as a member of the Public Employees' Retirement System, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2 shall be considered compensation earnable by a member for purposes of computing final compensation for that member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or six months if Section 31840.4 applies.

(2) He or she retires concurrently under both systems and is credited with that period of service under the other system at the time of retirement.

(b) This section shall be applied retroactively under this chapter in favor of any member whose membership in the Public Employees' Retirement System or in a retirement system established under this chapter in any county terminated prior to October 1, 1957, provided that he or she was eligible to and elected deferred retirement therein within 90 days after eligibility for reciprocity, the period intervening between active memberships in the respective systems did not exceed 90 days, or six months if Section 31840.4 applies, and he or she retires concurrently under both systems and is credited with that period of service under the other system at the time of retirement. The limitation of the 90-day or six-month period between the active membership in the two retirement systems shall not apply to an employee who entered the employment in which he or she became a member of the State Employees' Retirement System prior to July 18, 1961; provided he or she entered that employment within 90 days, or six months if Section 31840.4 applies, after the termination of employment in the county system, whether that employment is with the state or with a county, a city, or other public agency that contracts with the Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2.

31461.4. (a) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) Notwithstanding Sections 31460 and 31461, neither "compensation" nor "compensation earnable" shall include any increase, made on or after January 1, 1996, in cafeteria or flexible benefit plan contributions for any member represented by a certified employee organization, nor shall they include any increase in cafeteria or flexible benefit plan contributions made on or after January 1, 1995, for any member not represented by a certified employee organization, provided that the nonrepresented member waives the applicability of Sections 31460 and 31461 in writing prior to receiving any cash payment based on the increase.

(c) This section shall not be operative in the county until the time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions of this section applicable in the

county.

31461.45. (a) This section applies only to a county of the first class, as defined by Section 28020.

(b) "Compensation earnable" in a county of the first class shall include only those items of remuneration specifically included as a result of the court-approved settlement in (1) the consolidated cases of Los Angeles County Professional Peace Officers' Association, et al. v. Board of Retirement, Los Angeles County Employees' Retirement Association (Los Angeles County Superior Court, Case No. BS 051355) and Milton Cohen v. Board of Retirement, Los Angeles County Employees' Retirement Association (Los Angeles County Superior Court, Case No. BS 051774), (2) the case of Los Angeles County Fire Department Association of Chiefs, et al. v. Board of Retirement, Los Angeles County Employees' Retirement Association, County of Los Angeles (Los Angeles County Superior Court, Case No. BS 057432), and (3) the case of Cecil Bugh v. Board of Retirement, Los Angeles County Employees' Retirement System (Los Angeles County Superior Court, Case No. BS 055611), all of which were included in Coordination Proceeding Special Title (Rule 1550(b)), Retirement Cases, Judicial Council Coordination Proceeding No. 4049, even if a final judicial determination in that coordinated case, or any subsequent case, should conclude that any additional item of remuneration must be included in that definition with respect to any other county. Those items of remuneration in addition to base salary and the pensionable portion, if any, of cafeteria plan contributions, are set forth in Resolution No. 01-001, adopted by the board of retirement on or before the effective date of this section and shall include only the following:

Earnings

Code No.	Title
099	Patrol Station Retention Bonus
358	Temporary Promotion Bonus
359	Lifeguard Paramedic, Catalina
503	Uniform Allowance
504	Night Shift Differential
505	Coroner's Inquest Reporter
507	CoGeneration or HydroElectric Ops and Mtce
508	Henninger Flats Watchman
509	Freezer Work
510	Department Head Merit
511	Board of Supervisors Performance Lump Sum
512	Fire Suppression Transportation Truck Driver
514	Backhoe Operator
516	Explosives Work
517	Evening Shift Differential
518	Power Equipment Repair, Snow Conditions
519	Engineering Employees, Hazard Pay
520	Home Care Compensation
522	Custodian Acting as Watchman
523	DPD Deputy Director Recruitment Incentive
525	Contracting and Productivity Improvement Incentive for Managers
528	WEBCOM Press Operator

529 Power Equipment Operator, Fire Suppression
530 RN Extra Weekends Worked
531 Standby
532 Additional Responsibilities or Exceptional Performance
533 Power Sweeper Operator in Emergency Conditions
534 Power Plant Relief Engineer
535 Clinic Physician, First Hour and One-Half
536 Consulting Specialist, MD, & Mental Health Consultant,
MD, First and Fifth Hours
538 RN Assigned as Acting or Relief Charge Nurse
539 RN Weekend Differential
540 Relief Nurse Holiday Differential (Hourly Item)
541 Relief Nurse Weekend Differential (Hourly Item)
544 Appraisers Laundry and Dry Cleaning Allowance
545 Heavy Duty Tow Truck Driver
546 Slurry Seal Truck Driver
547 Lifeguard Paramedic-Shift
548 Lifeguard Paramedic-Hourly
550 Incentive Awards for Medi-Cal Reimbursements, Health Services
551 Group Incentive Award, Treasurer Tax Collector
553 Pioneer Excavation, Tunnel Operations, Fire Suppression
and Snow Removal-Construction Inspection and
Surveying Groups
554 Pioneer Excavation, Tunnel Operations, Fire Suppression
and Snow Removal
555 Scaffold or Swing Stage, 30 Feet Above Grade
556 High Scale and Rigging Operations, General
557 Evening Shift, Med Tech
558 Night Shift, Med Tech
565 Paramedic Recertification Bonus
567 Deputy Sheriff Reserve Annual Compensation
570 Home Care Program Standby
571 CSW Licensure Supervision
572 MOU Lump Sum Bonus
601 Lifeguard Paramedic, Relief
602 Supervising Transportation Deputy Performing Dispatcher Duties
603 Automotive Service Excellence Certificates
604 RN Mobile Intensive Care Certification
605 Custodian Floor Waxing Bonus
606 Fire Equipment Mechanic Assigned Field Repair Duties
607 SDPO Assigned Acting Director In A Camp
608 Bilingual Bonus
609 RN Assigned to Emergency Room
610 Antelope Valley Firefighting Crew
611 Tree Trimmer Supervisor, Power Operations
612 Shooting Bonus, Expert
613 Shooting Bonus, Distinguished Expert
614 Shooting Bonus, Marksman
615 Shooting Bonus, Sharpshooter
616 Antelope Valley Quarters, On Fire Call
617 Clinic Nurse Assigned to Probation Camp
618 Transportation Bus Driver, Sheriff
619 Lifeguard Paramedic
620 San Gabriel Dam Operator
621 Nurse Retention Incentive
622 Advanced Appraiser Certification

623 Probation Transcriber Typist Production Incentive
624 Bilingual Additional Bonus Children's Social Workers
625 Agriculture Inspectors Assigned to Standardization
626 Firefighter Paramedic not Assigned to a Paramedic Post
628 Bilingual Bonus for Other Than Monthly Employees
629 Mortuary Attendant at LAC/USC MC
630 Safety Police Educational/Longevity Incentive
632 Mental Health Workers Assigned to Sheriff's Detention Facilities
634 Supervising Detention Services Officer of the Day
635 Transportation Deputy Bus Driver, Probation
636 Sheriff's Station Commander Expenses
637 Professional Development Expenses
638 Probation Telecom Equipment Bonus
639 Intern Housing Allowance LAC/USC Med. Center
640 Children's Services ERCP Retention
641 Shooting Bonus, Expert-Reserve
642 Shooting Bonus, Distinguished Expert-Reserve
643 Shooting Bonus, Marksman-Reserve
644 Shooting Bonus, Sharpshooter-Reserve
645 Welder Certification Bonus
782 FLSA Premium Pay for Regularly Scheduled Work Assignment
903 Non-Elective Leave Buyback
910 Sick Buyback
911 Vacation Buyback
912 Holiday Buyback
913 Sick Pre-71 Buyback
914 Sick Buyback-Probation 56 Hour
915 Vacation Buyback-56 Hour
930 Special Paid Leave Buyback
931 Appraisers Leave Buyback
932 Intern/Resident Leave Buyback
None Emp Suggest
None Park, Nontaxable
None Park, Taxable
None Prior Salary
None Transportation Allowance
None Traffic Mitigation

Any additional item of remuneration may subsequently be included in "compensation earnable" pursuant to a memorandum of understanding between a county of the first class and any of its recognized employee organizations or a resolution adopted by its board of supervisors.

(c) No item of remuneration included in "compensation earnable" as a result of the court-approved settlement and as set forth in the resolution described above in subdivision (b) may be removed therefrom as a result of any subsequent judicial determination, except that a county of the first class and a recognized employee organization may agree only through a memorandum of understanding to exclude the item of remuneration from "compensation earnable" or the board of supervisors may adopt a resolution excluding the item of remuneration from "compensation earnable" with respect to nonrepresented employees.

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

31461.5. Notwithstanding any other provision of law, salary bonuses or any other compensation incentive payments for regular duties or for additional services outside regular duties received under the program known on April 1, 1997, as the Executive and Unclassified Management Operational Incentive Plan or any successor program that is substantially similar by any members who are in positions identified as executive or unclassified management shall be excluded from all retirement benefit calculations.

31461.6. "Compensation earnable" shall not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 and following of Title 29 of the United States Code.

31462. "Final compensation" means the average annual compensation earnable by a member during any three years elected by a member at or before the time he files an application for retirement, or, if he fails to elect, during the three years immediately preceding his retirement. If a member has less than three years of service, his final compensation shall be determined by dividing his total compensation by the number of months of service credited to him and multiplying by 12.

31462.1. "Final compensation" means the average annual compensation earnable by a member during any year elected by a member at or before the time he files an application for retirement, or, if he fails to elect, during the year immediately preceding his retirement.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions of this section applicable in such county.

31462.11. In any county subject to the provisions of Section 31462.1, every retirement allowance, optional death allowances, or annual death allowance, payable to or on account of any member, granted prior to the effective date of Section 31462.1 in such county, shall be recalculated as though Section 31462.1 had been in force in such county on the effective date of such allowance.

Any increased allowances resulting from such recalculation shall be payable only prospectively on and after the operative date of this section in that county.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions of this section applicable in such county.

31462.2. "Final compensation" for members whose service is on a tenure which is temporary, seasonal, intermittent, or for part time only means one-third of the total compensation earned for that period of time during which the member rendered the equivalent of three years of full-time service.

The member may elect at or before the time he files an application for retirement the period of time during which he has earned three full years of credit upon which final compensation shall be calculated. If he does not so elect, such period of time immediately preceding his retirement shall be used.

31462.3. (a) For members participating in the designated plans who are employed by the County of Los Angeles on or after October 1, 2000, and who retire or die on or after July 1, 2001, "final compensation" means the average annual compensation earnable by a member during any year elected by the member at or before the time he or she files an application for retirement or, if the member fails to elect, during the year immediately preceding his or her retirement.

(b) As used in this section, the "designated plans" means the retirement plans sponsored by the County of Los Angeles that are commonly known as Retirement Plans B, C, and D for general members and Retirement Plan B for safety members.

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

31463. "Normal contributions" means contributions by a member at the normal rates of contributions, but does not include additional contributions by a member.

31464. "Accumulated normal contributions" means the sum of all normal contributions standing to the credit of a member's individual account and regular interest thereon.

31465. "Additional contributions" means contributions made by members in addition to normal contributions under Sections 31504 and 31627.

31466. "Accumulated additional contributions" means the sum of all additional contributions standing to the credit of a member's individual account and regular interest thereon.

31467. "Accumulated contributions" means accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account.

31468. (a) "District" means a district, formed under the laws of the state, located wholly or partially within the county other than a school district.

(b) "District" also includes any institution operated by two or more counties, in one of which there has been adopted an ordinance placing this chapter in operation.

(c) "District" also includes any organization or association authorized by Chapter 26 of the Statutes of 1935, as amended by Chapter 30 of the Statutes of 1941, or by Section 50024, which organization or association is maintained and supported entirely from funds derived from counties, and the board of any retirement system is authorized to receive the officers and employees of that organization or association into the retirement system managed by the board.

(d) "District" also includes, but is not limited to, any sanitary district formed under Part 1 (commencing with Section 6400) of Division 6 of the Health and Safety Code.

(e) "District" also includes any city, public authority, public agency, and any other political subdivision or public corporation formed or created under the constitution or laws of this state and located or having jurisdiction wholly or partially within the county.

(f) "District" also includes any nonprofit corporation or association conducting an agricultural fair for the county pursuant to a contract between the corporation or association and the board of supervisors under the authority of Section 25905.

(g) "District" also includes the Regents of the University of California, but with respect only to employees who were employees of a county in a county hospital, who became university employees pursuant to an agreement for transfer to the regents of a county hospital or of the obligation to provide professional medical services at a county hospital, and who under that agreement had the right and did elect to continue membership in the county's retirement system established under this chapter.

(h) "District" also includes the South Coast Air Quality Management District, a new public agency created on February 1, 1977, pursuant to Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code.

(1) Employees of the South Coast Air Quality Management District shall be deemed to be employees of a new public agency occupying new positions on February 1, 1977. On that date, those new positions are deemed not to have been covered by any retirement system.

(2) No retirement system coverage may be effected for an employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, unless and until the employee shall have elected whether to become a member of the retirement association established in accordance with this chapter for employees of Los Angeles County or the retirement association established in accordance with this chapter for employees of San Bernardino County. The election shall occur before January 1, 1980. Any employee who fails to make the election provided for herein shall be deemed to have elected to become a member of the retirement association established in accordance with this chapter for the County of Los Angeles.

(3) The South Coast Air Quality Management District shall make application to the retirement associations established in accordance with this chapter for employees of Los Angeles County and San Bernardino County for coverage of employees of the South Coast Air Quality Management District.

(4) An employee of the South Coast Air Quality Management District who commenced employment with the district during the period commencing on February 1, 1977, and ending on December 31, 1978, and who has not terminated employment before January 1, 1980, shall be covered by the retirement association elected by the employee pursuant to paragraph (2). That coverage shall be effected no later than the first day of the first month following the date of the election provided for in paragraph (2).

(5) Each electing employee shall receive credit for all service with the South Coast Air Quality Management District. However, the elected retirement association may require, as a prerequisite to granting that credit, the payment of an appropriate sum of money or the transfer of funds from another retirement association in an amount determined by an enrolled actuary and approved by the elected retirement association's board. The amount to be paid shall include all administrative and actuarial costs of making that determination. The amount to be paid shall be shared by the South Coast Air Quality Management District and the employee. The share to be paid by the employee shall be determined by good faith bargaining between the district and the recognized employee organization, but in no event shall the employee be required to contribute more than 25 percent of the total amount required to be paid. The elected retirement association's board may not grant that credit for that prior service unless the request for that credit is made to, and the required payment deposited with, the elected retirement association's board no earlier than January 1, 1980, and no later than June 30, 1980. The foregoing shall have no effect on any employee's rights to reciprocal benefits under Article 15 (commencing with Section 31830).

(6) An employee of the South Coast Air Quality Management District who commenced employment with the district after December 31, 1978, shall be covered by the retirement association established in accordance with this chapter for employees of San Bernardino County. That coverage shall be effected as of the first day of the first month following the employee's commencement date.

(7) Notwithstanding paragraphs (2) and (4) above, employees of the South Coast Air Quality Management District who were employed between February 1, 1977, and December 31, 1978, and who terminate their employment between February 1, 1977, and January 1, 1980, shall be deemed to be members of the retirement association established in accordance with this chapter for the employees of Los Angeles County commencing on the date of their employment with the South Coast Air Quality Management District.

(i) "District" also includes any nonprofit corporation that operates one or more museums within a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, pursuant to a contract between the corporation and the board of supervisors of the county, and that has entered into an agreement with the board and the county setting forth the terms and conditions of the corporation's inclusion in the county's retirement system.

(j) "District" also includes any economic development association funded in whole or in part by a county of the 15th class, as described by Sections 28020 and 28036 of the Government Code, as amended by Chapter 1204 of the Statutes of 1971, and that has entered into an agreement with the board of supervisors and the county setting forth the terms and conditions of the association's inclusion

in the county's retirement system.

(k) "District" also includes any special commission established in the Counties of Tulare and San Joaquin as described by Section 14087.31 of the Welfare and Institutions Code, pursuant to a contract between the special commission and the county setting forth the terms and conditions of the special commission's inclusion in the county's retirement system with the approval of the board of supervisors and the board of retirement.

(1) (1) "District" also includes the retirement system established under this chapter in Orange County.

(2) "District" also includes the retirement system established under this chapter in San Bernardino County at such time as the board of retirement, by resolution, makes this section applicable in that county.

31469. (a) "Employee" means any officer or other person employed by a county whose compensation is fixed by the board of supervisors or by statute and whose compensation is paid by the county, and any officer or other person employed by any district within the county.

(b) "Employee" includes any officer or attache of any superior court that has been brought within the operation of this chapter.

(c) "Employee" includes any officer or other person employed by a district as defined in subdivision (c) of Section 31468 and whose compensation is paid from funds of the district.

(d) "Employee" includes any member paid from the county school service fund who elected pursuant to Section 1313 of the Education Code to remain a member of this system.

(e) "Employee" includes any person permanently employed by a local agency formation commission including the executive officer thereof.

31469.1. (a) "County peace officer" means the sheriff and any officer or employee of the sheriff's office of a county employed and qualifying as a constable or deputy constable or marshal or deputy marshal or deputy sheriff or equal or higher rank, irrespective of the duties to which that person may be assigned, excepting, however, those employees whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic.

(b) Any other provision in the Government Code to the contrary notwithstanding, "county peace officer" shall also include and mean any inspectors, detectives and investigators employed by the district attorney, whose principal duties are to investigate crime and criminal cases and to receive regular compensation for that service.

(c) "County peace officer" does not include a local prosecutor, local public defender, or local public defender investigator, as defined in Section 31469.2.

31469.2. (a) For purposes of this chapter, "local prosecutor" means any one of the following:

(1) A county officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the district attorney.

(B) His or her job classification is or, on or after January 1, 2002, was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(C) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(2) A county officer or employee who meets all of the following criteria:

(A) He or she was employed in the office of a district attorney prior to the date the local child support agency transitioned from the district attorney to a new county department, as specified in Section 17304 of the Family Code.

(B) His or her job classification was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(C) He or she is or, on or after January 1, 2002, was an attorney in a local child support agency, as defined in subdivision (h) of Section 17000 of the Family Code, with no break in service between employment by a district attorney and the local child support agency.

(D) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(3) A city officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the city attorney.

(B) He or she is or, on or after January 1, 2002, was primarily engaged in the active enforcement of criminal laws within any court operating in a county.

(C) His or her job classification is or, on or after January 1, 2002, was city attorney, deputy city attorney, chief deputy city attorney, assistant city attorney, chief assistant city attorney, or any other similar classification or title.

(D) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(b) For purposes of this chapter, "local public defender" means a city or county officer or employee who meets all of the following criteria:

(1) He or she is or, on or after January 1, 2002, was employed in the office of the public defender, the alternate public defender, or any similar office title.

(2) His or her job classification is or, on January 1, 2002, was public defender, deputy public defender, chief deputy public defender, senior deputy public defender, assistant public defender, chief assistant public defender, senior assistant public defender, or any other similar classification or title.

(3) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(c) For purposes of this chapter, "local public defender investigator" means a city or county officer or employee who meets all of the following criteria:

(1) He or she is or, on or after January 1, 2002, was employed in the office of the public defender, the alternate public defender, or

any other similar office title.

(2) His or her job classification is or, on or after January 1, 2002, was inspector, investigator, detective, or any other similar classification or title.

(3) His or her principal duties are or, on or after January 1, 2002, were to investigate crime and criminal statutes.

(4) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

31469.3. "Safety member" means any person who is any of the following:

(a) A member of a pension system established pursuant to either Chapter 4 or Chapter 5, who elects by written notice filed with the board, to become a safety member.

(b) Any person employed by a county, subject to Section 31676.1 or 31695.1 or by a district or court organized or existing within such a county, whose principal duties consist of active law enforcement or active fire suppression as described in Section 31470.2 and 31470.4, or active lifeguard service as limited by Section 31470.6 or juvenile hall group counseling and group supervision if adopted by the board of supervisors as provided in Section 31469.4.

(c) Any person described in Section 31469.2 in any county in which Section 31470.14 has become operative.

31469.4. "Safety member" means persons employed as probation officers, juvenile hall or juvenile home group counselors, and group supervisors who are primarily engaged in the control and custody of delinquent youths who must be detained under physical security in order not to be harmful to themselves or others.

The provisions of this section shall not be applicable in any county until the board of supervisors by resolution make the provisions applicable.

31469.5. (a) This section shall be applicable in the retirement system of any county of the 10th class, as defined by Sections 28020 and 28031, as amended by Chapter 1204 of the Statutes of 1971, if the board of supervisors executes a memorandum of understanding with the employee representatives and adopts, by majority vote, a resolution providing for safety status for probation officers, as provided in Section 31469.4.

(b) The purpose of this section is to provide optional safety status for probation officers employed on or before March 1, 1991. Notwithstanding Section 31558.6, that option shall be exercised within 120 days from the effective date of the implementation of Section 31469.4, together with the option to receive credit as a safety member for all or part of the time during which his or her duties would have made him or her eligible to become a safety member, if this section had then been in effect.

(c) Except as otherwise provided in this section, the retirement benefits of existing probation officers who elect to transfer from general membership in the county retirement system to safety membership shall be implemented pursuant to Section 31484.5, except that:

(1) The definition of final compensation in Section 31462.1 shall no longer apply to probation officers electing safety status; instead, the definition of final compensation in Section 31462 shall apply at the date of retirement to all credited safety service regardless of previous service under Section 31462.1. However, the board of supervisors may adopt a resolution providing that the definition of final compensation contained in Section 31462.1 shall apply to certain probation officers electing safety status who are specifically identified in the resolution and who are retiring on or after the date specified in the resolution.

(2) For employees entitled to a cost-of-living adjustment upon retirement, Article 16.5 (commencing with Section 31870) shall apply, except that the increase in the allowance shall not exceed a maximum of 3 percent in any given year credited as safety membership. An employee who elects safety retirement under Section 31469.4 and who thereby waives his or her entitlement to a higher cost-of-living allowance shall be deemed to have waived the higher cost-of-living allowance with regard to all previous service credited as safety service at the date of retirement, regardless of previous service under any other provision, and shall be deemed to have relinquished any right to the higher cost-of-living allowance without refund of contributions therefor, except as determined by the board of supervisors.

(3) An employee who elects safety retirement under Section 31469.4 may elect to receive credit as a safety member for all or part of the time during which his or her duties would have made him or her eligible to become a safety member if this section had then been in effect as provided in Section 31639.7, except that an election to receive part credit may be exercised only in multiples of five years of service. A member who elects to receive credit for only a part of that county service shall elect that county service latest in time and may not receive credit for any portion of county service prior in time to any county service for which he or she does not elect to receive credit.

(4) A member not previously within the safety membership category who elects to receive credit for all or part of the time during which the member's duties would have made him or her eligible to become a safety member if this section had then been in effect shall pay into the retirement system the amount that would have had to be contributed by the employer to fund the employer's liability for safety membership and an amount equal to the difference between the employee's contributions actually made during the time for which he or she claims credit and the contributions the member would have made during that period if he or she had been in safety status during that period.

(d) All probation officers in Tier III who elect to transfer from general membership in the county retirement system to safety membership pursuant to this section shall be placed in Tier II regardless of their status prior to selecting Tier III benefits.

(e) All persons hired after the effective date of implementation of Section 31469.4 shall, upon retirement, have his or her cost-of-living allowance and final compensation computed in accordance with this section.

31469.6. Law enforcement employees of a harbor improvement district

are safety members subject to Article 6.8 (commencing with Section 31639) and Article 7.5 (commencing with Section 31662) of this chapter, and to such other provisions of this chapter as apply to safety members.

31469.8. (a) In a county of the 18th class, as defined by Sections 28020 and 28039, as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may meet and confer pursuant to the Meyers-Miliias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) with a recognized employee organization that represents county employees who are not safety members because the board of supervisors has not made Section 31469.4 applicable in the county, and endeavor to reach agreement on any conditions to be required of employees or an employee organization seeking to have Section 31469.4 made applicable. The conditions shall include, but not be limited to, whether the employees shall be required to pay all or part of the following:

(1) The increase in the employer's normal cost contributions.

(2) Any increase of the employer's unfunded actuarial accrued liability in excess of what it would have accrued if the employees had remained miscellaneous members.

(3) Any increase in the employer's normal cost contributions or unfunded actuarial liability attributable to employees who have become safety members electing to purchase credit as a safety member pursuant to Section 31639.7 for the time served in an eligible position prior to becoming a safety member.

(b) Any payments made by employees on behalf of the employer to cover the increased cost of safety retirement shall be as determined upon actuarial advice from the retirement board's actuaries, and shall be approved by the board of retirement.

(c) This section shall not be operative in the county until the date on which the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county.

31470. "Member" means any person included in the membership of the retirement association pursuant to Article 4, and includes safety members as defined in Sections 31469.3, 31470.2, 31470.4 and 31470.6, or any person who has elected in writing to come within the provisions of Article 9.

31470.1. "Member" includes "county peace officer member" except in sections where county peace officer members are specifically excluded. Anything else in this act to the contrary notwithstanding, where there is a conflict with the special provisions pertaining to county peace officer members said special provisions shall apply.

31470.2. (a) All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys, deputies sheriff, bailiffs, constables, deputies constable, motorcycle officers, aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff, detectives and investigators in the office of the district attorney, marshals, court service officers only in a county of the third class, as defined in

Sections 28020 and 28024, and all regularly appointed deputy marshals are eligible.

(b) In a county of the eighth class, as defined in Sections 28020 and 28029, both as amended by Chapter 1204 of the Statutes of 1971, all peace officers in the Park Ranger class series in the Department of Regional Parks, Recreation, and Open Space are eligible. This subdivision shall not be operative until such time as the county board of supervisors shall, by resolution adopted by a majority vote, make this subdivision applicable in the county.

(c) Local prosecutors, local public defenders, and local public defender investigators are eligible if the county board of supervisors adopts a resolution by a majority vote making this subdivision and Section 31470.14 applicable in the county.

31470.25. (a) All sheriffs, undersheriffs, assistant sheriffs, chief deputy sheriffs, captains, lieutenants, sergeants, jailers, turnkeys, deputy sheriffs, bailiffs, constables, deputy constables, motorcycle officers, aircraft pilots, detectives, and investigators in the office of the district attorney, and marshals and all regularly appointed deputy marshals, who are first so employed on or after the operative date of this section in a county, are eligible. This section is an alternative to Section 31470.2.

(b) This section shall apply only in a county of the second class, as defined by Sections 28020 and 28023, as amended by Chapter 1204 of the Statutes of 1971.

(c) This section shall not be operative in a county unless and until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in that county.

31470.3. Clerks, bookkeepers, stenographers, court service officers, except in a county of the third class, as defined in Sections 28020 and 28024, and other employees who may have been appointed as deputies sheriff or deputies marshal but who do not perform the duties of any peace officers enumerated and honorary deputies sheriff or other persons holding appointments as deputies sheriff who receive no compensation therefor who do not regularly perform official duties and those whose principal duties clearly do not fall within the scope of active law enforcement, even though such a person is subject to occasional call, or is occasionally called upon to perform duties within the scope of active law enforcement are ineligible.

31470.4. All county foresters, county firewardens, deputies or assistant county foresters, deputies or assistant county firewardens, firefighters, fire apparatus engineers, fire prevention inspectors, forest firemen, fire patrolmen, aircraft pilots, and foremen assigned to fire suppression crews, all other personnel assigned to active fire suppression in any county forester's or county firewarden's department and all officers, engineers, and firemen of any county fire protection district, and all other personnel assigned to active fire suppression in any county fire protection district are eligible.

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

31470.6. (a) A permanent employee of a county having a population in excess of 500,000 whose principal duties consist of active protection, rescue, and rendition of aid or assistance to persons injured or imperiled in water areas at beaches and lakes, streams, dams, reservoirs, or other bodies of open water (not including swimming pools) or in small craft or airplanes at sea near the shoreline and the recovery from water areas of submerged objects and bodies of persons drowned or believed to have drowned in those areas, or the immediate supervision thereof, including persons employed to perform the duties now performed under the titles of director of beaches, assistant director of beaches, deputy director of beaches, chief lifeguard, assistant chief lifeguard, captain lifeguards, lieutenant rescue boat, lieutenant lifeguards, beach lifeguard, but who performs additional duties, some of which (including the maintenance of peace and order and the apprehension of law violators) are customarily performed by police or peace officers, and whose other duties (such as resuscitation work involving the use of special equipment in cases having no connection with their principal duties) which in other areas are customarily performed by firemen, and other and further duties (such as the rescue of persons from disabled aircraft and small boats in inshore or inland waters and the removal of dangerous obstructions from waters) which do not come directly within any of the aforesaid classifications but are essential to the safety and security of the public, excluding those whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise clearly do not fall within the scope of active lifeguarding or lifesaving service, even though a person is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active lifeguarding or lifesaving service, shall be considered and is hereby classified as an employee whose principal duties consist in "active law enforcement."

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

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

31470.7. The election by a member to receive credit for employment in public service or in county service pursuant to Section 31641.1 or 31641.5 does not make such person a member during any part of such public service or county service.

31470.8. In cases of doubt as to whether a person is eligible to become a safety member, the board shall decide.

31470.9. All public administrators, coroners and coroner-public administrators, whether compensated on a fee or salary basis, are eligible, except that the membership of such persons is subject to the approval of the board of supervisors.

31470.10. Notwithstanding Section 31470.2, all welfare fraud investigators and administrators budgeted within Orange County shall be eligible, regardless of which county department actually supervises or funds them, and shall receive those benefits upon a majority vote of the board of supervisors.

31470.11. Notwithstanding Section 31470.2, all welfare fraud investigators and administrators in counties of the 16th class, as described by Sections 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, shall be ineligible for safety membership, unless and until the board of supervisors shall elect, by resolution adopted by a majority vote, to make those investigators and administrators eligible.

31470.12. Child support investigators and administrators in counties of the 16th class, as described by Section 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, are eligible.

This section shall not be operative in any county until such time as the board of supervisors shall elect, by resolution adopted by a majority vote, to make this section applicable in the county.

31470.13. Officers and employees whose function clearly fall within the scope of hazardous materials services are eligible.

This section shall not be operative in any county until the time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31470.14. (a) Local prosecutors, local public defenders, and local public defender investigators are eligible.

(b) Except as provided in subdivision (c) and notwithstanding Sections 31639.7 and 31639.75, past service as a general member shall be converted to safety service if the past service was rendered in a position that has subsequently been reclassified as a safety position pursuant to this section. For local prosecutors, as

described in paragraph (2) of subdivision (a) of Section 31469.2, service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for purposes of this section.

(c) Notwithstanding any other provision of this chapter, within 90 days after this section becomes operative in the county, or on the first day of the calendar month following his or her entrance into service, whichever is later, a local prosecutor, local public defender, or local public defender investigator may file a written election not to become a local safety member pursuant to this section.

(d) Notwithstanding any other provision of this chapter, local prosecutors, local public defenders, and local public defender investigators shall be subject to the benefit formula contained in Section 31664 or 31664.2, or any other benefit formula applicable to safety members that does not provide benefits greater than those benefits provided under Section 31664.2, as designated in the resolution described in subdivision (e). A local prosecutor, local public defender, or local public defender investigator shall not be deemed to be a county peace officer, as defined in Section 31469.1, for any purpose under this chapter.

(e) This section shall not be operative in a county unless and until the board of supervisors, by resolution adopted by majority vote, makes this section operative in the county. A resolution to make this section operative in the county shall include all local prosecutors, local public defenders, and local public defender investigators described in Section 31469.2.

(f) A provision in a memorandum of understanding that an employer is not obligated to meet and confer regarding wages, hours, or conditions of employment during the term of the memorandum shall not be construed to preclude meetings regarding the provisions of this section between an employer and local prosecutors, local public defenders, and local public defender investigators prior to the expiration of the term of the memorandum of understanding.

(g) This section does not apply to any person described in Section 31469.2 who dies prior to the date this section becomes applicable in the county.

31471. "Pension" means payments for life derived from contributions made from funds controlled by the board of supervisors, or from funds of a district.

31472. "Regular interest" means interest at 2 1/2 percent a year until otherwise determined by the board compounded semiannually on June 30th and December 31st.

31472.1. "Regular interest" or "interest" when used for purposes of computing deposits under this chapter, except as otherwise specifically provided, shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contributions required to be deposited had been made in the amounts and at the times required if the member had been making such deposits

during the time service was rendered until the amount required to be deposited has been paid. For purposes of this section "deposits" includes "redeposits".

31473. "Retirement allowance" means the pension plus the annuity.

31474. "Retirement association" means an association of all persons who may qualify as annuitants or beneficiaries pursuant to this chapter.

31475. "Retirement fund" means the Employees Retirement Fund.

31476. "Retirement system" means each of the systems created and established pursuant to this chapter or its predecessor.

The retirement system for county employees created by Chapter 677 of the Statutes of 1937, as amended, is continued in existence under this chapter.

31477. "Salary fund" means the fund from which salaries are ordinarily paid.

31478. "Public agency" means the United States of America, this state, or any department or agency of either, or any county, or any city, which city or county is within this state, or any public corporation, municipal corporation, or public district, which public corporation, municipal corporation, or public district is situated in whole or in part within the county, and any local agency formation commission.

Section 31468 does not apply to this section.

31479. "Public service" means service rendered as an officer or employee of a public agency for which service the officer or employee received compensation from the public agency and with respect to which he is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he becomes a member of this system.

31479.1. Notwithstanding Section 31479 an elective or appointive county official may receive credit for service rendered as a city councilman even though such service was not compensated.

This section shall not be operative in any county until it is adopted by a majority vote of the board of supervisors.

31479.2. "Public service" also means service rendered as an officer or employee of a department or agency of the District of Columbia for which the officer or employee received compensation and with respect to which he is not entitled to receive credit in any

retirement system supported wholly or in part by public funds after he becomes a member of this system.

31479.3. "Public service" also means service in the merchant marine of the United States during the period of December 7, 1941, through August 15, 1945, whether or not the employee received compensation from the United States Government and with respect to which he or she is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he or she became a member of this system. This section shall apply to both members and retired members of a county retirement association subject to this chapter. Both members and retired members may purchase public service credit pursuant to Sections 31641.1 and 31641.2. For a retired member the additional pension amount accruing because of any public service credit purchased shall be computed as though the service had been credited on the effective date of retirement and increased by any cost-of-living increases which may have been granted since the effective date of retirement and shall begin as of the first of the month following either the date of receipt of the retired member's election to purchase the credit pursuant to Section 31641.1 or the date of receipt of the full cost of the purchase computed pursuant to Section 31641.2 whichever is later.

This section shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31480. The provisions of this chapter, as they apply to retirement for service or disability, deferred retirement, and the death benefit, shall not be applicable to any member claiming public service pursuant to Section 31478 or to any member claiming service credit for uncompensated illness leave of absence in excess of 12 consecutive months pursuant to Section 31646.1, unless such member has rendered service, other than the public service or the uncompensated illness leave of absence for which the member has elected to receive credit, sufficient to meet the minimum requirements of this chapter covering each of the benefits enumerated in this section.

31481. An amendment either heretofore or hereafter made to this chapter, unless expressly stated otherwise, does not grant, take away, or otherwise affect the right to, or the amount of, any retirement allowance, or other benefit, of:

(a) Any member who has retired or shall retire prior to the effective date of such amendment.

(b) The spouse, children, beneficiary or coannuitant of any member if such member has retired or shall retire prior to the effective date of such amendment.

(c) The spouse, children, beneficiary or coannuitant of any member, if such member has died or shall die, prior to retirement and prior to the effective date of such amendment.

31482. Notwithstanding any other provision of law, a participant in

a deferred compensation plan established pursuant to Chapter 8 (commencing with Section 18310) of Part 1 of Division 5 of Title 2 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, may also participate in a retirement system of a public agency established pursuant to this chapter.

31483. Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter applicable in such county or district through the adoption of an ordinance or resolution, such governing body may at any time thereafter adopt a further ordinance or resolution terminating the applicability of such provision or provisions as to employees of the county or district whose services commence after a given future date specified in the latter ordinance or resolution.

31484. Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter providing for increased benefits applicable to such county or district through the adoption of an ordinance or resolution, such governing body may at any time thereafter adopt another ordinance or resolution terminating the applicability of such provision or provisions as to current employees of the county or district who elect by written notice filed with the board to have the applicability of such provision or provisions terminated as to them. This section is intended only to authorize the termination of those benefits which the governing body of a county or district elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. Nothing herein shall be construed as authorizing the governing body of a county or district to terminate the basic benefits required under the provisions of this chapter.

The governing board of a county or district prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions shall provide oral or written explanation of the effect and impact of such termination for each member requesting termination of the applicability of any such provisions.

The governing board shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that such member has been fully informed regarding the effect of such termination, and understands that such termination of a provision or provisions is irrevocable. Such affidavit shall also state that the employee has chosen termination of the provision or provisions of the employee's own free will and was not coerced into termination of any provision by the employer or any other person.

The governing body shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of such provision or provisions terminated, specify the provision or provisions which shall be applicable to current employees making the election. Employees who elect to have such provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis

of the provision made applicable by the governing body.

Except as otherwise provided herein, the retirement allowance for service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service. Any employee who has made such an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions applicable at the date of retirement. Any employee who has made an election whereby the definition of "final compensation" in Section 31462.1 no longer applies, shall have the definition of "final compensation" in Section 31462 applied at the date of retirement regardless of previous service under the provisions of Section 31462.1. Any employee who has made an election whereby a cost-of-living adjustment provision of Article 16.5 (commencing with Section 31870) no longer applies shall have the cost-of-living adjustment provision, if any, specified by the governing body applied to all previous service at the date of retirement regardless of previous service under such other provision of Article 16.5. Any employee who has made an election whereby a death benefit provision of Article 12 (commencing with Section 31780) no longer applies, shall have the death benefit provisions specified by the governing body applied at the date of retirement regardless of previous service under other provisions of Article 12.

A current employee who has elected to have the applicability of such provision or provisions terminated may not rescind such an election unless the governing body of the county or district again makes the particular provision or provisions applicable to the county or district through the adoption of a subsequent ordinance or resolution. Any such election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under such employee's entitlement.

This section shall not be applicable to safety members.

This section shall only be applicable to a county of the third class as described by Section 28024.

31484.5. Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter providing for increased benefits applicable to such county or district through the adoption of an ordinance or resolution, such governing body may, at any time thereafter, adopt another ordinance or resolution terminating the applicability of such provision or provisions as to current employees of the county or district who elect by written notice filed with the board to have the applicability of such provision or provisions terminated as to them. This section is intended only to authorize the termination of those benefits which the governing body of a county or district elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. Nothing herein shall be construed as authorizing the governing body of a county or district to terminate the basic benefits required under the provisions of this chapter.

The governing board of a county or district, prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions, shall provide written explanation of the effect and impact of such termination for each

member requesting termination of the applicability of any such provisions.

The governing board shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that such member has been fully informed regarding the effect of such termination, and understands that such termination of a provision or provisions is irrevocable. Such affidavit shall also state that the employee has chosen termination of the provision or provisions of the employee's own free will and was not coerced into termination of any provision by the employer or any other person.

The governing body shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of such provision or provisions terminated, specify the provision or provisions which shall be applicable to current employees making the election. Employees who elect to have such provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis of the provision made applicable by the governing body.

Except as otherwise provided herein, the retirement allowance for service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service. Any employee who has made such an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions applicable at the date of retirement. Any employee who has made an election whereby the definition of "final compensation" in Section 31462.1 no longer applies, shall have the definition of "final compensation" in Section 31462 applied at the date of retirement regardless of previous service under the provisions of Section 31462.1. Any employee who has made an election whereby a cost-of-living adjustment provision of Article 16.5 (commencing with Section 31870) no longer applies shall have the cost-of-living adjustment provision, if any, specified by the governing body applied to all previous service at the date of retirement regardless of previous service under such other provision of Article 16.5. Any employee making such election shall be refunded all moneys contributed by that employee for those benefits, and such employee shall be deemed to thereby have waived and relinquished any right to such automatic cost-of-living benefits.

A current employee who has elected to have the applicability of such provision or provisions terminated may not rescind such an election unless the governing body of the county or district again makes the particular provision or provisions applicable to the county or district through the adoption of a subsequent ordinance or resolution. Any such election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under such employee's entitlement.

This section shall only be applicable to a county of the 10th class as described by Section 28031.

31484.6. Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter providing for increased benefits applicable to that county or district through the adoption of an ordinance or resolution, the governing body may at any time

thereafter adopt another ordinance or resolution terminating the applicability of that provision or provisions as to current employees of the county or district who elect by written notice filed with the board to have the applicability of the provision or provisions terminated as to them. This section is intended only to authorize the termination of those benefits which the governing body of a county or district elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. Nothing herein shall be construed as authorizing the governing body of a county or district to terminate the basic benefits required under the provisions of this chapter.

The governing board of a county or district prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions shall provide an oral or written explanation of the effect and impact of the termination for each member requesting termination of the applicability of any such provisions.

The governing board shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that the member has been fully informed regarding the effect of the termination, and understands that the termination of a provision or provisions is irrevocable. The affidavit shall also state that the employee has chosen termination of the provision or provisions of the employee's own free will and was not coerced into termination of any provision by the employer or any other person.

The governing body shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of such provision or provisions terminated, specify the provision or provisions which shall be applicable to current employees making the election. Employees who elect to have the provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis of the provision made applicable by the governing body.

Except as otherwise provided herein, the retirement allowance for service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service. Any employee who has made such an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions applicable at the date of retirement. Any employee who has made an election whereby the definition of "final compensation" in Section 31462.1 no longer applies, shall have the definition of "final compensation" in Section 31462 applied at the date of retirement regardless of previous service under the provisions of Section 31462.1. Any employee who has made an election whereby a cost-of-living adjustment provision of Article 16.5 (commencing with Section 31870) no longer applies shall have the cost-of-living adjustment provision, if any, specified by the governing body applied to all previous service at the date of retirement regardless of previous service under such other provision of Article 16.5. Any employee who has made an election whereby a death benefit provision of Article 12 (commencing with Section 31780) no longer applies shall have the death benefit provisions specified by the governing body applied at the date of retirement regardless of previous service under other provisions of Article 12.

A current employee who has elected to have the applicability of

the provision or provisions terminated may not rescind such an election unless the governing body of the county or district again makes the particular provision or provisions applicable to the county or district through the adoption of a subsequent ordinance or resolution. Any such election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under such employee's entitlement.

This section shall not be applicable to safety members.

This section shall only be applicable to a county of the eighteenth class as described by Section 28039.

31484.7. Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter providing for increased benefits applicable to such county or district through the adoption of an ordinance or resolution, such governing body may, at any time thereafter, adopt another ordinance or resolution terminating the applicability of such provision or provisions as to current employees of the county or district who elect by written notice filed with the board to have the applicability of such provision or provisions terminated as to them. This section is intended only to authorize the termination of those benefits which the governing body of a county or district elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. Nothing herein shall be construed as authorizing the governing body of a county or district to terminate the basic benefits required under the provisions of this chapter.

The governing board of a county or district, prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions, shall provide written explanation of the effect and impact of such termination for each member requesting termination of the applicability of any such provisions.

The governing board shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that such member has been fully informed regarding the effect of such termination, and understands that such termination of a provision or provisions is irrevocable. Such affidavit shall also state that the employee has chosen termination of the provision or provisions of the employee's own free will and was not coerced into termination of any provision by the employer or any other person.

The governing body shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of such provision or provisions terminated, specify the provision or provisions which shall be applicable to current employees making the election. Employees who elect to have such provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis of the provision made applicable by the governing body.

Except as otherwise provided herein, the retirement allowance for service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service. Any employee who has made such an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions

applicable at the date of retirement. Any employee who has made an election whereby the definition of "final compensation" in Section 31462.1 no longer applies, shall have the definition of "final compensation" in Section 31462 applied at the date of retirement regardless of previous service under the provisions of Section 31462.1. Any employee who has made an election whereby a cost-of-living adjustment provision of Article 16.5 (commencing with Section 31870) no longer applies shall have the cost-of-living adjustment provision, if any, specified by the governing body applied to all previous service at the date of retirement regardless of previous service under such other provision of Article 16.5 (commencing with Section 31870). Any employee making such election shall be refunded all moneys contributed by that employee for those benefits, and such employee shall be deemed to thereby have waived and relinquished any right to such automatic cost-of-living benefits.

A current employee who has elected to have the applicability of such provision or provisions terminated may not rescind such an election unless the governing body of the county or district again makes the particular provision or provisions applicable to the county or district through the adoption of a subsequent ordinance or resolution. Any such election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under such employee's entitlement.

This section shall only be applicable to a county of the 25th class as described by Section 28046.

31484.8. Notwithstanding any other provision of law, whenever the governing body of a county or district has made a particular provision or provisions of this chapter providing for increased benefits applicable to that county or district through the adoption of an ordinance or resolution, the governing body may at any time thereafter adopt another ordinance or resolution terminating the applicability of that provision or provisions as to current employees of the county or district who elect by written notice filed with the board to have the applicability of the provision or provisions terminated as to them. This section is intended only to authorize the termination of those benefits which the governing body of a county or district elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. Nothing herein shall be construed as authorizing the governing body of a county or district to terminate the basic benefits required under the provisions of this chapter.

The governing board of a county or district prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions shall provide an oral or written explanation of the effect and impact of the termination for each member requesting termination of the applicability of any such provisions.

The governing board shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that the member has been fully informed regarding the effect of the termination, and understands that the termination of a provision or provisions is irrevocable. The affidavit shall also state that the employee has chosen termination of the provision or provisions of the

employee's own free will and was not coerced into termination of any provision by the employer or any other person.

The governing body shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of such provision or provisions terminated, specify the provision or provisions which shall be applicable to current employees making the election. Employees who elect to have the provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis of the provision made applicable by the governing body.

The retirement allowance for service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service.

Any employee who has made such an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions applicable at the date of retirement.

A current employee who has elected to have the applicability of the provision or provisions terminated may not rescind such an election unless the governing body of the county or district again makes the particular provision or provisions applicable to the county or district through the adoption of a subsequent ordinance or resolution. Any such election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under such employee's entitlement.

An employee may make the election described herein at any time. The effective date of the election shall be the first day of the biweekly payroll period following execution and filing of the employee's affidavit.

An employee suffering a break in service shall, if he or she returns to covered employment within three years of the date of separation, return at the higher level if and only if his or her prior coverage was at that level. The provision in this paragraph applies only to separations occurring between June 30, 1983, through and including June 30, 1988, and further applies only to employees who were active members on June 30, 1983, and to employees laid off prior to that date who were on a civil service reemployment list on June 30, 1983. This provision does not apply to employees leaving the retirement system because of a change of status from full time to part time, regular appointment to project appointment and back to regular appointment, or regular appointment to intermittent appointment and back to regular appointment.

After June 30, 1988, an employee who is laid off and rehired within one year from the date of separation shall return at the higher level if and only if his or her prior coverage was at that level.

A former employee who has elected deferred retirement from the higher benefit level and who returns to covered employment shall return to the higher benefit level.

The benefit levels described in this section are those in existence on July 1, 1983.

This section shall only be applicable to a county of the fourth class as described by Sections 28020 and 28025.

31484.9. (a) This section shall apply to the retirement system of Contra Costa County and only if the board of supervisors of that

county adopts, by majority vote, a resolution making this section applicable in the county. Notwithstanding any other provision of law, the board of supervisors may make this section applicable in the county on a date specified in the resolution, which date may be different than the date of the resolution.

(b) (1) When the board of supervisors meets and confers pursuant to the Meyers-Miliias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) with the Contra Costa County Deputy Sheriffs' Association, the parties may agree, pursuant to a memorandum of understanding as described in Section 3505.1, that the provisions of this section shall apply to safety employees represented by the Contra Costa County Deputy Sheriffs' Association.

(2) The terms of any agreement reached with the Contra Costa County Deputy Sheriffs' Association pursuant to this subdivision shall be made applicable by the board of supervisors to unrepresented county employees who are safety members in the Contra Costa County Sheriff's Office and in similar job classifications as employees within applicable bargaining units and the supervisors and managers of those employees.

(3) An ordinance or resolution adopted pursuant to this section may establish different retirement benefits for different bargaining units of safety employees represented by the Contra Costa County Deputy Sheriffs' Association and the unrepresented groups of safety employees in similar job classifications and the supervisors and managers of those employees. The ordinance or resolution may also establish the time period during which employees may make an election under this section and the date on which an employee shall be employed to be subject to this section.

(c) (1) Notwithstanding any other provision of law, if the board of supervisors makes a particular provision or provisions of this chapter providing for increased benefits applicable to safety employees of the county represented by the Contra Costa County Deputy Sheriffs' Association through the adoption of an ordinance or resolution, the board of supervisors may at any time thereafter adopt another ordinance or resolution terminating the applicability of that provision or provisions as to current employees of the county who elect by written notice filed with the board to have the applicability of the provision or provisions terminated as to those employees. This section is intended only to authorize the termination of those benefits that the board of supervisors elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. The termination of benefits shall be consistent with the memorandum of understanding described in subdivision (b). Nothing in this section shall be construed as authorizing the board of supervisors to terminate the basic benefits required under the provisions of this chapter.

(2) The board of supervisors, prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions shall provide a written explanation of the effect and impact of the termination for each member requesting termination of the applicability of any provisions.

(3) The board of supervisors shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that the member has been fully informed regarding the effect of the termination, and understands that the termination

of a provision or provisions is irrevocable. The affidavit shall also state that the employee has chosen termination of the provision or provisions of the employee's own free will and was not coerced into termination of any provision by the employer or any other person and shall waive and release any right to a benefit under the terminated provision or provisions for the period of service following the election.

(4) The board of supervisors shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of the provision or provisions terminated, and consistent with the memorandum of understanding described in subdivision (b), specify the provision or provisions that shall be applicable to current employees making the election. More than one optional set of provisions may be made available for election, including, but not limited to, the "3 Percent at 55" retirement formula, a cost-of-living adjustment, and the definition of final compensation pursuant to Section 31462 or 31462.1.

(5) Employees who elect to have the provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis of the provision made applicable by the board of supervisors. Except as otherwise provided in this section, the retirement allowance for service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service and the retirement allowance for service rendered on or after the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service. The total retirement allowance for an employee subject to this section shall be the sum of the retirement allowance calculated for service rendered prior to the effective date of the election and the retirement allowance calculated for service rendered on or after the effective date of the election. Any employee who has made an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions applicable at the date of retirement.

(6) Any employee who has made an election that the definition of "final compensation" in Section 31462.1 no longer applies, shall have the definition of "final compensation" in Section 31462.1 applied to all service rendered prior to the effective date of the election and the definition of "final compensation" in Section 31462 applied to all service rendered on or after the effective date of the election. For purposes of applying Section 31835 to a retirement system other than the retirement system in Contra Costa County, the highest average compensation described in this paragraph shall apply.

(7) Any employee who has made an election that a cost-of-living adjustment provision of Article 16.5 (commencing with Section 31870) no longer applies shall have the cost-of-living adjustment provision, if any, for service rendered prior to the effective date of the election calculated on the basis of the cost-of-living adjustment provision applicable during that period of service. Any cost-of-living adjustment provision specified by the board of supervisors for service rendered after the effective date of the election shall apply solely to that service. A termination of benefits shall be consistent with the memorandum of understanding described in subdivision (b).

(8) A current employee who has elected to have the applicability

of the provision or provisions terminated may not rescind that election, unless the board of supervisors again makes the particular provision or provisions applicable to the employees who are represented by the Contra Costa County Deputy Sheriffs' Association, through the adoption of a subsequent ordinance or resolution pursuant to a memorandum of understanding as described in Section 3505.1.

(9) An election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under that employee's entitlement.

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date. The repeal of this section shall have no effect on actions taken under this section prior to the repeal of this section.

31485. Notwithstanding any other provision of law, whenever the governing body of a county or district following meet and confer has made a particular provision or provisions of this chapter providing for increased benefits applicable to such county or district through the adoption of an ordinance or resolution, such governing body may at any time thereafter adopt another ordinance or resolution terminating the applicability of such provision or provisions as to current employees of the county or district who elect by written notice filed with the board to have the applicability of such provision or provisions terminated as to them. This section is intended only to authorize the termination of those benefits which the governing body of a county or district elected to increase over the basic benefits or to make applicable in addition to the basic benefits pursuant to the provisions of this chapter. Nothing herein shall be construed as authorizing the governing body of a county or district to terminate the basic benefits required under the provisions of this chapter.

The governing board of a county or district prior to adopting an ordinance or resolution allowing the termination of the applicability of any increased benefit provisions shall provide oral and written explanation of the effect and impact of such termination for each member requesting termination of the applicability of any such provisions.

The governing board shall require members requesting termination of the applicability of any provisions to sign an affidavit stating that such member has been fully informed regarding the effect of such termination and understands that such termination of a provision or provisions is irrevocable. Such affidavit shall also state that the employee has chosen termination of the provision or provisions of the employee's own free will and was not coerced into termination of any provision by the employer or any other person.

The governing body shall, in the ordinance or resolution granting current employees the option of electing to have the applicability of such provision or provisions terminated, specify the provision or provisions which shall be applicable to current employees making the election. Employees who elect to have such provision or provisions terminated, shall have their retirement allowance for service rendered after the effective date of election calculated on the basis of the provision made applicable by the governing body.

Except as otherwise provided herein, the retirement allowance for

service rendered prior to the effective date of the election shall be calculated on the basis of the provision or provisions applicable during that period of service. Any employee who has made such an election shall not be eligible for retirement unless the employee meets the minimum requirements of the provision or provisions applicable at the date of retirement. Any employee who has made an election whereby the definition of "final compensation" in Section 31462.1 no longer applies, shall have the definition of "final compensation" in Section 31462 applied at the date of retirement regardless of previous service under the provisions of Section 31462.1. Any employee who has made an election whereby a cost-of-living adjustment provision of Article 16.5 (commencing with Section 31870) no longer applies shall have the cost-of-living adjustment provision, if any, specified by the governing body applied to all previous service at the date of retirement regardless of previous service under such other provision of Article 16.5. Any employee making such election shall be refunded all moneys contributed by that employee for those benefits, and such employee waives and relinquishes all rights to such automatic cost-of-living benefits.

A current employee who has elected to have the applicability of such provision or provisions terminated may not rescind such an election unless the governing body of the county or district again makes the particular provision or provisions applicable to the county or district through the adoption of a subsequent ordinance or resolution. Any such election made by a current employee shall be binding upon the employee's spouse and all others claiming benefits under such employee's entitlement.

This section shall not be applicable to safety members.

This section shall only be applicable to a county of the thirteenth class as described by Section 28034.

31485.5. It is the intent of the Legislature that counties that are considering the adoption of defined contribution plans, also consider having those plans administered by their county retirement systems.

31485.6. "Treasurer" as used in Sections 31595.9, 31625, 31625.1, 31629, and 31706 means the county treasurer or any other entity authorized by the board.

31485.7. (a) Notwithstanding any other provision of this chapter, a member who elects to purchase retirement service credit under Section 31486.3, 31486.35, 31499.3, 31499.13, 31641.1, 31641.5, 31641.55, 31646, 31652, or 31658, or under the regulations adopted by the board pursuant to Section 31643 or 31644 shall complete that purchase within 120 days after the effective date of his or her retirement.

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

31485.8. (a) Notwithstanding any other provision of this chapter, a member who elects to purchase retirement service credit under Section 31490.5, 31490.6, 31494.3, 31494.5, 31641.1, 31641.5, 31646, 31652, or 31658, or under the regulations adopted by the board pursuant to Section 31643 or 31644 shall complete that purchase within 120 days after the effective date of his or her retirement.

(b) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31485.9. (a) Notwithstanding any other provision of law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, no resolution, ordinance, contract, or contract amendment under this chapter adopted on or after January 1, 2004, may provide any retirement benefits for some, but not all, general members of a county or district.

(b) No resolution, ordinance, contract, or contract amendment under this chapter adopted on or after January 1, 2004, may provide different retirement benefits for any subgroup of general members within a membership classification, including, but not limited to, bargaining units or unrepresented groups, unless benefits provided by statute for members hired on or after the date specified in the resolution are adopted by the county or district governing board, by resolution adopted by majority vote, pursuant to a memorandum of understanding made under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 2). All nonrepresented employees within similar job classifications as employees in a bargaining unit subject to a memorandum of understanding, or supervisors and managers thereof, shall be subject to the same formula for the calculation of retirement benefits applicable to the employees in the bargaining unit. No retirement contract amendment may be imposed by the employer in absence of a memorandum of understanding under the Meyers-Milias-Brown Act.

(c) This section does not preclude changing membership classification from one membership classification to another membership classification.

(d) This section shall not apply to retirement benefits for a member described in paragraph (2) of subdivision (d) of Section 31676.15.

31485.10. (a) Notwithstanding any other provision of law, in a county of the 10th class, as defined in Sections 28020 and 28031, the board of supervisors may, by resolution, ordinance, contract, or contract amendment under this chapter, provide any retirement benefits for some, but not all, general members or safety members of a county.

(b) The resolution, ordinance, contract, or contract amendment described in subdivision (a) may provide a different formula for calculation of retirement benefits, by making any section of this chapter applicable to any subgroup of members within a membership classification, including, but not limited to, bargaining units, or unrepresented groups, applicable to service credit earned on and after the date specified in the resolution, which date may be earlier

than the date the resolution is adopted.

(c) A resolution adopted pursuant to this section may require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (b), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution. The payment by a member shall become part of the accumulated contributions of the member. For those members who are represented by a bargaining unit, the payment requirement shall be approved in a memorandum of understanding executed by the board of supervisors and the employee representatives.

(d) This section shall only apply to members who retire on or after the effective date of the resolution described in subdivision (a) or (b).

(e) This section shall not become operative unless and until the county board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

31485.11. (a) Notwithstanding any other provision of law, in a county of the fourth class, as defined in Sections 28020 and 28025, or a county of the 25th class, as defined in Sections 28020 and 28046, each as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may, by resolution, ordinance, contract, or contract amendment under this chapter, provide different retirement benefits for some safety member bargaining units within the safety member classification of a county retirement system.

(b) The resolution, ordinance, contract, or contract amendment described in subdivision (a) may provide a different formula for calculation of retirement benefits, by making any section of this chapter applicable to different safety bargaining units within the safety member classification, applicable to service credit earned on and after the date specified in the resolution, which date may be earlier than the date the resolution is adopted. The terms of an agreement or memorandum of understanding reached with a recognized employee organization, pursuant to this subdivision, may be made applicable by the board of supervisors to any unrepresented group within the same or similar membership classification as the employees represented by the recognized employee organization or bargaining unit.

(c) A resolution adopted pursuant to this section may require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (b), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution. The payment by a member shall become part of the accumulated contributions of the member. For those members who are represented by a bargaining unit, the payment requirement shall be approved in a memorandum of understanding executed by the board of supervisors and the employee representatives.

(d) This section shall only apply to members who retire on or after the effective date of the resolution described in subdivision (a) or (b) or on or after the date provided in the memorandum of understanding described in subdivision (c).

(e) The board of supervisors, in the resolution, ordinance, contract, or contract amendment described in subdivision (a), shall not require that a bargaining unit be divided solely for the purpose of providing different retirement benefits. However, if the members of a bargaining unit within the same or similar membership classification so elect, retirement benefits may be separately negotiated with that bargaining unit.

(f) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

31485.12. (a) Notwithstanding any other provision of law, in a county of the 16th class, as defined in Sections 28020 and 28037, or a county of the 22nd class, as defined in Sections 28020 and 28043, each as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may, by resolution, ordinance, contract, or contract amendment under this chapter, provide different retirement benefits for some safety member bargaining units within the safety member classification of a county retirement system.

(b) The resolution, ordinance, contract, or contract amendment described in subdivision (a) may provide a different formula for calculation of retirement benefits by making any section of this chapter that is applicable to different safety member bargaining units within the safety member classification applicable to service credit earned on and after the date specified in the resolution, which date may be earlier than the date the resolution is adopted. The terms of an agreement or memorandum of understanding reached with a recognized employee organization, pursuant to this subdivision, may be made applicable by the board of supervisors to any unrepresented group within the same or similar membership classification as the employees represented by the recognized employee organization or bargaining unit.

(c) A resolution, ordinance, contract, or contract amendment adopted pursuant to this section may require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (b), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution, ordinance, contract, or contract amendment. The payment by a member shall become part of the accumulated contributions of the member. For those members who are represented by a bargaining unit, the payment requirement shall be approved in a memorandum of understanding executed by the board of supervisors and the employee representatives.

(d) This section shall only apply to members who retire on or after the effective date of the resolution, ordinance, contract, or contract amendment described in subdivision (a) or (b), or on or after the date provided in the memorandum of understanding described in subdivision (c).

(e) The board of supervisors, in the resolution, ordinance, contract, or contract amendment described in subdivision (a), shall not require that a bargaining unit be divided solely for the purpose of providing different retirement benefits. However, if the members of a bargaining unit within the same or similar membership

classification so elect, retirement benefits may be separately negotiated with that bargaining unit.

(f) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

**Article 1.4 Alternative Plan for Counties of the 16th Class
31486-31486.12**

31486. (a) The retirement plan created by this article shall be known as Retirement Plan 2.

(b) This article shall be applicable in the retirement system of any county of the 16th class as described by Sections 28020 and 28037, if the board of supervisors executes a memorandum of understanding with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan herein created, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided in this subdivision, the provisions contained in this chapter shall apply:

- (1) Article 9 (commencing with Section 31700) shall not apply.
- (2) Article 10 (commencing with Section 31720) shall not apply.
- (3) Article 11 (commencing with Section 31760) shall not apply.
- (4) Article 12 (commencing with Section 31780) shall not apply.
- (5) Article 16.5 (commencing with Section 31870) shall not apply.

(g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions shall not be applicable.

(h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

(i) Unless specifically otherwise provided therein, no amendment to this article enacted subsequent to the effective date of this article shall apply to any county or to the employees of any county unless and until mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

31486.1. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed or, if no election is made, during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, and eligible for membership as defined by the board in accordance with subdivision (h) of Section 31527, except an employee eligible for or employed in a position eligible for safety membership as defined in Sections 31470.2 and 31470.4.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age of 65.

(g) "Service" means the period of uninterrupted employment of a member. Except as otherwise provided, a member shall not be credited with service for any period of time in which the member is absent from work without pay.

31486.2. (a) (1) Except as otherwise provided in Section 31486.3 or 31486.35, there shall be no general members' contributions under the plan created by this article.

(2) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. A refund under this section shall be payable to the member.

(3) A member who has five or more years of county service as defined in subdivision (g) of Section 31486.1 may elect to leave his or her contributions on deposit for service retirement benefits only.

(b) (1) Except as provided in Sections 31486.3 and 31486.9 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and may not receive credit for that prior public service.

(2) Absence from work without pay may not be considered as breaking the continuity of service.

31486.3. (a) An active member governed by the provisions of this article may elect, by written notice filed with the board, to make contributions and receive credit under this plan for service for which he or she would not otherwise be entitled to receive credit pursuant to this article.

(b) A member who elects to receive service credit pursuant to this section shall have the same purchase rights and shall contribute to the retirement fund the amount that a member in the contributory plan wishing to purchase the same service would have to contribute, based on the rates applicable to a member of the contributory plan with the same date of entry into membership. Payment shall be made by lump-sum payment or by installment payments over a period not to exceed 10 years, prior to the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.7.

(c) No member may receive any service credit under this section for which he or she has not completed payment pursuant to subdivision (b) before the effective date of his or her retirement or, if applicable, before the date provided in Section 31485.7. Subject to the limitations of federal law, a member who has elected to make payments in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

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

(e) As used in this section, the "contributory plan" means that contributory plan otherwise available to new members of the system on the election date.

(f) This section is not operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31486.35. (a) An active member may elect, by written notice filed with the board, 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.

31486.4. (a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(d) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 10 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary insurance amount, shall not exceed 80 percent of the member's final compensation.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55 .....	.39
56 .....	.43
57 .....	.47
58 .....	.51

59 .....	.56
60 .....	.61
61 .....	.67
62 .....	.74
63 .....	.82
64 .....	.90

The ERA Factors set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise qualify for the survivor allowance provided for in Section 31486.6.

(j) Notwithstanding subdivision (e) of Section 31486.4, any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

31486.5. A member who retires for service prior to the age of becoming eligible for benefits described under subdivision (f) of Section 31486.1 may, with the approval of the board, elect to have the retirement pension increased prior to the eligible age and reduced after that age by amounts which have equivalent actuarial values. This modification is for the purpose of coordinating a member's retirement pension with that received from the federal system.

31486.6. (a) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (c), shall be continued during and throughout the life of his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including stepchild or adopted child, attains the age of 18 years, then the allowance that the surviving spouse would have received had she or he lived, shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, the allowance shall be divided among the children in equal amounts. However, the right of any child to share in the allowance shall cease upon the death or marriage of the child or upon the child attaining the age of 18 years.

Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21 years, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) If, upon the death of a retired member, there is no surviving spouse or child entitled to the allowance under this section, and the total retirement allowance income received by the member during his or her lifetime did not exceed his or her accumulated normal contributions, if any, the member's designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

(c) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone, may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and thereafter to have a survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement.

(d) Designations pursuant to subdivision (c) shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

31486.7. Notwithstanding any other provisions, upon the death of a

member before retirement while in service, the designated beneficiary shall receive a death benefit equal to one month's final compensation as defined in subdivision (d) of Section 31486.1 for each year of service completed up to a maximum of six months.

31486.8. Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until that person certifies to the board an election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article.

As a condition of continued employment, the certification shall be made within 60 days of employment. The employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting the election.

31486.9. (a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. The transfer is voluntary and shall be irrevocable.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, a transferring member may elect to receive credit and a retirement benefit as determined by the former retirement system for public service credit received by leaving contributions on deposit or a refund of contributions and relinquish public service credit.

31486.10. A member upon becoming vested under this article may elect to terminate and defer accrued benefits for the purpose of future service retirement benefits only, and enter membership of the contributory retirement provisions in effect for new members at the time of transfer. Notwithstanding any other provisions, the rate of contributions shall be based on age nearest birthday at the time of election to transfer.

31486.11. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

31486.12. If any provision of this article, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the article which can be given effect without the invalid provisions or application and, to this end the provisions of this article are severable.

**Article 1.5 Alternative Plan for Counties with Populations in
Excess of Six Million 31487-31495.5**

31487. (a) The retirement plan created by this article shall be known as Retirement Plan E.

(b) This article shall be applicable in the retirement system of any county with a population in excess of six million, if the board of supervisors executes a memorandum of understanding with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan herein created, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided below, the provisions contained in this chapter shall apply:

(1) Article 9 (commencing with Section 31700) of this chapter shall not be applicable.

(2) Article 10 (commencing with Section 31720) of this chapter shall not be applicable.

(3) Article 11 (commencing with Section 31760) of this chapter shall not be applicable.

(4) Article 12 (commencing with Section 31780) of this chapter shall not be applicable.

(5) Article 16.5 (commencing with Section 31870) of this chapter shall not be applicable.

(g) Article 15 (commencing with Section 31830) dealing with reciprocal benefits shall be applicable, excluding those provisions dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions.

(h) Any amendments to or modifications of this chapter subsequent to the effective date of this article shall not affect the provisions of this article unless mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

(i) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each such section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

31488. Unless the context otherwise requires, the definitions contained in this section, govern the construction of this article.

(a) As used in subdivisions (f) and (g) of Section 31491, subdivisions (b) and (c) of Section 31492, and Section 31495, "board" means the board of investments. In all other cases "board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed or, if no election is made, during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a monthly permanent basis of at least three-quarter time, as defined by the employer, except an employee eligible for safety membership.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age at which full retirement benefits are available under the federal system. This age is deemed to be age 65 until June 30, 1983.

(g) "Service" means the period of uninterrupted employment of a member and the time in which a member or former member (1) is totally disabled, and (2) is receiving disability benefits or is eligible to receive disability benefits either during or after any elimination or qualifying period, under a disability plan provided by the employer.

Except as otherwise herein provided, a member shall not be credited with service for any period of time, in excess of 22 consecutive workdays, in which the member is absent from work without pay.

Unless otherwise provided, service shall not include military service or public service other than service with the employer.

31489. (a) Except as otherwise provided in Section 31490.5 or 31490.6, there shall be no general members' contributions under the plan created by this article.

(b) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. A refund under this section shall be payable to the member.

31490. (a) Except as provided in Sections 31490.5 and 31494, and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive

credit in this retirement plan for that public service time, and shall not receive credit for that prior public service.

(b) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by a disability plan provided by the employer, shall not be considered as breaking the continuity of service.

(c) For the purposes of subdivision (b) of Section 31491, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit that has been approved by the employer, shall not be considered an interruption of service. However, the period of time of unpaid leave in excess of 22 consecutive workdays shall not be considered as service in calculating the benefits otherwise provided under this article.

31490.5. (a) An active member governed by the provisions of this article may elect, by written notice filed with the board, to make contributions and receive credit under this plan for service for which he or she would not otherwise be entitled to receive credit pursuant to this article.

(b) Any member who elects to receive service credit pursuant to this section shall have the same purchase rights and shall contribute to the retirement fund the amount that a member in the contributory plan wishing to purchase the same service would have to contribute, based on the rates applicable to a member of the contributory plan with the same date of entry into membership. Payment shall be made by lump-sum payment or by installment payments over a period not to exceed 10 years, prior to the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.8.

(c) No member may receive any service credit under this section for which he or she has not completed payment pursuant to subdivision (b) before the effective date of his or her retirement or, if applicable, before the date provided in Section 31485.8. Subject to the limitations of federal law, a member who has elected to make payments in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

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

(e) As used in this section, the "contributory plan" means that contributory plan otherwise available to new members of the system on the election date.

(f) This section is not operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31490.6. (a) An active member may elect, by written notice filed with the board, 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 31485.8. 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 until the board of supervisors, by resolution adopted by majority vote, makes this section operative in the county.

31491. (a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(d) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 10 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary

insurance amount, shall not exceed 80 percent of the member's final compensation.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55 .....	.39
56 .....	.43
57 .....	.47
58 .....	.51
59 .....	.56
60 .....	.61
61 .....	.67
62 .....	.74
63 .....	.82
64 .....	.90

The ERA Factors set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise

qualify for the survivor allowance provided for in Section 31492.

(j) Notwithstanding subdivision (e) of Section 31491, any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

31491.1. (a) Notwithstanding Section 31491, any retired member receiving a retirement pension may present evidence in the form required by the board of the retired member's actual primary insurance amount. For the purposes of this section, the actual primary insurance amount shall be the amount being paid under the federal system. Following receipt of that evidence, the board shall adjust the retired member's pension to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual insurance amount.

(b) The adjustment calculated in subdivision (a) shall be applied to the retired member's pension beginning in the month upon which the retired member presents evidence required by the board.

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

31491.2. (a) Notwithstanding Section 31491, any retired member receiving a retirement pension may present evidence in the form required by the board of the retired member's federal estimated primary insurance amount provided that the retired member is not receiving a federal primary insurance amount. For the purposes of this section, the federal estimated primary insurance amount shall be the amount payable under the federal system as of the retired member's normal federal retirement age. Should the federal estimated primary insurance amount equal zero, the retired member shall not have his or her pension benefit reduced for an estimated primary insurance amount as required in subdivision (e) of Section 31491.

(b) Following receipt of that evidence, the board shall adjust the retired member's pension to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount calculated in Section 31491 equaled zero.

(c) The adjustment calculated in subdivision (a) shall be applied to the retired member's pension beginning in the month upon which the retired member presents evidence required by the board.

(d) Notwithstanding subdivision (a), upon attaining federal retirement age, the retired member shall submit any evidence as may be required by the board of the retired members' federal estimated or actual primary insurance amount. Following receipt of that

evidence, the board shall adjust the retired member's pension in accordance with subdivision (j) of Section 31491.

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

31491.3. (a) Notwithstanding subdivision (f) of Section 31491, for those members retiring on or after the operative date of this section, the early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount that is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55 .....	.3748
56 .....	.4109
57 .....	.4511
58 .....	.4957
59 .....	.5454
60 .....	.6009
61 .....	.6631
62 .....	.7328
63 .....	.8113
64 .....	.8998

(b) For those members retiring on or after the operative date of this section, paragraph (2) of subdivision (g) of Section 31491 shall not apply, but with regard to those members who have not attained the age of 62 years as of the date of retirement (1) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of employment of a vested member, whichever is applicable, until the member attains the age of 62 years, and (2) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of employment of a vested member, whichever is applicable, until the member attains the age of 62 years, and (3) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(c) Notwithstanding subdivision (e) or subdivision (j) of Section 31491, any member who retires on or after the operative date of this section, and after attaining the age of 62 years may, as soon as possible but not later than six months following retirement, present evidence required by the board demonstrating the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount actually payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work, or the estimate of that amount as set

forth on a current earnings and benefits estimate statement provided by the Social Security Administration. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

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

31492. (a) (1) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (c) or (d), shall be continued during and throughout the life of his or her surviving spouse, if she or he was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including every stepchild or adopted child, attains the age of 18 years, then the allowance that the spouse would have received had she or he survived shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, it shall be divided among the children in equal shares. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or attaining the age of 18 years.

(2) Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21 years, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) If, upon the death of a retired member, there is no surviving spouse or child entitled to the allowance under this section, and the total retirement allowance income received by the member during his or her lifetime did not equal or exceed his or her accumulated normal contributions, if any, the member's designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

(c) (1) A vested member, or vested former member, in lieu of the retirement allowance and survivor allowance, if any, otherwise payable to a retired member and his or her surviving spouse pursuant to this article, may elect to have the actuarial equivalent of these benefits, as of the date of retirement, applied to a lesser amount payable throughout the retired member's life and to an increased survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including every stepchild and adopted child, attains the age of 18 years, then the increased survivor allowance that the spouse would have received had he or she survived shall be paid to the deceased retired member's child or children under the age of 18 years. If the increased survivor allowance is to be paid to surviving children, it shall be divided

among the children in equal shares. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or attaining the age of 18 years.

(2) Notwithstanding any other provision of this subdivision, the increased allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(3) The election pursuant to this subdivision may not, in the opinion of the board and the actuary, place any additional burden upon the retirement system. If a member makes the election, the member's normal or early retirement benefit shall be reduced by the additional actuarial cost to the system resulting from the increased survivor allowance. The actuarial cost of the survivor allowance payable under this subdivision shall be calculated taking into account the life expectancy of the member's surviving spouse.

(4) This subdivision is not operative unless the county board of supervisors, by resolution adopted by a majority vote, makes this subdivision operative in the county. This subdivision applies only to members who retire after the operative date of this subdivision.

(d) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone and the survivor allowance, if any, that would be payable under subdivision (a) or (c), may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and to a survivor allowance as approved by the board, upon the advice of the actuary, that, upon the death of the retired member, shall continue throughout the life of and be paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement. The member's normal or early retirement benefit shall be reduced by the actuarial cost of the survivor allowance elected.

31492.1. (a) Notwithstanding Section 31492, each monthly survivor allowance paid pursuant to subdivision (a) of Section 31492 on account of a member who retires on or after the operative date of this section shall be equal to 55 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (c) or (d) of that section.

(b) This section is only applicable to Los Angeles County and is not operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

31492.2. (a) Notwithstanding the provisions of Section 31492, each monthly survivor allowance paid on or after the operative date of this section pursuant to subdivision (a) of Section 31492 on account of a member who retires before the operative date of this section shall be equal to 55 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b) of that section.

(b) This section shall only be applicable to Los Angeles County

and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

31493. (a) Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until he or she certifies to the board his or her election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article. As a condition of continued employment, the certification shall be made within 60 days of employment. The employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting his or her election.

(b) This section shall be applicable to persons who are eligible for membership and are employed prior to January 1, 1991.

31493.5. (a) Any person employed who qualifies as a member shall certify to the board his or her election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members as of the date of employment. Any person who dies prior to certifying his or her election or who fails to certify his or her election within the period set forth in subdivision (b) shall, as of the date of death or the day immediately following the last day to certify his or her election, be deemed to have elected to be covered by the retirement plan established by this article.

(b) The election required to be made by subdivision (a) shall be certified to the board:

(1) Within 30 days of employment if written disclosure materials are provided by the employer pursuant to subdivision (c) within 14 days of employment, or

(2) Within 30 days of the receipt of written disclosure materials provided by the employer if the employer fails to provide written disclosure materials within 14 days of employment as required by subdivision (c).

(c) The employer shall, within 14 days of the date of employment, provide to each person who qualifies as a member, written disclosure materials of the elements of each of the available retirement plans.

(d) This section shall be applicable to persons eligible for general membership in Plans D and E who become employed on or after January 1, 1991, and prior to January 1, 1992, and to persons who were employed prior to January 1, 1991, who first became eligible for membership on or after January 1, 1991, and before January 1, 1992.

31493.6. (a) Any person who qualifies as a member, and who has not elected to be covered by the retirement provisions and benefits available to members, shall become a member of the plan established by this article as of the first day of the month following the date of employment or date of eligibility for membership. Any person who dies prior to certifying his or her election shall be deemed to have elected to be covered by the retirement plan established by this article.

(b) The employer shall, within 14 days of the date of employment or eligibility for membership, provide to each person who qualifies as a member, written disclosure materials of the elements of each of the available retirement plans.

(c) Any person who has been enrolled in the plan provided for in this article pursuant to subdivision (a) may elect to be covered by any other retirement plan to which he or she is otherwise eligible, provided that the election is made in writing and filed with the board within 60 days from his or her beginning date of employment or eligibility for membership, or within 45 days after receipt from the employer of the materials required by subdivision (b), whichever is later. Any person who makes the election shall be deemed to be a member of the elected plan as of the first day of the month following the date of employment or eligibility, and the county auditor shall make appropriate deductions from the member's future salary warrant to cover the member's contributions applicable to the period that the member was deemed to be included in the plan covered by this article.

(d) This section shall be applicable to persons eligible for general membership who become employed on or after January 1, 1992, and to persons who were employed prior to January 1, 1992, but who did not become eligible for membership until January 1, 1992, or later.

31494. (a) General members may elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. That transfer is voluntary and shall be irrevocable.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, transferring members shall receive credit for public service performed prior to the transfer, including service with the employer, military service, and other public service to which the member would otherwise be eligible under this chapter, except that member contributions shall not be collected.

(d) This section shall be operative at any time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative.

(e) This section shall be superseded by Section 31494.2 in any county when Section 31494.2 becomes operative in the county.

31494.1. (a) In accordance with the provisions of this section, general members, whose retirement benefits are governed by the noncontributory plan created by this article, may transfer to the contributory plan. Contributory plan shall mean that contributory plan otherwise available to new members of the retirement system on the election date. Transfer may be made by election upon written application executed by the member and filed with the board on or before the election date and shall be effective on the transfer date,

subject to the terms and conditions set forth in this section. The election date shall be that date identified in the resolution adopted by the board of supervisors declaring this section to be operative. The transfer date shall be that date on which the member completes deposit of all contributions required by Section 31494.3. The election is voluntary and may be revoked upon written notice received by the board prior to the transfer date.

(b) The retirement benefits of members electing to transfer and transferred members shall be governed and defined by this section. In the event of conflict, this section shall supersede and prevail over other provisions, or application of provisions, otherwise contained in this article.

(c) Transferred members relinquish, waive, and forfeit any and all vested or accrued benefits available under any other retirement plan provided to members of the retirement system, and shall be entitled only to the benefits available under the contributory plan.

(d) Transferred members shall receive retirement service credit for that period of service with the employer, for which the members were otherwise eligible to receive credit under the plan created by this article. Transferred members shall also receive retirement service credit for that period of service for which the member made contributions pursuant to Section 31490.5.

(e) Transferred members may receive retirement service credit for service other than that with the employer, for which the members were credited or were eligible to receive credit under the plan created by this article, by written application executed by the member and filed with the board on or before the election date.

(f) The employer, the members who have elected to transfer, and transferred members shall make contributions to the retirement fund in accordance with the rates, and in the same manner, as prescribed under the contributory plan. The monthly contributions shall commence for the month next following the transfer date or that date 120 days after the election date, whichever is earlier.

(g) For purposes of calculating member contributions required under Section 31494.3, the entry age of a transferred member shall be that entry age as reflected in the retirement records maintained on behalf of the board.

(h) Failure of a member to deposit the contributions at the time and in the manner required by subdivision (a) of Section 31494.3 shall result in the cancellation of his or her election to transfer.

(i) Failure of a member to deposit the contributions at the time and in the manner required by subdivision (b) or (c) of Section 31494.3 shall result in the cancellation and forfeiture of his or her right to elect credit for other service under subdivision (e).

(j) Prior to the transfer date, the rights to retirement, disability, survivors, and death benefits of members who have made the election to transfer shall remain the same as defined and governed by this article. If those members die, terminate service, or make application for retirement prior to the transfer date, or fail to deposit all required contributions as required by Section 31494.3, all member contributions and regular interest shall be refunded to the member or member's survivor.

(k) Notwithstanding any other provision contained in this section or Section 31494.3, in the event of the death of a member who has elected to transfer prior to the transfer date, the spouse of the member, or the minor children of the member if no spouse survives the

member, may elect to pay the balance of contributions required by Section 31494.3, and if the contributions are deposited in the retirement fund within 120 days after the death of the member, the spouse of the member, or if no spouse survives the member, the minor children of the member, shall be entitled to rights and benefits as if the deceased member had deposited all contributions required by Section 31494.3.

(l) Prior to the transfer date, the rights to retirement, disability, survivors, and death benefits of members who have made the election to transfer shall remain the same as defined and governed by this article. If those members die, terminate service, or make application for retirement prior to the transfer date, all member contributions and regular interest shall be refunded to the member or the member's survivor.

(m) This section shall be operative at such time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative.

31494.2. (a) A general member whose benefits are governed by Retirement Plan D may, during a period of active employment, elect to change plan membership and become a member, prospectively, in Retirement Plan E. The election shall be made upon written application signed by the member and filed with the board, pursuant to enrollment procedures and during an enrollment period established by the board, which enrollment period shall not occur more frequently than once every three years for that member. The change in plan membership shall be effective as of the transfer date, as defined in subdivision (d). Except as otherwise provided in this section, the rights and obligations of a member who elects to change membership under this section shall be governed by the terms of this article on and after the transfer date. Prior to the transfer date, the rights to retirement, survivors', or other benefits payable to a member and his or her survivors or beneficiaries shall continue to be governed by Retirement Plan D.

(b) Except as otherwise provided in this section, effective as of the transfer date, a member who has transferred to Retirement Plan E pursuant to this section and his or her survivors or beneficiaries shall receive retirement, survivors', and other benefits that shall consist of: (1) the benefits to which they are entitled under the terms of Retirement Plan E, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan E, and (2) the benefits to which they would have been entitled under the terms of Retirement Plan D had the member remained a member of Retirement Plan D, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan D. Except as otherwise provided in this section, the calculation of the member's, survivors', or beneficiaries' benefits under each plan shall be subject to that plan's respective, separate terms, including, but not limited to, the definitions of "final compensation" and provisions establishing cost-of-living adjustments, establishing minimum retirement age and service requirements, and governing integration with federal social security payments. Notwithstanding

the foregoing, the aggregate service credited under both retirement plans shall be taken into account for the purpose of determining eligibility for and vesting of benefits under each plan.

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

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

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

(d) As used in this section:

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

(2) "Retirement Plan D" means the contributory retirement plan otherwise available to new members of the system on the transfer date.

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

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

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

31494.3. (a) Members who have elected to transfer under Section 31494.1 shall be provided within 90 days of the election date the cost of contributions required for that period of all creditable service with the employer prior to the month for which monthly contributions are to commence, as prescribed in subdivision (f) of Section 31494.1, and shall deposit in the retirement fund, the amount hereinafter provided in this subdivision, by lump sum, or regular monthly installments, or both, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, but in any event prior to the date of application for retirement or, if applicable, the date provided in Section 31485.8, the date of termination, or the date of death. The amount shall equal the sum of the contributions a member would have made to the retirement fund for that length of time as that for which the member shall receive credit as service, computed in accordance with the rate of contribution applicable to the member under the contributory plan, based upon entry age, and in the same manner as prescribed under the plan as if the plan had been in effect during the entire period of all creditable service, together with regular interest thereon.

(b) All service previously purchased by the member pursuant to

Section 31490.5, if any, shall be recalculated in accordance with the rate of contribution applicable to the member under the contributory plan, based upon the entry age, and in the same manner as prescribed under the plan as if the contributory plan had been in effect during the entire period of all creditable service, together with regular interest thereon. All contributions paid by the member pursuant to Section 31490.5, if any, shall be credited toward the amount owed under subdivision (a) and all periods of service credited under the plan created by this article shall be transferred to the contributory plan upon completion of payment of that amount.

(c) Any member who applies for service credit under subdivision (e) of Section 31494.1 relating to federal and military service, shall be provided within 90 days of the election date the cost of contribution required for that service, and shall deposit in the retirement fund the amount hereinafter provided in this subdivision by lump sum, or regular monthly installments, or both, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, but in any event prior to the date of application for retirement, date of termination, or death. The amount shall equal the sum of twice the contributions the member would have made to the retirement fund for the length of time as that for which the member has elected to receive credit as service, computed by applying the rate of contribution applicable to the member under the contributory plan, based upon entry age, to the monthly compensation first earnable by the member as of the most recent date of entry into the retirement system, multiplied by the number of months for which the member has elected to receive credit, together with regular interest thereon.

(d) Any member who applies for service credit under subdivision (e) of Section 31494.1, relating to prior service as defined in the bylaws of the board, other than qualifying service under Section 31490.5, and public service other than military and federal service, shall be provided within 90 days of the election date the cost of contribution required for that service, and shall deposit in the retirement fund the amount hereinafter provided in this subdivision, by lump sum or regular monthly installments, or both, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, but in any event prior to the date of application for retirement or, if applicable, prior to the date provided in Section 31485.8, the date of termination, or the date of death. The amount shall equal that sum of contributions the member would have made to the retirement fund for the length of time as that for which the member has elected to receive credit as service, calculated in the same manner as prescribed in the bylaws of the board relating to credit for prior service, except that such contribution shall be computed by applying the rate of contribution applicable to the member under the contributory plan, based upon entry age.

(e) This section shall be operative in a county at such time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative in the county.

31494.4. Any county electing to provide group health insurance

benefits to retirees under this article shall do so in compliance with applicable federal tax laws.

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

(b) If a member has made the election to change plans under subdivision (a), monthly contributions by the member and the employer under the terms of Retirement Plan D shall commence as of the transfer date. For the purposes of calculating the member's contribution rate under Retirement Plan D, his or her entry age shall be deemed to be his or her age at his or her birthday nearest the transfer date; however, if the member exchanges service credit in accordance with subdivision (c), with regard to contributions made for periods after that exchange, his or her entry age shall be adjusted and deemed to be the member's age at his or her birthday nearest the date on which begins the most recent period of unbroken service credited under Retirement Plan D, taking into account service purchased under subdivision (c). In no event shall the exchange of service under subdivision (c) affect the entry age with respect to, or the cost of, employee contributions made, or service purchased, prior to the exchange.

(c) A general member who has elected to change plans under subdivision (a) also may elect to exchange, at that time or any time thereafter, but prior to the earlier of his or her application for retirement, termination from employment, or death, some portion designated in whole-month increments, or all of the service credited under Retirement Plan E for an equivalent amount of service credited under Retirement Plan D, provided, however, that the member may not exchange less than 12 months service or, if less, the total service credited under Retirement Plan E. The exchange shall be effective on the date when the member completes the purchase of that service by depositing in the retirement fund, by lump sum or regular monthly installments, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, or both, but in any event prior to the earlier of his or her death or the date that is 120 days after the effective date of his or her retirement, the sum of: (1) the contributions the member would have made to the retirement fund under Retirement Plan D for that length of time for which the member shall receive credit as service under Retirement Plan D, computed in accordance with the rate of contribution applicable to the member under Retirement Plan D, based upon his or

her entry age, and in the same manner prescribed under Retirement Plan D as if that plan had been in effect during the period for which the member shall receive service credit, and (2) the regular interest thereon.

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

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

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

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

A member who becomes disabled and retires before meeting either of these conditions (1) may apply for and receive only a deferred or service retirement allowance, and (2) for the purposes of calculating his or her retirement benefits under this section, shall be credited with service under Retirement Plan E as provided under subdivision

(g) of Section 31488 during any period he or she is totally disabled

and is receiving, or eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer. If a member dies before he or she is eligible to retire and before completing either two continuous years of active service after the transfer date or earning five years of retirement service credit under Retirement Plan D after the transfer date, that member's beneficiary shall not be entitled to the survivor allowance under Section 31781.1 or 31781.12, if operative.

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

(g) As used in this section:

(1) "Active service" means time spent on active, on-the-job performance of the duties of a full-time or part-time position and on any authorized paid leaves of absence; provided, however, that any authorized paid leave of absence or part-time service shall not constitute active service if the leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease. The board of retirement shall determine whether or not a leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease, and thus excluded from the member's active service, based upon evidence presented by the employer and the member upon request by the board.

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

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

(4) "Retirement Plan D" means the contributory retirement plan otherwise available to new members of the retirement system on the transfer date.

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

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

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

31495. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

31495.5. (a) Notwithstanding any other provision of this article, every retirement allowance or death allowance payable, on or after the operative date of this section, to or on account of any member of Retirement Plan E who retires or dies or who has retired or died shall, as of April 1 each year, be increased or decreased by an amount equal to that member's automatic COLA, as defined in subdivision (f) and as calculated by the board of retirement before April 1 of each year. No decrease in the cost of living shall reduce an allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance or the operative date of this section, whichever is later.

(b) A Retirement Plan E member may elect to purchase an elective COLA, as defined in subdivision (f), with regard to some portion (designated in whole-month increments) or all of his or her months of Retirement Plan E service earned prior to the operative date of this section. The member may also elect to purchase an elective COLA, as defined in subdivision (f), with regard to some portion (designated in whole-month increments) or all of his or her months of Retirement Plan E service purchased pursuant to Section 31490.5, including service rendered after June 4, 2002, but prior to becoming a member of this system.

(c) The election shall be made upon written application signed by the member and filed with the board pursuant to election procedures and during election periods established by the board. The purchase of the elective COLA shall be effective only when the member has paid contributions necessary to purchase the designated amount of service for which he or she shall receive the elective COLA. The amount of required contributions shall be determined by the board, subject to the following:

(1) The cost of purchasing service for elective COLA purposes shall be determined by the board of retirement such that no elective COLA liability shall be borne by the county and no diminution in the funding ratio of the system shall result.

(2) The cost charged to the member for purchasing the elective COLA service shall be based upon the assumption that the member retires at the age of 65 years.

(3) Members may pay for the elective COLA by lump-sum payment or monthly installments over a period to be determined by a resolution adopted by a majority vote of the board of retirement, or both, but in any event prior to the earlier of his or her death or the date that is 120 days after the effective date of his or her retirement.

(4) If a member fails to timely complete the purchase of his or her elective COLA, he or she shall receive an elective COLA calculated only with regard to that amount of service actually purchased.

(5) If a Retirement Plan E member dies prior to retirement, any contributions made toward the purchase of an elective COLA, and all interest credited thereto, shall be refunded to the deceased member's

surviving spouse or, if there is no surviving spouse, to the deceased member's surviving child or children under the age of 18 years, divided among those children in equal amounts, or, if there is no surviving spouse or surviving child or children under the age of 18 years, to the deceased member's estate.

(d) If a Retirement Plan E member elects and purchases an elective COLA, then, notwithstanding any other provision of this article, every Retirement Plan E allowance or postretirement death allowance payable on and after the operative date of this section, to or on account of that member who retires or dies or who has retired or died shall, as of April 1 of each year, be increased or decreased by an amount equal to that member's elective COLA as calculated by the board of retirement before April 1 of each year. No decrease in the cost of living shall reduce an allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance or this provision, whichever is later.

Notwithstanding any other provisions of this section, if a member retires before attaining the age of 65 years, his or her elective COLA shall be actuarially reduced to reflect that earlier retirement age unless, within 120 days after his or her retirement, he or she contributes by lump-sum the amount necessary to complete the purchase of his or her elective COLA as determined by the board. If, upon a member's retirement, the board of retirement determines that a member has paid more contributions than necessary to purchase his or her elective COLA in accordance with subdivision (b), the member shall receive a refund of those excess contributions and all interest credited thereto. Upon retirement or termination of employment, but before he or she begins receiving his or her elective COLA, a member may revoke his or her election to purchase an elective COLA and receive a refund of any contributions made toward the purchase of the elective COLA and all interest credited thereto.

(e) If a Retirement Plan E member or former member is totally disabled, begins receiving disability benefits, other than state-mandated benefits, under a disability plan provided by the employer on or after the operative date of this section, and, on or after that date, his or her employment terminates, then, for purposes of calculating the member's or former member's final compensation, his or her predisability compensation, as previously adjusted in accordance with this subdivision and paragraph (5) of subdivision (f), shall, as of April 1 of each year after his or her employment terminates and during a period for which he or she both remains totally disabled and earns "service" within the meaning of subdivision (g) of Section 31488, be increased or decreased by an amount equal to that member's or former member's predisability compensation adjustment as calculated by the board of retirement before April 1 of each year.

(f) As used in this section:

(1) "Automatic COLA" means, with respect to any member of Retirement Plan E, an amount equal to the allowance then being received (including any automatic or elective COLAs previously received), multiplied by a percentage (rounded to the nearest one-tenth of 1 percent) derived by taking the number of months of service the member earned on and after the operative date of this section, dividing by the member's total months of service, and multiplying by a percentage equal to the lesser of 2 percent or the percentage found by the board of retirement to approximate to the

nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1 of each year as shown by the then current CPI, as adjusted for the amount applied from a prior year. For purposes of applying this formula, the amount of any annual cost-of-living increase under the CPI in excess of the 2 percent maximum shall be accumulated and applied in future years in which the annual cost-of-living increase under the CPI is less than the 2 percent maximum.

(2) "CPI" means the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated.

(3) "Elective COLA" means, with respect to any member of Retirement Plan E, an amount equal to the allowance then being received (including any automatic or elective COLAs previously received), multiplied by a percentage (rounded to the nearest one-tenth of 1 percent) derived by taking the number of months of service the member purchased in accordance with subdivision (b), dividing by the member's total months of service, and multiplying by a percentage equal to the lesser of 2 percent or the percentage found by the board of retirement to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1 of each year as shown by the then current CPI, as adjusted for the amount applied from a prior year. For purposes of applying this formula, the amount of any annual cost-of-living increase under the CPI in excess of the 2 percent maximum shall be accumulated and applied in future years in which the annual cost-of-living increase under the CPI is less than the 2 percent maximum.

(4) "Predisability compensation" means a member's last 12 months of compensation earnable preceding the date his or her employment terminates while he or she is receiving disability benefits, other than state-mandated benefits, under a disability plan provided by the employer because he or she is totally disabled. The employer shall provide the board of retirement with the information necessary for a member's predisability compensation to be determined.

(5) "Predisability compensation adjustment" means, with respect to any member or former member of Retirement Plan E qualifying under subdivision (e), an amount equal to that member's or former member's predisability compensation as previously adjusted under this section, multiplied by a percentage equal to the lesser of 2 percent or the percentage found by the board of retirement to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1, of each year as shown by the then current CPI, as adjusted for the amount applied from a prior year. For the purpose of applying this formula, the amount of any annual cost-of-living increase under the CPI in excess of the 2 percent maximum shall be accumulated and applied in future years in which the annual cost-of-living increase under the CPI is less than the 2 percent maximum.

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

**Article 1.6 Alternative Plan for Counties of the 10th Class
31496-31498.7**

31496. (a) The retirement plan created by this article shall be known as Retirement Plan 3.

(b) This article shall be applicable in the retirement system of any county of the 10th class, if the board of supervisors executes a memorandum of understanding with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan herein created, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided below, the provisions contained in this chapter shall apply:

(1) Article 9 (commencing with Section 31700) of this chapter shall not be applicable.

(2) Article 10 (commencing with Section 31720) of this chapter shall not be applicable.

(3) Article 11 (commencing with Section 31760) of this chapter shall not be applicable.

(4) Article 12 (commencing with Section 31780) of this chapter shall not be applicable.

(5) Article 16.5 (commencing with Section 31870) of this chapter shall not be applicable.

(g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions shall not be applicable.

(h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each such section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

(i) Any amendments to or modifications of this chapter subsequent to the effective date of this article shall not affect the provisions of this article unless mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

31496.3. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed or, if no election is made, during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, except an employee eligible for safety membership.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age of 65.

(g) "Service" means the period of uninterrupted employment of a member and the time in which a member or former member (1) is totally disabled, and (2) is receiving disability benefits or is eligible to receive disability benefits either during or after any elimination or qualifying period, under a disability plan provided by the employer.

Except as provided, a member may not be credited with service for any period of time in which the member is absent from work without pay.

Unless otherwise provided, service may not include military service or public service other than service with the employer.

Notwithstanding any other provision of this chapter, a member who has elected or transferred to the plan created by this article and who terminates for any reason and is later reemployed shall receive Plan 3 credit for his or her service rendered prior to termination.

31496.7. (a) There shall be no general members' contributions under the plan created by this article.

(b) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. Any refund under this section shall be payable to the member.

31497. (a) Except as provided in Section 31498.3 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and shall not

receive credit for that prior public service.

(b) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by a disability plan provided by the employer, shall not be considered as breaking the continuity of service.

(c) For the purposes of subdivision (b) of Section 31497.3, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit which has been approved by the employer, shall not be considered an interruption of service. However, the period of time of unpaid leave shall not be considered as service in calculating the benefits otherwise provided under this article.

31497.3. (a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(d) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 10 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary insurance amount, shall not exceed 80 percent of the member's final compensation.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55 .....	.39
56 .....	.43
57 .....	.47
58 .....	.51
59 .....	.56
60 .....	.61
61 .....	.67
62 .....	.74
63 .....	.82
64 .....	.90

The ERA Factors set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise qualify for the survivor allowance provided for in Section 31497.7.

(j) Notwithstanding subdivision (e) of Section 31497.3, any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the

retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

31497.7. (a) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b), shall be continued during and throughout the life of his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including stepchild or adopted child, attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, the allowance shall be divided among the children in equal amounts. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or upon attaining the age of 18 years.

Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone, may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and thereafter to have a survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement.

(c) Designations pursuant to subdivision (b) shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

31498. (a) Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until he or she certifies to the board his or her election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article. As a condition of continued employment, the certification shall be made within 60 days of employment. The employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting his or her election.

(b) If the person does not elect to be covered by either Retirement Plan 2 or Retirement Plan 3 within 60 days of employment, the person shall automatically be covered by Retirement Plan 2 and no

certification shall be required.

31498.3. (a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, a transferring member shall receive credit for no more than 24 months of public service performed prior to December 31, 1969, including service with the employer, military service, and any other public service to which the member would otherwise be eligible under this chapter, except that member contributions shall not be collected.

(d) The transfer by the member is voluntary, and shall be irrevocable, unless the board of supervisors, by resolution, authorizes Retirement Plan 3 members to transfer to Retirement Plan 2, under terms and conditions specified in the resolution. These terms may include, but are not limited to, an eligibility provision based on the number of years in county service, a provision for crediting service in Retirement Plan 2 only for that service rendered after adoption of the resolution, or an eligibility provision allowing members to transfer to Retirement Plan 2 all county service rendered under Retirement Plan 3 provided the member deposits into the retirement fund within a specified time an amount equal to the contributions he or she would have made during that time, had he or she been a member of Retirement Plan 2, together with regular interest on that amount. The resolution may establish different conditions for different job classifications or groups, and for represented bargaining units, conditions mutually agreed upon by the employer and the employee representative. The board of supervisors may also establish any other conditions it deems necessary or desirable.

(e) Any member who has elected or transferred to the plan created by this article and who terminates his or her employment and is later reemployed shall not be entitled to change his or her election upon that reemployment, unless a resolution, enacted by the board of supervisors subsequent to the member's election to transfer to the new plan, so provides.

31498.7. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

**Article 1.7 Alternative Plan for Counties of the 25th Class
31499-31499.9**

31499. (a) The retirement plan created by this article shall be known as Retirement Plan 3.

(b) This article shall be applicable in the retirement system of any county of the 25th class as described by Section 28046, if the board of supervisors executes a memorandum of understanding with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan herein created, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided below, the provisions contained in this chapter shall apply:

(1) Article 9 (commencing with Section 31700) of this chapter shall not be applicable.

(2) Article 10 (commencing with Section 31720) of this chapter shall not be applicable.

(3) Article 11 (commencing with Section 31760) of this chapter shall not be applicable.

(4) Article 12 (commencing with Section 31780) of this chapter shall not be applicable.

(5) Article 16.5 (commencing with Section 31870) of this chapter shall not be applicable.

(g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions shall not be applicable.

(h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each such section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

(i) Unless specifically otherwise provided therein, no amendment to this article enacted subsequent to the effective date of this article shall apply to any county or to the employees of any county unless and until mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

31499.1. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed or, if no election is made, during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, except an employee eligible for safety membership.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age of 65.

(g) "Service" means the period of uninterrupted employment of a member and the time in which a member or former member (1) is totally disabled, and (2) is receiving disability benefits or is eligible to receive disability benefits either during or after any elimination or qualifying period, under a disability plan provided by the employer.

Except as otherwise herein provided, a member shall not be credited with service for any period of time in which the member is absent from work without pay.

Unless otherwise provided, service shall not include military service or public service other than service with the employer.

31499.2. (a) (1) Except as otherwise provided in Section 31499.3, there shall be no general members' contributions under the plan created by this article.

(2) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. Any refund under this section shall be payable to the member.

(b) (1) Except as provided in Sections 31499.3 and 31499.7 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for that public service time, and may not receive credit for that prior public service.

(2) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by a disability plan provided by the employer, may not be considered as breaking the continuity of service.

(3) For the purposes of subdivision (b) of Section 31499.4, an

unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit which has been approved by the employer, may not be considered an interruption of service. However, the period of time of unpaid leave may not be considered as service in calculating the benefits otherwise provided under this article.

31499.3. (a) An active member governed by the provisions of this article may elect, by written notice filed with the board, to make contributions and receive credit in this retirement system for service with the county that was rendered prior to his or her current membership in the system and for which he or she would not otherwise be entitled to receive credit pursuant to this article.

(b) Notwithstanding any other provision of this chapter, service credit received by a member pursuant to this section may not be counted to meet the minimum qualifications for service or disability retirement, additional cost-of-living benefits, health care benefits, or any other benefits based on service credit.

(c) Any member who elects to make contributions and receive service credit pursuant to this section shall contribute to the retirement fund, prior to the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.7, by lump-sum payment or by installment payments over a period not to exceed 10 years, an amount that is equal to the present value of the additional liability incurred by the system in crediting the prior service, based upon actuarial assumptions in effect for the retirement system at the time the election is made.

(d) No member may receive any service credit under this section for which he or she has not completed payment pursuant to subdivision (c) before the effective date of his or her retirement or, if applicable, before the date provided in Section 31485.7. Subject to the limitations of federal law, a member who has elected to make payments in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

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

(f) This section is not operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31499.4. (a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(d) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension shall consist of an annual

allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 10 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary insurance amount, shall not exceed 80 percent of the member's final compensation.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

Age	ERA Factor
55 .....	.39
56 .....	.43
57 .....	.47
58 .....	.51
59 .....	.56
60 .....	.61
61 .....	.67
62 .....	.74
63 .....	.82
64 .....	.90

The ERA Factors set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future

earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise qualify for the survivor allowance provided for in Section 31499.8.

(j) Notwithstanding subdivision (e) of Section 31499.4, any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

31499.5. (a) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b), shall be continued during and throughout the life of his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including stepchild or adopted child, attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, the allowance shall be divided among the children in equal amounts. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or upon attaining the age of 18 years.

Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life

alone, may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and thereafter to have a survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement.

(c) Designations pursuant to subdivision (b) shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

31499.6. Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until he or she certifies to the board his or her election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article. As a condition of continued employment, the certification shall be made within 60 days of employment. The employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting his or her election.

31499.7. (a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. Such transfer is voluntary and shall be irrevocable.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, a transferring member shall receive credit for no more than 24 months of public service performed prior to December 31, 1969, including service with the employer, military service, and any other public service to which the member would otherwise be eligible under this chapter, except that member contributions shall not be collected.

(d) Any member who has elected or transferred to the plan created by this article and who terminates his or her employment and is later reemployed shall not be entitled to change his or her election upon such reemployment.

31499.8. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

31499.9. If any provision of this article, or the application thereof, to any person or circumstances, is held invalid, the

invalidity shall not affect other provisions or application of the article which can be given effect without the invalid provisions or application and, to this end the provisions of this article are severable.

**Article 1.8 Alternative Optional, Integrated, Noncontributory
Plan for Counties of the 20th Class 31499.10-
31499.19**

31499.10. (a) The retirement plan created by this article shall be known as Retirement Plan 3.

(b) This article shall be applicable in the retirement system of any county of the 20th class as described by Section 28041, if the board of supervisors adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide an optional, noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and who elect the plan created by this article and (2) existing general members who transfer to the plan created by this article, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided below, the provisions contained in this chapter shall apply:

(1) Article 9 (commencing with Section 31700) of this chapter shall not be applicable.

(2) Article 10 (commencing with Section 31720) of this chapter shall not be applicable.

(3) Article 11 (commencing with Section 31760) of this chapter shall not be applicable.

(4) Article 12 (commencing with Section 31780) of this chapter shall not be applicable.

(5) Article 16.5 (commencing with Section 31780) of this chapter shall not be applicable.

(g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 dealing with disability retirement, death benefits, and the requirement relating to the deposit of accumulated member contributions shall not be applicable.

(h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each such section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

(i) Unless specifically otherwise provided, no amendment to this article subsequent to the effective date of this article shall apply to any county or to the employees of any county unless mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

31499.11. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Final compensation" means the average annual compensation earnable by a general member during any three years, whether or not consecutive, elected by the member at or before the time an application for retirement is filed, or, if no election is made, during the three years in which the member or former member last earned compensation preceding retirement. If a member or former member has less than three years of service, final compensation shall be determined by dividing total compensation by the number of months of service credited to the member or former member and multiplying by 12. In no event shall final compensation include any disability benefits received by the member or former member under a disability plan provided by the employer.

(e) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, except an employee eligible for safety member.

(f) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the age of 65.

(g) "Service" means the period of uninterrupted employment of a member and the time in which a member or former member (1) is totally disabled, and (2) is receiving disability benefits or is eligible to receive disability benefits either during or after any elimination or qualifying period, under a disability plan provided by the employer.

Except as otherwise provided in this article, a member shall not be credited with service for any period of time in which the member is absent from work without pay.

Unless otherwise provided, service shall not include military service or public service other than service with the employer.

31499.12. (a) (1) Except as otherwise provided in Section 31499.13, there shall be no general members' contributions under the plan created by this article.

(2) A member who transfers to the retirement plan created by this article shall have refunded, within a reasonable period of time, not to exceed nine months from the date of receipt of election to transfer by the board, the member's accumulated contributions, together with interest thereon, which are credited to the member's account. Interest shall be credited to the June 30 or December 31 date, whichever is later, immediately preceding the date of the refund warrant. Any refund under this section shall be payable to the member.

(b) (1) Except as provided in Sections 31499.13 and 31499.17 and under reciprocal provisions of this article, a member who was in public service prior to becoming a member may not elect to receive credit in this retirement plan for the public service time, and may not receive credit for that prior public service.

(2) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by a disability plan provided by the employer, may not be considered as breaking the continuity of service.

(3) For the purposes of subdivision (b) of Section 31499.14, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee received any benefit that has been approved by the employer, may not be considered an interruption of service. However, the period of time of unpaid leave may not be considered as service in calculating the benefits otherwise provided under this article.

31499.13. (a) An active member governed by the provisions of this article may elect, by written notice filed with the board, to make contributions and receive credit in this retirement system for service with the county that was rendered prior to his or her current membership in the system and for which he or she would not otherwise be entitled to receive credit pursuant to this article.

(b) Notwithstanding any other provision of this chapter, service credit received by a member pursuant to this section may not be counted to meet the minimum qualifications for service or disability retirement, additional cost-of-living benefits, health care benefits, or any other benefits based on service credit.

(c) Any member who elects to make contributions and receive service credit pursuant to this section shall contribute to the retirement fund, prior to the effective date of his or her retirement or, if applicable, prior to the date provided in Section 31485.7, by lump-sum payment or by installment payments over a period not to exceed 10 years, an amount that is equal to the present value of the additional liability incurred by the system in crediting the prior service, based upon actuarial assumptions in effect for the retirement system at the time the election is made.

(d) No member may receive any service credit under this section for which he or she has not completed payment pursuant to subdivision (c) before the effective date of his or her retirement or, if applicable, before the date provided in Section 31485.7. Subject to the limitations of federal law, a member who has elected to make payments in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement.

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

(f) This section is not operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31499.14. (a) Retirement of a member or former member who has met the requirements for age and service shall be made by the board, at which time the member or former member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the plan created by this article.

(c) Any member who is not vested, whose employment terminated, and who is then reemployed shall not receive credit for his or her previous service credited under Plan 3, provided, that the service was rendered in Plan 3.

(d) Any vested member or vested former member who has attained the age of 65 years may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date.

(e) Any vested member or vested former member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(f) The normal retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to 2 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, not to exceed 35 years, added to 1 percent of the member's final compensation multiplied by the number of years of service in excess of 35, not to exceed 20 years, reduced by the estimated primary insurance amount, if any, multiplied by the fraction of the number of years of service with the employer subject to coverage under the federal system, not to exceed 35 years, divided by 35.

In no event shall the normal retirement pension, when added to the estimated primary insurance amount, exceed 70 percent of the member's final compensation unless the years of service to which the member is entitled to be credited at retirement exceeds 35, in which case the normal retirement pension, when added to the estimated primary insurance amount, shall not exceed 80 percent of the member's final compensation.

(g) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement in the following table:

Age	ERA factor
55 .....	.39
56 .....	.43
57 .....	.47
58 .....	.51
59 .....	.56
60 .....	.61
61 .....	.67
62 .....	.74
63 .....	.82
64 .....	.90

The early retirement adjustment factor set forth in this subdivision shall be used until adjusted by the board in accordance with the interest and mortality tables adopted by the board.

(h) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age and salary as of the date of retirement or the date of termination of a vested member, whichever is applicable, provided that:

(1) An employee's prior career earnings shall be assumed to have

been subject to the federal system and to have increased on a year-to-year basis at a rate equivalent to the rate of increase in the average per worker total wages reported by the Social Security Administration, and

(2) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (A) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (B) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (C) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(i) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(j) At the time of application for retirement, the member or former member shall provide adequate proof (1) of age and (2) of the eligibility of persons, if any, who at that time would otherwise qualify for the survivor allowance provided for in Section 31499.15.

(k) Notwithstanding subdivision (f), any retired member receiving a normal retirement pension shall, as soon as possible but not later than six months following retirement, present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

31499.15. (a) Upon the death of a retired member, 50 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b), shall be continued during and throughout the life of his or her surviving spouse, if he or she was married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if he or she dies before every child of the deceased retired member, including stepchild or adopted child, attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to the deceased retired member's child or children under the age of 18 years. If the survivor allowance is to be paid to surviving children, the allowance shall be divided among the children in equal amounts. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or upon attaining the age of 18 years.

Notwithstanding any other provisions of this subdivision, the allowance otherwise payable to the children of the retired member shall be paid to the children through the age of 21, if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(b) A vested member, or vested former member, in lieu of the normal or early retirement pension for the retired member's life alone, may elect to have the actuarial equivalent of the retired member's pension as of the date of retirement applied to a lesser amount payable throughout the retired member's life, and thereafter to have a survivor allowance as approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the person or persons having an insurable interest in the life of the retired member, as the member or former member nominates by written designation duly executed and filed with the board at the time of retirement.

(c) No designation pursuant to subdivision (b) shall, in the opinion of the board and the actuary, place any additional actuarial cost burden upon the retirement system.

31499.16. Any person employed subsequent to the effective date of this article who would otherwise qualify as a member shall not become a member until he or she certifies to the board his or her election to be covered by the retirement plan established by this article or to be covered by the retirement provisions and benefits otherwise available to members on the date preceding the effective date of this article. As a condition of continued employment, the certification shall be made within 60 days of employment. The employer shall make available to the person a disclosure of the elements of each of the available retirement plans prior to accepting his or her election.

31499.17. (a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. All transferring members whose contributions for public service have been refunded to them shall not receive credit for that service.

(d) Any member who selects Retirement Plan 3 upon reentering into county service and who has not received credit as a Plan 3 member for previous county service, may elect to repurchase his or her previous service by redepositing his or her withdrawn contributions, plus interest, from date of termination, and shall then receive credit for that service under the plan status at the time of original employment.

(e) Any member who has elected or transferred to the plan created by this article and who terminates his or her employment and is later reemployed shall not be entitled to change his or her election upon that reemployment, unless a resolution, enacted by the board of supervisors subsequent to the member's election to transfer to the

new plan, so provides.

(f) A plan transfer by a member is voluntary and shall be irrevocable, unless the board of supervisors, by resolution, authorizes Retirement Plan 3 members to transfer to a retirement plan authorized under Article 8 (commencing with Section 31670), under the terms and conditions specified in the resolution. The terms may include, but are not limited to, (1) an eligibility provision based on the number of years in county service, or (2) a provision for crediting service in the plan which (A) the member transfers to only for that service rendered after adoption of the resolution or (B) an eligibility provision that, for the purposes of Article 10 (commencing with Section 31720), considers years in county service from the date the member transfers to a new plan unless the prior county service credit is restored, or both. The resolution may establish different service credit conditions for various job classifications or groups, or for various represented bargaining units, different conditions agreed upon by the employer and the employee representative, or both. The board of supervisors may also establish other conditions it deems necessary or desirable.

31499.18. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

31499.19. If any provision of this article, or the application thereof, to any person or circumstances, is held invalid, the invalidity shall not affect other provisions or application of the article which can be given effect without the invalid provisions or application and, to this end the provisions of this article are severable.

Article 2 Establishment of System 31500-31509

31500. A retirement system is established in any county for eligible officers and employees by the adoption of an ordinance, accepting this chapter, by:

- (a) A majority vote of the electors voting on the proposition at a special or general election; or
- (b) A four-fifths vote of the board of supervisors.

31501. This chapter becomes operative in any county on either January 1st or July 1st following the adoption of the ordinance, as specified in the ordinance, but not sooner than 60 days after its adoption.

31502. This chapter may be made effective by a resolution adopted by a majority of the governing board or committee of any institution operated by two or more counties, or by a majority of the governing board or committee of any district as defined in subdivision (c) of Section 31468, if one of the counties involved in the operation of the institution has adopted its provisions, or, in the case of a district as defined in subdivision (c) of Section 31468, if one of the counties comprising the organization or association has adopted its provisions. Upon the adoption of the resolution the employees of the institution shall become members of the retirement system of the county designated by the governing board or committee of the institution, and all contributions made by the employees and by the institution shall be paid into the county retirement system of the county selected. The governing board or committee shall cause to be paid to the county operating the retirement system, the institution's proportionate share of the cost of operation of the system.

31503. A retirement system established pursuant to this chapter shall supersede any previously established county pension system.

31505. The assets and records of a superseded system shall become the assets and records of this retirement system, but there shall be left to the superseded system not established pursuant to either Chapter 4 or Chapter 5, sufficient assets, according to tables adopted by the board of supervisors, to pay all retirement payments or annuities to persons who have been retired under the superseded retirement system.

31506. All previously retired members of the superseded system shall be paid for their respective lives the full amount of the retirement payments or annuities to which they are entitled.

31507. The retirement board created by this chapter shall determine the amount and kind of assets necessary to meet the requirements of

Section 31506, and if the amount so determined proves insufficient, the county shall annually appropriate the sum necessary to fulfill the requirements.

31508. The assets shall be administered solely by the board subject to the provisions of this chapter as to the custody, investment, and disbursement of the retirement fund. If there are assets of the superseded system remaining after the termination of all liabilities of the superseded system, the remaining assets shall be transferred to and become part of the retirement fund.

31509. A member who has made special contributions to a superseded system shall have the option of withdrawing such special contributions together with interest thereon, following the transfer of contributions to this system, or of permitting the contributions to remain as additional contributions to this system. Any member electing to make such withdrawal shall do so by written notice addressed to the board within 90 days after the effective date of this system.

**Article 2.1 Additional Plan for Counties of the First Class
31510-31510.4**

31510. (a) This article shall be applicable to all members of the retirement system of any county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) The purpose of this article is to provide a defined contribution plan which, in conjunction with retirement benefit provisions otherwise contained in this chapter, will provide approximately the same level of retirement benefits to persons who first become members on or after January 1, 1990, and are subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986, as they would receive under the other retirement benefit provisions in the absence of those limitations, while not affecting the rate of either member or employer contributions to the retirement system. In addition, it is intended that subdivisions (c) and (d) constitute an election under Section 415(b)(10)(C) of the Internal Revenue Code of 1986 with respect to all retirement plans within the retirement system.

(c) Notwithstanding any other provision of this part, the benefits payable to any person who first becomes a member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986, as adjusted pursuant to Section 415(d)(1)(A) and (B).

(d) Notwithstanding any other law, the benefits payable to any person who first became a member prior to January 1, 1990, shall not be subject to the limitations set forth in Section 415(b) of the Internal Revenue Code of 1986, except to the extent required by subsection (b)(10)(A) of Section 415.

(e) The election described in subdivision (b) shall apply to all employers whose employees are members of the retirement system of the county on December 31, 1989.

(f) The retirement benefits of all persons who first become members of the retirement system on or after January 1, 1990, and participate in Safety Plan B or General Plan D shall be governed by this chapter applicable to those plans and by this article.

(g) Subdivisions (c) and (d) shall not become operative until the board of supervisors has taken the actions required by subdivision (a) of Section 31510.2.

(h) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

31510.1. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county, district, or agency whose employees are members of the retirement system of the county.

(c) "General Plan F" means the defined contribution plan established in accordance with this article for the benefit of certain members of General Plan D.

(d) "Plan F" means General Plan F and Safety Plan F, collectively.

(e) "Prior plan" means Safety Plan B or General Plan D, as the

context requires.

(f) "Safety Plan F" means the defined contribution plan established in accordance with this article for the benefit of certain members in Safety Plan B.

31510.2. (a) The board of supervisors of any county subject to this article shall establish two defined contribution retirement plans authorized by Section 401 of the Internal Revenue Code of 1986. The terms of the plans shall be mutually agreed to by the employer and employee representatives of affected employees prior to adoption or amendment by the board of supervisors. The plans shall be known as General Plan F and Safety Plan F and are referred to collectively as plan F.

(b) Any general member described in subdivision (f) of Section 31510 shall participate in General Plan F, and any safety member described in subdivision (f) of Section 31510 shall participate in Safety Plan F, after commencement of his or her participation in the prior plan.

(c) The board, upon the advice of the actuary, shall determine the portion of the member contributions otherwise required under the prior plan that shall be credited to plan F in lieu of being credited to the other plan. In doing so, the board shall provide for the level of contributions to plan F that is the minimum amount sufficient to satisfy the purposes set forth in subdivision (b) of Section 31510.

(d) The right of the member to benefits derived from member contributions vests under plan F upon the commencement of participation in plan F.

(e) If a member or beneficiary becomes entitled to receive a benefit in the form of an annuity under the terms of the prior plan, the member's account in plan F shall be converted to the same form of annuity as is payable to the member or beneficiary from the prior plan. The amount of the annuity payable under the prior plan, calculated prior to the application of this article (including the limitations set forth in Section 415 of the Internal Revenue Code of 1986), shall be reduced by the amount of the annuity generated under plan F as described in the preceding sentence. The amount payable from plan F shall be paid at the same time and in the same manner as the annuity payable from the prior plan and may be provided through an annuity contract purchased from an insurance company, at the discretion of the board. Notwithstanding the foregoing, if the member's account in plan F does not exceed three thousand five hundred dollars (\$3,500), it shall be paid to the member or beneficiary as a lump-sum payment, in lieu of the benefit otherwise payable under plan F.

(f) If a member or beneficiary becomes entitled to receive the member's accumulated contributions and interest from the prior plan, the member or beneficiary shall receive the member's account balance from plan F consisting of the member's accumulated contributions and actual earnings at the same time and in the same manner.

(g) In applying the limitations set forth in Section 415 of the Internal Revenue Code of 1986, benefits or annual additions in qualified retirement plans maintained by an employer separate from the retirement system shall be reduced first. Any additional reduction shall be made to the benefits from plans within the

retirement system other than plan F, and then lastly to the annual addition to plan F.

(h) Plan F shall be administered in accordance with subsection (a) of Section 401 of the Internal Revenue Code of 1986 and the Treasury Regulations issued thereunder. The plan shall state that it is intended to be a profit-sharing plan wherein contributions are determined without regard to current or accumulated profits.

(i) For the purpose of this article, the term "annuity" means the combined benefit provided by an annuity, as defined in Section 31457, and the pension, as defined in Section 31471.

(j) To the extent any county subject to this article terminates General Plan F or Safety Plan F, or both of them, with respect to any group of members and in accordance with their terms and adopts a replacement benefits program under Section 31899.4 for those members in lieu of that plan or plans, this section shall be inoperative in that county with respect to those members. In any event, the election made pursuant to subdivision (b) of Section 31510, the provisions of subdivisions (c), (d), (e), (f), and (h) of Section 31510, and the provisions of Section 31510.3 shall remain operative in that county.

31510.3. It is intended that disability benefits payable from the retirement system pursuant to Article 10 (commencing with Section 31720), in the event of the member's termination of employment for disability, are compensation for personal injury or sickness, and therefore would not be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986. If the Internal Revenue Service rules that the disability benefits are subject to those limitations, any employer which is subject to this article shall provide an alternate disability benefit equal to the decrease in the disability benefit caused by application of those limitations, through a long-term disability plan which shall be separate from the retirement system. The terms of that long-term disability plan shall be mutually agreed to by the employer and employee representatives and adopted by the board of supervisors.

31510.4. It is intended that the maintenance of plan F not affect the rate of either member or employer contributions to the retirement system. The board may set a rate of regular interest credited to contributions to the prior plan made with respect to members participating in plan F that is different than the rate of regular interest credited to contributions made with respect to members not participating in plan F, if necessary to effectuate that intent.

**Article 2.6 Alternative Plan for Counties of the 13th Class
31511-31511.11**

31511. (a) The retirement plan created by this article shall be known as Retirement Plan 3.

(b) This article shall be applicable in the retirement system of any county of the 13th class as described by Sections 28020 and 28034, if the board of supervisors executes a memorandum of understanding agreement with employee representatives and adopts, by majority vote, a resolution providing that the article shall be applicable.

(c) The purpose of this article is to provide a noncontributory retirement plan for general members as an alternative to the provisions and benefits otherwise contained in this chapter.

(d) The retirement benefits of (1) all general members employed after the date this article is made operative and (2) existing general members who transfer to the plan herein created, shall be governed by this article.

(e) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

(f) Except as otherwise provided below, the provisions contained in this chapter shall apply:

(1) Article 10 (commencing with Section 31720) shall not apply.

(2) Article 16.5 (commencing with Section 31870) shall not apply.

(g) Article 15 (commencing with Section 31830) shall only be applicable for service retirement. Those provisions of Article 15 (commencing with Section 31830) dealing with disability retirement and the requirement relating to the deposit of accumulated member contributions shall not apply.

(h) Except as otherwise provided, any member who upon retirement receives a retirement pension calculated in accordance with sections or provisions added to this article subsequent to the effective date of this article shall have his or her pension calculated under each such section or provision only for the period of time that those sections or provisions were in effect, unless otherwise mutually agreed between the employer and its employee representatives.

(i) Unless specifically otherwise provided therein, no amendment to this article enacted subsequent to the effective date of this article shall apply to any county or to the employees of any county unless and until mutually agreed to by the employer and employee representatives and adopted by majority resolution of the board of supervisors.

31511.1. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county or district or agency whose employees are members of the retirement system of the county.

(c) "Federal system" means the Old Age and Survivors Insurance provisions of the Social Security Act.

(d) "Member" or "general member" means an employee hired on a permanent basis, as defined by the employer, except an employee

eligible for safety membership.

(e) "Primary insurance amount" means the monthly retirement benefit payable under the federal system at the normal retirement age.

(f) "Service" means the period of employment of a member and the time in which a member or former member (1) is totally disabled, and (2) is receiving disability benefits or is eligible to receive disability benefits either during or after any elimination or qualifying period, under a long-term disability plan provided by the employer.

Except as otherwise herein provided, a member shall not be credited with service for any period of time in which the member is absent from work without pay.

Unless otherwise provided, service shall not include military service or public service other than service with the employer.

(g) "Final compensation" means the average annual compensation earnable by a member during any three years elected by a member at or before the time he or she files an application for retirement, or, if he or she fails to elect, during the three years immediately preceding his or her retirement. If a member has less than three years of service, his or her final compensation shall be determined by dividing his or her total compensation by the number of months of service credited to him or her and multiplying by 12.

The board of supervisors of any county subject to this article shall establish a defined contribution retirement plan authorized by Section 401 of the United States Code or a similar plan authorized by the United States Code.

31511.2. (a) There shall be no general members' contributions under the plan created by this article.

(b) No refund shall be made to any member who elects to transfer to the retirement plan created by this article of the member's accumulated contributions. A member who elects to transfer to the retirement plan established pursuant to this article shall receive: service credit toward vesting under the other retirement plan; a pension from the other retirement plan based upon his or her credited service on the day prior to the operative date of the transfer to the retirement plan established pursuant to this article; and a pension from the retirement plan established pursuant to this article based upon service credited on and after the operative date of the transfer to the retirement plan established pursuant to this article.

31511.3. (a) Absence from work or termination of employment while an eligible employee or disability beneficiary, as defined by the long-term disability plan provided by the employer, shall not be considered as breaking the continuity of service.

(b) For the purposes of subdivision (b) of Section 31511.4, an unpaid leave of absence which has been approved by the employer, shall not be considered an interruption of service. However, the period of time of unpaid leave shall not be considered as service in calculating the retirement benefits otherwise provided under this article.

31511.4. (a) Retirement of a member who has met the requirements for age and service shall be made by the board, at which time the member becomes a retired member.

(b) Any member who has completed 10 years of service shall be vested under the retirement plan created by this article.

(c) Any vested member who has attained normal retirement age may be retired upon filing with the board a written application on a form provided by the board for normal retirement setting forth the desired effective retirement date. For purposes of this article, normal retirement date means the first day of the month coincident with or next following the member's normal retirement age. For purposes of this article, normal retirement age means:

For Persons Born	Normal Retirement Age
1937 or before	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67.

(d) Any vested member who has attained the age of 55 years may be retired upon filing with the board a written application on a form provided by the board for early retirement setting forth the desired effective retirement date.

(e) The normal retirement pension for a member who has attained normal retirement age shall consist of an annual allowance payable in monthly installments for the life of the retired member equal to: 2.333 percent of his or her final compensation multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, but not to exceed 30 years; reduced by 2.166 percent of the estimated primary insurance amount, if any, multiplied by the number of years of service to the preceding completed month to which the member is entitled to be credited at retirement, but not to exceed 30 years, multiplied by a fraction, the numerator of which is the number of years of service with the employer subject to coverage under the federal system, but not to exceed 30 years, and the denominator of which is 30.

(f) The early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount which is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth, based on the number of years and months by which the member's early retirement date precedes the member's normal retirement date, in the following tables:

Early Retirement Adjustment Factors

Years	Months				
	0	1	2	3	4
0	1.0000	0.9944	0.9889	0.9833	0.9778
1	0.9333	0.9278	0.9222	0.9167	0.9111
2	0.8667	0.8611	0.8556	0.8500	0.8444
3	0.8000	0.7944	0.7889	0.7833	0.7778
4	0.7333	0.7278	0.7222	0.7167	0.7111
5	0.6667	0.6639	0.6611	0.6583	0.6556
6	0.6333	0.6306	0.6278	0.6250	0.6222
7	0.6000	0.5972	0.5944	0.5917	0.5889
8	0.5667	0.5639	0.5611	0.5583	0.5556
9	0.5333	0.5306	0.5278	0.5250	0.5222
10	0.5000	0.4972	0.4944	0.4917	0.4889
11	0.4667	0.4639	0.4611	0.4583	0.4556
12	0.4333	0.4306	0.4278	0.4250	0.4222

Early Retirement Adjustment Factors

Years	Months			
	5	6	7	8
0	0.9722	0.9667	0.9611	0.9556
1	0.9056	0.9000	0.8944	0.8889
2	0.8389	0.8333	0.8278	0.8222
3	0.7722	0.7667	0.7611	0.7556
4	0.7056	0.7000	0.6944	0.6889
5	0.6528	0.6500	0.6472	0.6444
6	0.6194	0.6167	0.6139	0.6111
7	0.5861	0.5833	0.5806	0.5778
8	0.5528	0.5500	0.5472	0.5444
9	0.5194	0.5167	0.5139	0.5111
10	0.4861	0.4833	0.4806	0.4778
11	0.4528	0.4500	0.4472	0.4444
12	0.4194	0.4167	0.4139	0.4111

Early Retirement Adjustment Factors

Years	Months			
	9	10	11	12
0	0.9500	0.9444	0.9389	0.9333
1	0.8833	0.8778	0.8722	0.8667
2	0.8167	0.8111	0.8056	0.8000
3	0.7500	0.7444	0.7389	0.7333
4	0.6833	0.6778	0.6722	0.6667
5	0.6417	0.6389	0.6361	0.6333
6	0.6083	0.6056	0.6028	0.6000
7	0.5750	0.5722	0.5694	0.5667
8	0.5417	0.5389	0.5361	0.5333
9	0.5083	0.5056	0.5028	0.5000
10	0.4750	0.4722	0.4694	0.4667
11	0.4417	0.4389	0.4361	0.4333

12 0.4083 0.4056 0.4028 0.4000

(g) The board, upon the advice of the actuary, shall establish and adjust, as required, the table of estimated primary insurance amounts, which shall be utilized in computing the retirement benefit.

For purposes of this article, the primary insurance amount shall be estimated based on the employee's age as of the date of retirement or the date of termination of a vested member, whichever is applicable, and the employee's earnings, provided that:

(1) An employee's earnings prior to the first day of service with the employer shall be assumed to have been zero, and

(2) An employee's earnings during the period of service shall include only those earnings paid by the employer, and

(3) For those members who have not attained the normal retirement age under the federal system as of the date of retirement (i) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of a vested member, whichever is applicable, and (ii) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of a vested member, whichever is applicable, and (iii) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(h) The employer shall certify the years of service to be credited at retirement and the final compensation to be utilized in computing the normal and early retirement pension.

(i) Notwithstanding subdivision (e), any retired member receiving a normal retirement pension may present evidence required by the board of the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work or any reductions on account of early retirement. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

(j) All part-time and intermittent employees of a county which elects to be subject to this article shall not be eligible to participate in the retirement plans provided by this article.

31511.5. Notwithstanding any other provision of this chapter to the contrary, no surviving spouse benefit shall be paid to a surviving spouse of a member who at the time of death had not met the minimum age and service credit requirements for service retirement.

31511.6. General members may, within 180 days of the operative date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. Furthermore, any general member who does not

elect to transfer during this 180-day period, may elect to transfer within the 30 days prior to any annual anniversary of the operative date of this article. Such a transfer is voluntary and shall be irrevocable.

31511.7. Until the completion of the next regularly scheduled actuarial survey of the retirement system, the employer contribution rate required to finance the plan created by this article shall be established by the board, upon the recommendation of the actuary.

31511.8. The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member of the plan created by this article who retires at or beyond normal retirement age or dies shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the Los Angeles-Anaheim-Long Beach area, but such change shall not exceed 5 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 5 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance. No adjustment shall be made in the retirement allowance of a member who retires prior to attaining normal retirement age until the member attains normal retirement age.

31511.9. (a) An employer which is subject to this article shall provide disability benefits for its employees through a long-term disability plan which shall be separate from and administered separately from the retirement plans authorized by this article and all other retirement plans.

(b) The long-term disability plan shall consist of a separate trust which shall be funded utilizing a level cost method and employer contributions. No employee shall be required to make any employee contribution to the long-term disability plan.

(c) The board of supervisors shall contract for the resolution of the issue of disability. The board of supervisors shall establish an appeals board to which a member who is aggrieved by a decision of the administrator may appeal.

(d) Any member permanently incapacitated for the performance of duty, regardless of age or years of service, shall receive disability benefits as follows: (1) for not to exceed two years; (2) for any time after the expiration of the two-year period specified in subdivision (a) if, and only if the member is unable to perform the duties of any occupation for which the member is qualified by reason

of training or experience.

(e) The disability benefit shall be 50 percent of the final compensation of the member reduced by any Social Security benefits, workers' compensation benefits, and earnings from any employment other than employment which is part of a rehabilitation program.

31511.10. (a) The board of retirement shall establish a position whose qualifications shall include experience in administration and communication of defined benefit plans and defined contribution plans and whose duties shall include management of the plan or plans adopted pursuant to this article and reporting to the county treasurer and the director of personnel.

(b) The board of retirement shall establish and implement a comprehensive communication program to educate employees regarding the benefits available under this article and Social Security.

31511.11. (a) The board of supervisors of any county subject to this article shall establish a defined contribution retirement plan authorized by Section 401 of the Internal Revenue Code of 1954 or a similar plan authorized by the Internal Revenue Code of 1954.

(b) Any full-time employee of the county who is hired by the county on or after the operative date of this article in that county and has completed 6 months of credited full-time service with the county or any member who elects to transfer to the retirement plan created by this article shall participate in the plan.

(c) The county shall partially or fully match the contributions of the employee on the basis mutually agreed to by the board of supervisors and the employee representatives.

(d) The right of the employee to benefits derived from employee contributions vests upon the commencement of the participation by the employee in the plan.

(e) The right of the employee to benefits derived from matching employer contributions vests 100 percent after five years of full-time service with the county.

(f) Upon termination of the employment of an employee whose benefits derived from employer contributions are not vested, benefits derived from the contributions of the employee shall be refunded to the employee and the matching contributions of the employer shall be credited to reduce future employer contributions or to pay expenses of the plan.

(g) The defined contribution plan shall accept rollover contributions from other plans to the extent authorized by federal law.

(h) The plan shall be administered in accordance with subdivision (k) of Section 401 of the United States Code.

Article 2.7 General Limitations 31515-31517

31515. It is the intent of the Legislature to specifically include in the County Employees Retirement Law of 1937 provisions of law that limit public retirement benefits, other than health benefits, for the members of the legislative bodies of counties and districts and provisions respecting the impact of salary and benefit increases upon the funding status of county retirement systems.

This chapter shall be known and may be cited as the Responsibility in Pensions Act of 1995.

31515.5. The board of supervisors, in compliance with Section 23026, shall make public, at a regularly scheduled meeting of the board, all salary and benefit increases that affect either or both represented employees and nonrepresented employees. Notice of any salary or benefit increase shall be included on the agenda for the meeting as an item of business in compliance with the requirements of Section 54954.2. Notice shall occur prior to the adoption of the salary or benefit increase, and shall include an explanation of the financial impact that the proposed benefit change or salary increase will have on the funding status of the county employees' retirement system.

The board of retirement, or board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized, consistent with its fiduciary duties, to have an enrolled actuary prepare an estimate of the actuarial impact of the salary or benefit increase. The actuarial data shall be reported to the board of supervisors.

Nothing in this section shall be construed to limit or lessen the requirement imposed by Section 7507 that the costs associated with increases in benefits be determined by an enrolled actuary and publicly disclosed two weeks prior to an adoption of the increase in benefits.

31516. The board of supervisors, in compliance with Section 7507, shall secure the services of an enrolled actuary to provide a statement of the actuarial impact upon future annual costs before authorizing increases in benefits. An "enrolled actuary" means an actuary enrolled under Sections 1241 and 1242 of Title 29 of the United States Code and "future annual costs" shall include, but not be limited to, annual dollar increases or the total dollar increases involved when available.

The future annual costs as determined by the actuary shall be made public at a public meeting at least two weeks prior to the adoption of any increases in benefits.

31517. (a) Notwithstanding any other provision of this chapter, as provided in Section 53060.1, the benefits of any member of a legislative body of any county or district shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of

members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.

(b) Notwithstanding any other provision of this chapter, members of the legislative body of a county or district shall not be eligible to accrue multiple benefits greater than the most generous schedule of benefits being received by any category of nonsafety employees from two or more public agencies for concurrent service except in the case of a member who serves as a regular full-time employee in a separate public agency.

(c) This section shall be applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

Article 3 Retirement Board 31520-31539

31520. Except as otherwise delegated to the board of investment and except for the statutory duties of the county treasurer, the management of the retirement system is vested in the board of retirement, consisting of five members, one of whom shall be the county treasurer. The second and third members of the board shall be active members of the association elected by it within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth and fifth members shall be qualified electors of the county who are not connected with county government in any capacity, except one may be a supervisor and one may be a retired member, and shall be chosen by the board of supervisors. The first persons chosen as the second and fourth members shall serve for two years from the date the system becomes operative and the third and fifth members shall serve for a term of three years from that date. Thereafter the terms of office of the four elected members are three years.

As used in this section "active member" means a member in the active service of a county, district, or superior court and a "retired member" means a member, including a member under former Section 31555, retired for service or disability.

31520.1. (a) In any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement shall consist of nine members and one alternate, one of whom shall be the county treasurer. The second and third members of the board shall be members of the association, other than safety members, elected by those members within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth, fifth, sixth, and ninth members shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors. A supervisor appointed as a member of the retirement board may not serve beyond his or her term of office as supervisor. The seventh member shall be a safety member of the association elected by the safety members. The eighth member shall be a retired member elected by the retired members of the association in a manner to be determined by the board of supervisors. The alternate member shall be that candidate, if any, for the seventh member from the group under Section 31470.2 or 31470.4, or any other eligible safety member in a county if there is no eligible candidate from the groups under Sections 31470.2 and 31470.4, which is not represented by a board member who received the highest number of votes of all candidates in that group. If there is no eligible candidate there may not be an alternate member. The first person chosen as the second and fourth members shall serve for a term of two years beginning with the date the system becomes operative, the third and fifth members shall serve for a term of three years beginning with that date, and the sixth, seventh and alternate members shall serve for a term of two years beginning January 1, 1952, or the date on which a retirement system established by this chapter becomes operative, whichever is the later. The

eighth and ninth members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member. Thereafter, the terms of office of the elected, appointed, and alternate members are three years.

(b) The alternate member provided for by this section shall vote as a member of the board only if the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate member shall fill the vacancy until a successor qualifies. The alternate member shall sit on the board in place of the seventh member if a member of the same service is before the board for determination of his or her retirement.

(c) Unless prohibited by a resolution or regulation of the board, the alternate member shall be entitled to both of the following:

(1) The alternate member shall have the same rights, privileges, responsibilities, and access to closed sessions as the second, third, seventh, and eighth member.

(2) The alternate member may hold positions on committees of the board independent of the second, third, seventh, or eighth member and may participate in the deliberations of the board or its committees whether or not the second, third, seventh, or eighth member is present.

(d) The amendments to this section during the 1972 Regular Session do not affect the continuation on the board of retired members appointed by the board of supervisors until the expiration of the term for which they were appointed.

31520.11. As an alternative to the terms of office specified in Section 31520. 1, the County of Contra Costa may, if the board of supervisors adopts a resolution, have terms of office which expire as follows:

Seat number 1, the treasurer, who serves on the board of retirement ex officio, and whose term of office on the retirement board expires with his or her term of office as treasurer.

Seats 2, 4, and 8 expire June 30, 1992, and every three years thereafter.

Seats 3, 5, and 9 expire June 30, 1993, and every three years thereafter.

Seats 6, 7, and alternate expire June 30, 1994, and every three years thereafter.

31520.12. (a) Notwithstanding Section 31520.1, and subject to the limitations of subdivision (c), in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662), the board of supervisors may, by resolution adopted by majority vote, appoint an alternate member for the fourth, fifth, sixth, and ninth members. The term of office of the alternate member shall run concurrently with the term of office of the ninth member. The alternate member shall vote as a member of the board only in the event the fourth, fifth, sixth, or ninth member is absent from a board meeting for any cause. If there is a vacancy with respect to the fourth, fifth, sixth, or ninth member, the alternate member shall fill that vacancy until a successor qualifies.

(b) The alternate member for the fourth, fifth, sixth, or ninth member shall be entitled to the same compensation as the fourth, fifth, sixth, or ninth member for attending a meeting, pursuant to Section 31521, whether or not the fourth, fifth, sixth, or ninth member attends the meeting.

(c) If the board of supervisors appoints a supervisor as the fourth, fifth, sixth, or ninth member, an alternate member appointed pursuant to subdivision (a) may not serve as an alternate for that supervisor member unless service by an alternate member for an appointed supervisor member is approved by the majority of the electors in the county.

(d) This section shall apply only to a county of the ninth class, as defined in Sections 28020 and 28030.

31520.2. In any county in which the assets of the retirement system exceed eight hundred million dollars (\$800,000,000), the board of supervisors may, by resolution, establish a board of investments. The board shall consist of nine members, one of whom shall be the county treasurer. The second and third members shall be general members of the association elected by the general membership of the association for a three-year term and, on the effective date of the amendment to this section during the 1970 Regular Session, shall also be members of the board of retirement. The fourth member shall be a safety member elected by the safety membership of the association for a three-year term and, on the effective date of the amendment to this section during the 1970 Regular Session, shall also be a member of the board of retirement. The eighth member shall be a retired member of the association elected by the retired membership of the association for a three-year term and, on the effective date of the amendment to this section during the 1976 Regular Session, shall also be a member of the board of retirement. The fifth, sixth, seventh, and ninth members shall be qualified electors of the county who are not connected with county government in any capacity, and shall be appointed by the board of supervisors. They shall also have had significant experience in institutional investing, either as investment officer of a bank, or trust company; or as investment officer of an insurance company, or in an active, or advisory, capacity as to investments of institutional or endowment funds. The first person chosen as a fifth, sixth, or seventh member, shall serve for three years, the second person chosen shall serve a four-year term, and the third person chosen shall serve a two-year term. The ninth member shall be appointed for the balance of a term ending December 31, 1978. Thereafter, all terms of all appointed members shall be three years. The general members, the safety member, and the retired member shall serve on the board of investment until their current term as members of the board of retirement expires.

The board of investment shall be responsible for all investments of the retirement system.

31520.3. (a) Notwithstanding Section 31520.1, the board of retirement of a county of the 16th class, as defined by Sections 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, may, by majority vote, appoint, from a list of nominees submitted by

an organization consisting solely of retired members, an alternate retired member to the office of the eighth member, who shall serve until the expiration of the current term of the current eighth member and thereafter the alternate retired member shall be elected by the retired members of the association in the same manner and at the same time as the eighth member is elected. The term of office of the alternate retired member shall run concurrently with the term of office of the eighth member. The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any cause. If there is a vacancy with respect to the eighth member, the alternate retired member shall fill that vacancy until a successor qualifies. The alternate retired member shall be entitled to the same compensation as the eighth member for attending a meeting, pursuant to Section 31521, whether or not the eighth member is in attendance at those meetings. In the event that this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate safety member shall not sit and act for the eighth member, except as described in subdivision (b).

(b) If both the eighth member and the alternate retired member are not attending a meeting, the alternate safety member may sit and act for the eighth member as described in Section 31520.1.

31520.4. In any county with a board of retirement composed of nine members pursuant to Section 31520.1, if the second, third, seventh, or alternate member of the board is injured or killed while performing his or her duties as a member of the board, that member shall be deemed to have been acting in the course and scope of his or her duties as an employee of the county or district employing the member, for the limited purpose of determining eligibility for workers' compensation benefits or disability or death benefits from the retirement system.

This section shall not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in that county.

31520.5. (a) Notwithstanding Section 31520.1, in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662), the board of retirement may, by majority vote, appoint, from a list of nominees submitted by a qualified retiree organization, an alternate retired member to the office of the eighth member, who shall serve until the expiration of the current term of the current eighth member. Thereafter, the alternate retired member shall be elected separately by the retired members of the association in the same manner and at the same time as the eighth member is elected. An organization shall be deemed to be a "qualified retiree organization" for purposes of this subdivision if a majority of the members of the organization are retired members of the system.

(b) The term of office of the alternate retired member shall run concurrently with the term of office of the eighth member. The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any cause. If there is a vacancy with respect to the eighth member, the alternate retired member shall fill that vacancy until a successor

qualifies. Except as provided in subdivision (c) and as otherwise provided in this subdivision, the alternate retired member shall be entitled to the same rights and privileges and shall have the same responsibilities and access to closed sessions as the eighth member.

(c) The alternate retired member may hold positions on committees of the board independent of the eighth member and may participate in the deliberations of the board or its committees whether or not the eighth member is present, unless prohibited by resolution or regulation of the board.

(d) The alternate retired member shall be entitled to the same compensation as the eighth member for attending a meeting, pursuant to Sections 31521 and 31521.1, whether or not the eighth member is in attendance at those meetings.

(e) (1) If this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate safety member shall not sit and act for the eighth member, except as described in paragraph (2).

(2) If both the eighth member and the alternate retired member are not attending a meeting, the alternate safety member may sit and act for the eighth member as described in Section 31520.1.

31521. The board of supervisors may provide that the fourth and fifth members, and in counties having a board consisting of nine members or nine members and an alternate retired member, the fourth, fifth, sixth, eighth, ninth, and alternate retired members, and in counties having a board of investments under Section 31520.2, the fifth, sixth, seventh, eighth, and ninth members of the board of investments, shall receive compensation at a rate of not more than one hundred dollars (\$100) for a meeting, or for a meeting of a committee authorized by the board, for not more than five meetings per month, together with actual and necessary expenses for all members of the board.

31521.1. (a) The board of supervisors may provide that in counties having a board consisting of nine members and an alternate retired member, the fourth, fifth, sixth, eighth, ninth, and alternate retired members, and in counties having a board of investments under Section 31520.2, the fifth, sixth, seventh, eighth, and ninth members of the board of investments, shall receive compensation at a rate of not more than one hundred dollars (\$100) for a meeting, or for a meeting of a committee authorized by the board, for not more than five meetings per month, together with actual and necessary expenses for all members of the board.

(b) This section shall apply only in a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31521.3. (a) The board of supervisors may provide that the fourth, fifth, sixth, eighth, ninth, and alternate retired members of the board of retirement shall receive compensation for the review and analysis of disability retirement cases. That compensation shall be limited to the first time a case is considered by the board and shall

not exceed one hundred dollars (\$100) per day. The compensation shall be prorated for less than eight hours of work in a single day.

(b) A board member compensated pursuant to subdivision (a) shall certify to the retirement board, in a manner specified by the retirement board, the number of hours spent reviewing disability cases each month. In no event shall the number of hours compensated under this section exceed 32 hours per month.

(c) On or before March 31, 2010, and on or before March 31 in each even-numbered year thereafter, the compensation limit established by the board of supervisors pursuant to subdivision (a) shall be adjusted biennially by the board of retirement to reflect any change in the Consumer Price Index for the Los Angeles, Riverside, and Orange County areas that has occurred in the previous two calendar years, rounded to the nearest dollar.

(c) This section shall apply only in a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31522. The official duties of elected board members who are employees of the county or a district shall be included as part of their county or district employment and their board duties shall normally take precedence over any other duties. The elected board members who are county or district employees shall not receive any additional compensation by virtue of their election to the board.

31522.1. The board of retirement and both the board of retirement and the board of investment may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards. The appointments shall be made from eligible lists created in accordance with the civil service or merit system rules of the county in which the retirement system governed by the boards is situated. The personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees.

31522.2. In a county in which the board of retirement or both the board of retirement and the board of investment have appointed personnel pursuant to Section 31522.1, the respective board or boards may elect to appoint an administrator as provided for in this section. The position of the administrator shall not be subject to county civil service or merit system rules. The person so appointed shall be a county employee and the position of administrator shall be included in the salary ordinance or salary resolution adopted by the board of supervisors for the compensation of county officers and employees. The administrator so appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the administrator by the appointing board or boards.

This section shall not be operative in any county unless the board

of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

31522.3. (a) In a county in which the board of retirement or both the board of retirement and the board of investment have appointed personnel pursuant to Section 31522.1, the respective board or boards may elect to appoint assistant administrators and chief investment officers as provided for in this section. The positions of the assistant administrators and chief investment officers designated by the retirement board shall not be subject to county charter, civil service, or merit system rules. The persons so appointed shall be county employees and shall be included in the salary ordinance or salary resolution adopted by the board of supervisors for the compensation of county officers and employees. The assistant administrators and chief investment officers so appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the assistant administrators and chief investment officers by the appointing board or boards.

(b) This section shall not apply to any person who was an assistant administrator or a chief investment officer and was included in the county civil service or was subject to merit system rules on December 31, 1996.

(c) This section shall only apply to a county of the third class, a county of the eighth class, a county of the 14th class, a county of the 15th class, or a county of the 18th class, as provided by Sections 28020, 28024, 28029, 28035, 28036, and 28039.

31522.4. (a) In a county in which the board of retirement or both the board of retirement and the board of investment have appointed personnel pursuant to Sections 31522.1 and 31522.2, the respective board or boards may elect to appoint assistant administrators, persons next in line of authority to assistant administrators, chief legal officers, chief deputy legal officers, chief investment officers, and investment officers next in line of authority to chief investment officers as provided for in this section. These positions designated by the board or boards shall not be subject to county charter, civil service, or merit system rules. The persons appointed shall be county employees and their positions shall be included in the salary ordinance or salary resolution adopted by the board of supervisors for the compensation of county officers and employees. The persons appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the persons so appointed by the appointing board or boards.

(b) This section shall not apply to any person who was an assistant administrator, person next in line of authority to an assistant administrator, chief legal officer, chief deputy legal officer, chief investment officer, or investment officer next in line of authority to a chief investment officer and was included in the county civil service or was subject to merit system rules on December 31, 2001, unless that person consents to make this section

applicable to him or her.

(c) This section shall only apply to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31522.5. (a) In a county in which the board of retirement has appointed personnel pursuant to Section 31522.1, the board of retirement may appoint an administrator, an assistant administrator, a chief investment officer, senior management employees next in line of authority to the chief investment officer, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel.

(b) Notwithstanding any other provision of law, the personnel appointed pursuant to this section may not be county employees but shall be employees of the retirement system, subject to terms and conditions of employment established by the board of retirement. Except as specifically provided in this subdivision, all other personnel shall be county employees for purposes of the county's employee relations resolution, or equivalent local rules, and the terms and conditions of employment established by the board of supervisors for county employees, including those set forth in a memorandum of understanding.

(c) The compensation of personnel appointed pursuant to this section shall be an expense of administration of the retirement system, pursuant to Section 31580.2.

(d) The board of retirement and board of supervisors may enter into any agreements as may be necessary and appropriate to carry out the provisions of this section.

(e) Section 31522.2 is not applicable to any retirement system that elects to appoint personnel pursuant to this section.

(f) This section shall apply only in Orange County.

(g) This section shall apply to the retirement system established under this chapter in San Bernardino County at such time as the board of retirement, by resolution, makes this section applicable in that county.

31522.6. The board may contract with a third party to temporarily assume administration of the system if a catastrophic event destroys or severely damages the system's administrative facilities or otherwise prevents or significantly hinders continued local administration of the system. Local administration of the system shall resume as soon as practicable.

The costs of contracting with the third party for temporary administration of the system shall be a charge against the investment earnings of the retirement fund.

31523. If a vacancy on the board occurs for any cause or on the expiration of the term of office of any member, a successor shall be chosen in the same manner as was his predecessor, except that if an election to fill a vacancy for the second, third, seventh or eighth member has been called and only one member has been duly nominated in accordance with the rules established for the holding of such

election, the board of supervisors shall order that no election be held and shall direct the clerk to cast a unanimous ballot in favor of such nominated member.

31524. Separation from the service of the county of a member of the board vacates his office.

31525. The board may make regulations not inconsistent with this chapter. The regulations become effective when approved by the board of supervisors.

31526. The regulations shall include provisions:

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

(b) 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 such other information as is required by the board.

(c) For forms of annuity certificates and for such other forms as are required.

31527. In its regulations, the board may include the following provisions:

(a) From what warrants deductions of members' contributions shall be made.

(b) For a period of time longer than one year during which a member may redeposit in the the retirement fund an amount equal to all of the accumulated normal contributions which he has withdrawn, plus regular interest thereon from the date of return to service.

(c) For a period of time longer than one year during which a member brought within the field of membership may pay into the retirement fund the amount equal to the contributions he would have made plus interest, if he had been a member from the date of its organization, or from the date of his entrance into county service, whichever is later.

(d) For a withdrawal charge against a member who withdraws his accumulated contributions. The withdrawal charge shall not exceed the interest credited to the member subsequent to the effective date of the regulation.

(e) For the exemption or exclusion from membership as a peace officer member or as a safety member or from membership altogether, in the discretion of the board, of persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose rate of compensation is less than eighty dollars (\$80) a month, or persons whose compensation is fixed at a rate by the day or hour.

(f) For the periodic physical examination, at county expense of safety members.

(g) The amount of additional deductions from the salaries or wages of members pursuant to Article 15.5 or 16. Such a provision may be adopted in anticipation of, and prior to Article 15.5 or 16 becoming operative in the particular county.

(h) The day upon which each person entering the county employ

becomes a member of the association if it is to be other than the first day of the calendar month after his entrance into the service, provided that said day shall be no later than six weeks after his entrance into the service.

31528. (a) Unless permitted by this chapter, a member or employee of the board shall not become an endorser, surety, or obligor on, or have any personal interest, direct or indirect, in the making of any investment for the board, or in the gains or profits accruing from those investments. A member or employee of the board shall not directly or indirectly, for himself or herself, or as an agent or partner of others, borrow or use any of the funds or deposits of the retirement system, except to make current and necessary payments authorized by the board.

(b) A member or employee of the board shall not, directly or indirectly, by himself or herself, or as an agent or partner or employee of others, sell or provide any investment product that would be considered an asset of the fund, to any retirement system established pursuant to this chapter.

31529. The district attorney, or the county counsel if there is one, is the attorney for the board.

31529.1. Notwithstanding any other provision of this part, the board of retirement or the board of investment may elect to secure legal representation, on such matters as the board of retirement or the board of investment may specify, from other than the county counsel. The cost of the legal representation shall not exceed one-hundredth of 1 percent of system assets in any budget year.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31529.5. Notwithstanding Section 31529, the board may contract for the legal services of an attorney in private practice when the board determines, after consultation with the county counsel, that the county counsel cannot provide the board with legal services due to a conflict of interest or other compelling reason. The compensation of such attorney shall be paid from the portion of reserves created by Section 31592 which exceed one percent of the total assets of the fund, or in the absence of such excess reserves, from the county general fund.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31529.6. In addition to the powers granted by Sections 31529, 31529.5, and 31614, the board of retirement and the board of investment may contract with attorneys in private practice for legal services and advice. The boards shall pay reasonable compensation

for the legal services and advice. The compensation shall be considered a cost of administration of the system.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31529.9. (a) In addition to the powers granted by Sections 31529, 31529.5, 31614, and 31732, the board of retirement and the board of investment may contract with the county counsel or with attorneys in private practice or employ staff attorneys for legal services.

(b) Notwithstanding Sections 31529.5 and 31580, the board shall pay, from system assets, reasonable compensation for the legal services.

(c) This section applies to any county of the 2nd class, 7th class, 14th class, 15th class, or the 16th class as described by Sections 28020, 28023, 28028, 28035, 28036, and 28037.

(d) This section shall also apply to any other county if the board of retirement, by resolution adopted by majority vote, makes this section applicable in the county.

31530. The county health officer shall advise the board on medical matters and, if requested by the board, shall attend its meetings.

31531. If it is impracticable for the board to determine from the records the length of service or the age of any member, or if the member refuses or fails to give the board a statement of his service or age, it may estimate his length of service or age for the purposes of this chapter.

31532. Sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter or upon order of a court of competent jurisdiction, or upon written authorization by the member.

31533. Whenever, in order to make a determination, it is necessary to hold a hearing the board may appoint either one of its members or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the board his proposed findings of fact and recommended decision.

31534. The proposed findings of fact and recommendations of the referee shall be served on the parties who shall have 10 days to submit written objections thereto which shall be incorporated in the record to be considered by the board.

Upon receiving the proposed findings of fact and the recommendations of the referee, the board may:

(a) Approve and adopt the proposed findings and the recommendations of the referee, or

(b) Require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon the receipt thereof the board shall take such action as in its opinion is indicated by such evidence, or

(c) Refer the matter back with or without instructions to the referee for further proceedings, or

(d) Set the matter for hearing before itself. At such hearing the board shall hear and decide the matter as if it had not been referred to the referee.

31535. The board may issue subpoenas and subpoenas duces tecum, and compensate persons subpoenaed. This power shall be exercised and enforced in the same manner as the similar power granted the board of supervisors in Article 9 (commencing with Section 25170) of Chapter 1, Part 2, Division 2; except that the power shall extend only to matters within the retirement board's jurisdiction, and committees of the board shall not have this power. Reasonable fees and expenses may be provided for by board regulation for any or all of such witnesses regardless of which party subpoenaed them.

Subpoenas shall be signed by the chairman or secretary of the retirement board, except that the board may by regulation provide for express written delegation of its subpoena power to any referee it appoints pursuant to this chapter or to any administrator appointed pursuant to Section 31522.2.

Any member of the board, the referee, or any person otherwise empowered to issue subpoenas may administer oaths to, or take depositions from, witnesses before the board or referee.

31535.1. The board may issue subpoenas and subpoenas duces tecum, and compensate persons subpoenaed. This power shall be exercised and enforced in the same manner as the similar power granted the board of supervisors in Article 9 (commencing with Section 25170) of Chapter 1 of Part 2 of Division 2 of this title; except that the power shall extend only to matters within the retirement board's jurisdiction, and committees of the board shall not have this power. Reasonable fees and expenses may be provided for by board regulation for any or all of the witnesses regardless of which party subpoenaed them.

Subpoenas shall be signed by the chairman or secretary of the retirement board, except that the board may by regulation provide for express written delegation of its subpoena power to the retirement administrator or to any referee it appoints pursuant to this chapter.

Any member of the board, the referee, or any person otherwise empowered to issue subpoenas may administer oaths to, or take depositions from, witnesses before the board or referee.

This section shall apply only in a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31536. If a superior court reverses the denial by the board of an application for a retirement allowance, or for a survivor's allowance

based on such allowance, or for a claim based on a claimed pension right or benefit, the superior court in its discretion may award reasonable attorney's fees as costs to the member or beneficiary of the member who successfully appealed the denial of such application. Such costs shall be assessed against the board, shall be considered a cost of administration, and shall in no event become a personal liability of any member of the board.

31537. The board may establish efficient records management procedures, which may include, but need not be limited to, maintenance and, when determined by the board to be necessary, disposal of records in its jurisdiction.

31538. The board shall adjust the payment of benefits payable pursuant to this part, as necessary, in order to maximize the benefits available to members who are subject to the limits of Section 415 of the Internal Revenue Code. Those adjustments shall include, but are not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof.

31539. (a) The board of retirement may, in its discretion, correct any error made in the calculation of a retired member's monthly allowance or any other benefits under this chapter, if either of the following exist:

(1) The error in the calculation of the member's monthly allowance or other benefits under this chapter was made as a result of fraudulent reports for compensation made, or caused to be made, by the member for his or her own benefit.

(2) The member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement and the system applied that overstated amount as the basis for calculating the member's monthly retirement allowance or other benefits under this chapter.

(b) The retirement allowance or other benefits under this chapter with respect to a retired member described in subdivision (a) shall be adjusted prospectively to the amount that would have been payable if the overstatement of the member's final compensation had not occurred.

(c) Adjustment of the member's retirement allowance or other benefits may also be implemented retroactively and include the collection or return of the overpayment of benefits. The board of retirement may direct staff to correct the overpayment of benefits by offsetting the amount to be recovered against future benefits. Adjustments to correct the overpayment of benefits may also be made by adjusting the allowance so that the retired member or the retired member and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies any party may have at law or in equity. Nothing in this section shall preclude any party from instituting an action for declaratory or other relief in lieu of

proceeding under this section.

(e) The period of limitation of actions under this section shall be 10 years and that period shall commence either from the date of payment or upon discovery of the facts described in subdivision (a), whichever date is later. The board shall determine the applicability of the period of limitation in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error.

Article 4 Membership 31550-31567

31550. Whenever this chapter becomes operative in any county a retirement association shall be organized.

31551. The persons expressly declared to be ineligible to membership by this article shall not become members of the retirement association, and, except as expressly excluded, the persons enumerated in this article shall become members of the association.

Persons employed as participants in a program of, and whose wages are paid in whole or in part by federal funds in accordance with, the Comprehensive Employment and Training Act of 1973 (Public Law 93-203), as amended, are excluded from membership. This exclusion shall not apply to active fire suppression personnel who are safety members pursuant to Sections 31469.3 and 31470.4.

31552. All existing officers and employees of the county become members of the association on the day the retirement system becomes operative, and thereafter each person entering the county employ becomes a member on the first day of the calendar month after his entrance into the service, unless otherwise provided by regulations adopted by the board. Such regulations may provide for waiver of membership by the prospective employee in the case of newly hired employees who have attained the age of 60. In all cases where there is such a waiver, said employee upon attaining the age of 70 shall thereafter be employed from year to year at the discretion of the county.

31552.1. On the first day of the calendar month after this section takes effect all existing officers and employees of the county, who, because of the provisions of Section 31552 prior to its amendment in 1953, were not members, become members on that day.

31552.2. All existing officers and employees of the county, now members of the retirement system, and who became employed by the county during that interim period when the law did not allow membership into the retirement system until the first day of the calendar month following the expiration of 180 days after his entrance into service, shall be allowed to make contributions and receive credit for that period of time as prior county service. The contribution rate shall be as prescribed in Section 31641.5 and election to receive credit for such service shall be available until time of filing of notice of retirement from county service.

31553. Elective officers become members of the retirement association on the first day of the calendar month following the filing of a declaration with the board to become a member, provided, however, that any such elective officer may, within 60 days after the expiration of the officer's term of office or within 60 days after

the officer ceases to hold the office, rescind the declaration and withdraw from the retirement association. In such cases, all contributions paid by the member shall be refunded in the same manner as applicable to members terminating service.

31554. All officers and attaches of the superior court established within the county, except judges and participants in any other pension system, become members of the association on the first day of the calendar month after the board of supervisors adopts by four-fifths vote a resolution providing for their inclusion. Thereafter each person entering such employ becomes a member on the first day of the calendar month following his entrance into the service of the court.

In this section "officer or attache of the superior court" includes all commissioners, phonographic reporters who are paid salaries or per diems by the county and whose contributions are based upon such salaries or per diems, secretaries, stenographers, investigators, messengers, or other employees of the court.

31556. The board of supervisors and all other county officers shall make the appropriations and perform the duties specified in this chapter with reference to court officers and attaches in the same manner as specified for county or district officers or employees. The deductions provided for in this chapter shall be made from the salaries of such officers or attaches in the same manner as for officers or employees of the county or districts.

31557. All officers and employees of any district become members of the association on the first day of the calendar month after:

(a) In the case of districts for which the board of supervisors is the governing body, such body adopts by four-fifths vote a resolution providing for the inclusion of the district in the retirement association.

(b) In the case of districts for which the board of supervisors is not the governing body, the governing body adopts by a two-thirds vote, a resolution providing for the inclusion of the district in the retirement association and the board, by majority vote, consents thereto. Thereafter, each person entering such employment becomes a member on the first day of the calendar month following his entrance into the service. However, if prior to January 1, 1976, the governing body and the board of retirement have executed an agreement providing for the purchase of prior service, the agreement may be amended to provide that the date of membership in the retirement association for any officer or employee shall be the first day of the calendar month following the officer's or employee's entrance into district service.

Members may be withdrawn from the association in the manner provided in Section 31564.

31557.1. Officers and employees of a district as defined in subdivision (g) of Section 31468, become members on the date specified in the agreement between the regents and the board of

supervisors relating to the transfer to the regents of the hospital in which they are employed or of the obligation to provide professional medical services at the hospital in which they are employed. Notwithstanding Section 31564, if the agreement so provides, those employees shall cease to be members on the date of a referendum relating to coverage of those members under the Federal Old Age, Survivors, Disability, and Health Insurance Program in which less than a majority of those eligible employees voted in favor of that coverage.

31557.2. Any action heretofore taken by the governing body of a district under Section 31557, or under color of that section, is hereby confirmed and validated and made fully effective. Membership in the association of any officers and employees of any district who were included in the association by such action of the governing body, is hereby validated and confirmed and made fully effective as of the time of such inclusion.

31557.3. On the date a district, as defined in subdivision (1) of Section 31468, is included in the retirement system, any personnel appointed pursuant to Section 31522.5 who had previously been in county service shall continue to be members of the system without interruption in service or loss of credit. Thereafter, each person entering employment with the district shall become a member of the system on the first day of the calendar month following his or her entrance into service.

31558. All existing members of a pension system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200) of this part and all employees eligible as safety members who at the time of entering service elected to become safety members, or who subsequently became members, shall become safety members and thereafter each person employed in a position, the principal duties of which consist of active law enforcement or active fire suppression or juvenile hall group counseling and group supervision, as defined in Sections 31469.3, 31469.4, 31470.2 and 31470.4, shall become a safety member on the first day of the calendar month following his or her entrance into the service. The sheriff and undersheriff shall become safety members on the first day of the calendar month following their entrance into the service. The marshal and assistant marshal shall become safety members on the first day of the calendar month following their appointment.

31558.1. Notwithstanding any of the provisions of Section 31558 to the contrary, each person who, prior to July 1, 1969, was employed in a position, the principal duties of which consist of active law enforcement as defined in Section 31469.3 or active fire suppression as defined in Section 31470.4, who has continuously since his or her employment made the salary contributions required of a safety member, and who has continuously since his or her employment been employed in a position which would make such person eligible to become a

safety member if he or she had not been over the age of 35 years at the time of his or her employment, shall become a safety member as of the first day of the calendar month following his or her original entrance into the service.

A member who meets the requirements of the preceding paragraph, except that he or she has not made the contributions required of a safety member, may receive credit for such service, as a safety member, when he or she has contributed, with interest to the date paid, the difference between contributions made and those which would have been required if he or she had been a safety member. Such additional contributions are to be made prior to retirement and notice of election to receive credit for service, as a safety member, pursuant to this section, shall be made to the retirement board prior to April 1, 1975.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance, make the provisions of the section applicable in that county.

31558.2. Notwithstanding any of the provisions of Section 31558 to the contrary, each person who, prior to the effective date of this section was employed in positions the principal duties of which consist of active law enforcement for not less than 10 years and who is employed by a county in a position which would make such person eligible to become a safety member at the time of his or her employment, may, if he or she so elects, become a safety member as of the first day of the calendar month following his or her entrance into county service.

A member may receive credit for such service, as a safety member, when he or she has contributed, with interest to the date paid, the difference between contributions made and those which would have been made by the member if he or she had been a safety member. Such additional contributions shall be made prior to retirement.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in that county.

31558.5. All members employed by a county having a population in excess of 2,000,000 who are employed on and prior to January 1, 1958, whose duties are described in Section 31470.6 and who prior to that date file with the board a written election to become safety members, shall become safety members on January 1, 1958.

All members employed by a county having a population of 2,000,000 or less and in excess of 500,000, who are employed on and prior to January 1, 1960, whose duties are described in Section 31470.6 and who prior to that date file with the board a written election to become safety members, shall become safety members on January 1, 1960.

After January 1, 1958, each person not over 35 years of age when employed by a county having a population in excess of 2,000,000 in a position the principal duties of which are described in Section 31470.6, shall become a safety member on the first day of the calendar month following his entrance into the service.

After January 1, 1960, each person not over 35 years of age when employed by a county having a population of 2,000,000 or less and in

excess of 500,000 in a position the principal duties of which are described in Section 31470.6, shall become a safety member on the first day of the calendar month following his entrance into the service.

31558.6. Notwithstanding any of the provisions of Section 31558 to the contrary, each person who is employed in a position, the principal duties of which consist of juvenile hall group counseling and group supervision as defined in Section 31469.4, on the date the provisions of Section 31469.4 are made applicable in a county by the board of supervisors and who files with the board written election to become a safety member on or prior to one year after the date the provisions of Section 31469.4 are made applicable in a county by the board of supervisors, shall become a safety member.

Thereafter each person when employed in such position, shall become a safety member on the first day of the calendar month following his or her entrance into the service.

31558.8. Notwithstanding any of the provisions of Section 31558 to the contrary, a person over 35 years of age who is employed by a county of the third class, as established by Sections 28020 and 28024, as amended in 1971, as a detective or investigator in the office of the district attorney, which would make the person eligible to become a safety member if he or she had not been over the age of 35 years at the time of his or her employment, may, if he or she so elects, become a safety member as of the first day of the calendar month following his or her entrance into county service regardless of age.

A member may receive credit for that service, as a safety member, when he or she has contributed, with interest to the date paid, the difference between contributions made and those which would have been made by the member if he or she had been a safety member. The additional contributions shall be made prior to retirement.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make this section applicable in the county.

31559. Whenever a county or district subject to the provisions of this chapter takes over and assumes any of the functions of any other public agency, and because of such assumption all or any employees of such other public agency become employees of such county or district, any such employee whose principal duties consist of active law enforcement or active fire suppression, as defined in Sections 31469.3, 31470.2 and 31470.4, who, because of such transfer of functions, is employed in such a position in such county or district, shall become a safety member on the first day of the calendar month following his entrance into service.

31560. A safety member shall remain a safety member only while the principal duties of his position consist of active law enforcement, active fire suppression or active lifeguard service as defined in Section 31469.3. While holding any other position in county service

he shall remain a member but not a safety member.

31561. Any person employed under contract for temporary services requiring professional or highly technical skill is ineligible for membership.

31562. Any elective officer who does not declare his intention to become a member of the retirement association as required by this chapter is ineligible to membership.

31563. Notwithstanding any other provision of law, a person ceases to be a member for any portion of his or her service as an elected public officer that is forfeited pursuant to Section 1243.

31564. All officers and employees of any district who have become members of the association as provided in Section 31557, may be withdrawn by a resolution of the governing body declaring all of the district's employees withdrawn from the association; provided, the governing body has first received a written petition signed by a majority of its officers and employees requesting that the district's officers and employees be withdrawn from the association.

Upon the adoption of any resolution to withdraw its members, all accumulated contributions held in the association shall be refunded to the district's employees upon the effective date of their withdrawal and in the same manner as the accumulated contributions would be refunded upon the termination of their employment by the district.

Upon the adoption of any resolution to withdraw its members and where there are no existing retirees from the district, the district's contributions shall be refunded to the district, or shall, upon the election of and designation by the governing body of the district, be transferred to another public retirement system.

In the event of the transfer of district contributions to another public retirement system, the employee contributions shall also be transferred to the other public retirement system.

The effective date of withdrawal of any resolution adopted pursuant to this section shall be at the end of the calendar month during which such resolution is adopted.

31564.2. (a) If a district's participation in the retirement system is terminated pursuant to the provisions of Section 31564, the district shall remain liable to the retirement system for the district's share of any unfunded actuarial liability of the system which is attributable to the officers and employees of the district who either have retired or will retire under the retirement system.

(b) Unless otherwise developed by an actuarial source and approved by the board of retirement, the amount of the district's liability shall be the unfunded actuarial liability of the entire system, computed as described below, multiplied by a fraction:

(1) The numerator of which is the total amount required to be contributed to the plan by the withdrawing district for the last five

years ending prior to the withdrawal date.

(2) The denominator of which is the total amount required to be contributed to the plan by all participating employers for the last five years.

The plan's total unfunded actuarial liability for this purpose shall be calculated on the basis of the actuarial assumptions used in the plan's most recent actuarial valuation, except that all district members shall be assumed to terminate as of the date of withdrawal.

(c) The district's liability shall be paid in accordance with a schedule determined by the retirement board over a period no longer than the period over which the plan's remaining unfunded actuarial liability is being amortized.

(d) The funding of the retirement benefits for the employees of a withdrawing agency is solely the responsibility of the withdrawing agency or the board of supervisors. Notwithstanding any other provision of law, no contracting agency shall fail or refuse to pay the employer's contribution required by this chapter or to pay the employer's contribution required by this chapter within the applicable time limitations. In dealing with a withdrawing district, the board of retirement shall take whatever action needed to ensure the actuarial soundness of the retirement system.

(e) The Legislature finds and declares that this section is declaratory of existing law, to the extent this section provides that upon withdrawal from the retirement system, a district shall remain liable for its share of the unfunded actuarial liability of the system. This section is intended to define the method of calculating the district's share of that unfunded actuarial liability.

31564.5. Whenever the governing body of a district for which the board of supervisors is not the governing body adopts a resolution for the inclusion of such district in the retirement association, if, in the opinion of the board because of conditions peculiar to such district the contributions required from such district by this chapter are insufficient to pay the same proportion of the costs of the system as will be paid by the county, the board may require that such district contract with the board to appropriate additional sums.

If, because of conditions peculiar to such district the contributions required from such district by this chapter are greater than necessary to pay the same proportion of the costs of the system as will be paid by the county, the board and such district may contract for lesser sums. Either of such contracts may provide, among other things, that whenever the board of supervisors makes an additional appropriation pursuant to Section 31454.5, the district also will make an additional appropriation calculated by a formula specified in such contract. All such districts are hereby authorized to enter into and perform such contracts.

31565. Any member of a system established under this chapter who is employed in a status requisite for membership in the State Teachers' Retirement System, may elect to transfer his membership to that system. Any member who elects to transfer his membership pursuant to this section may also elect in writing to withdraw his accumulated contributions, and in such event he shall be paid all of his accumulated contributions in the county retirement system.

31565.5. Any member of a system established under this chapter who ceases to be an employee of the county under the provisions of Education Code Section 873 may elect as authorized in Education Code Section 873.1 to remain a member of such system.

31567. Any member of a retirement system established under this chapter who is employed in a position, the principal duties of which consist of active law enforcement or active fire suppression as defined under Sections 31469.3, 31470.2 and 31470.4, and who, prior to 1955, had the right to elect to become a safety member of such system shall again have the right to elect to become a safety member.

Notice of such election shall be given in writing to the board of retirement administering the system.

The member's status as a safety member shall be effective on the first day of the second month following that in which the notice of election is received by the board of retirement.

Such a member may elect to receive credit for service rendered as a member of such system, as if he had been a safety member commencing in 1955. Notice of such election shall be given in writing to the board of retirement no less than 30 days prior to the member's retirement. The member shall receive credit for such service, as a safety member, if he contributes the difference between the member contributions actually made for that period of service and the contributions that he would have been required to make if he had been a safety member during that period. The member shall also contribute interest on the difference at the rates at which interest was credited on member contributions for each year of the period for which credit is sought.

An election under this section shall be irrevocable, and the additional contribution payments hereunder required, if not completed as specified, shall be forfeited to the retirement fund, and a forfeiting member shall then receive only general membership benefits. Additional contributions shall be made by lump sum payment or in such monthly payroll deduction amounts as determined by the board, but must be made prior to the member's retirement.

Article 5 Financial Provisions 31580-31607

31580. The board of supervisors shall appropriate annually from the proper county funds the amount necessary to defray the entire expense of administration of the retirement system based upon budget estimates prepared by the treasurer.

31580.1. The board may include each year in the contribution required of a district a reasonable amount, which may differ from district to district, to cover the costs of administering its retirement system as such costs affect the active and retired employees of that district. The board may also assess a district a reasonable amount to cover costs incurred because of the district's failure to submit reports and forward contributions on a timely basis.

31580.2. In counties in which the board of retirement, or the board of retirement and the board of investment, have appointed personnel pursuant to Section 31522.1 or 31522.5, or both, the respective board or boards shall annually adopt a budget covering the entire expense of administration of the retirement system which expense shall be charged against the earnings of the retirement fund. Except as described in Section 31580.3, the expense incurred in any year may not exceed eighteen hundredths of 1 percent of the total assets of the retirement system.

31580.3. (a) If during any year the expense of administration of the retirement system includes expenditures for software, hardware, and computer technology consulting services in support of that software or hardware, the expense incurred may not exceed the greater of the following:

(1) The sum of eighteen hundredths of 1 percent of the total assets of the retirement system plus one million dollars (\$1,000,000).

(2) Twenty-three hundredths of 1 percent of the total assets of the retirement system.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

31581. After the date a system becomes operative the board of supervisors shall, in the preparation and adoption of the county budget, add to the appropriation for salaries and wages and include therein an appropriation determined pursuant to Sections 31453, 31453.5 and 31454. Until such determination the additional appropriations shall equal 23.77 percent of the total compensation provided for all safety members covered by Article 7.5 (commencing with Section 31662) and 8.85 percent of the total compensation provided for all other employees who are members of the retirement association.

31581.1. The board of supervisors may elect to pay up to one-half of the contributions normally required of members for any period of time designated in the resolution providing for such payment. The payments shall not become part of the accumulated contributions of the member. Such payments may be made with respect to employees in one or more bargaining units irrespective of whether they are made with respect to other employees.

31581.2. The board of supervisors or the governing body of the district may agree to pay any portion of the contributions required to be paid by a member. All payments shall be in lieu of wages and shall be reported simply as normal contributions and shall be credited to member accounts.

The enactment of a resolution pursuant to this section shall not create vested rights in any member. The board of supervisors or the governing body of the district may amend or repeal the resolution at any time, subject to the provisions of Sections 3504 and 3505, or any similar rule or regulation of the county or district.

31582. (a) The county auditor shall certify to the board at the end of each month or at the end of each pay period the compensation earnable, as defined in Section 31461, paid to all safety members of the retirement association covered by Article 7.5 (commencing with Section 31662) and the compensation earnable, as defined in Section 31461, paid to all other members of the retirement association, and the auditor shall thereupon transfer from the appropriation to the retirement fund the percentage of this amount determined pursuant to Sections 31453, 31453.5 and 31454. Until that determination, the amount of the transfer shall be 23.77 percent of the compensation earnable, as defined in Section 31461, paid to all safety members covered by Article 7.5 (commencing with Section 31662) and 8.85 percent of the compensation earnable, as defined in Section 31461, paid to all other members.

(b) The board of supervisors may authorize the county auditor to make an advance payment of all or part of the county's estimated annual contribution to the retirement fund, provided that the payment is made within 30 days after the commencement of the county's fiscal year. If the advance is only a partial payment of the county's estimated annual contribution, transfers from the appropriation to the retirement fund shall be made at the end of each month or at the end of each pay period until the total amount estimated for the year is contributed. This amount shall be adjusted at the end of the fiscal year to reflect the actual contribution required for that year.

31582.1. In any county in which the board of retirement so provides, the county auditor shall not be required to make the certifications required by Section 31582.

31584. The board of supervisors shall make the appropriations, and if it fails or neglects to make the appropriations, the county

auditor shall transfer from any money available in any fund in the county treasury the sums specified by this chapter and this transfer shall have the same force and effect as it would have had if the required appropriation had been made by the board of supervisors.

31585. When any district becomes a part of the retirement system, the same appropriations and transfers of funds shall be made as those required of the county in this article, and such charges are legal charges against the funds of the district.

31585.1. When an employee paid from the county school service fund elects to remain a member of this retirement system as authorized by Section 1313 of the Education Code, the same appropriations, transfers, and disposition of funds shall be made as those required of the county by this article, and those charges are legal charges against the funds of the county school service fund.

31585.2. On and after the date a district, as defined in subdivision (1) of Section 31468, is included in the retirement system, the district's appropriations and transfers of funds made pursuant to Section 31585 shall be legal charges against the funds of the district and shall be part of the expense of administration of the retirement system pursuant to Section 31580.2.

31586. All payments of the county or of any district into the retirement fund, whether made pursuant to this article or made pursuant to law, are obligations of the county or district.

31587. The board shall apply the contributions of the county or district to its obligations under the system in the order and amounts as follows:

First, in an amount equal during each fiscal year to the liability accruing to the county or district because of service rendered during such year and on account of service and disability pensions, in an amount determined by the actuarial valuation as interpreted by the actuary.

Second, in an amount equal during each fiscal year to the payments made from contributions by the county or district during the year for death benefits.

Third, the balance of such contributions on the liabilities accrued on account of prior service benefits.

31588. A trust fund account to be designated as "employees retirement fund" shall be opened upon the books of the retirement board, or treasurer and auditor if authorized by the board, of any county adopting this retirement system.

The "employees retirement fund" shall be a trust fund created or continued and administered in accordance with this chapter, solely for the benefit of the members and retired members of the system and their survivors and beneficiaries.

Nothing in this section shall be construed to prohibit the retirement board paying administrative costs, already authorized or to be authorized, or to prohibit the transfer of surplus funds to county advance reserves.

31588.1. There is hereby established in the County Employees' Retirement System a deferred yield adjustment account which shall be increased by the sale or disposition of any debt securities at less than book value and shall be decreased by the sale or disposition of debt securities at more than book value. At the end of each year, a portion of the balance of this account shall be offset against the investment income for that year. The annual portion of the balance to be offset shall be proportional to the reciprocal of the average remaining life of the bonds sold. The amount of this account shall be included in any accounting or actuarial computations or listing of assets. In any year in which the gains on the sales of debt securities exceed the discounts realized on the sales of such securities, the excess shall be used to reduce the balance of the account.

This section shall not be operative in any county until such time as the board shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31588.2. Notwithstanding any other provision of law, no funds in the retirement fund shall be expended for any purpose other than the expense of administration of the system, investments for the benefit of the system, and the provision of benefits to the members and retired members of the system and their survivors and beneficiaries.

31589. All transfers or payments to the retirement system and all withdrawals and other cash transactions, shall be accounted upon the books of the retirement board, or treasurer and auditor, if authorized by the board, in and out of the retirement fund, in the same manner as county transactions.

31589.1. There is hereby established for accounting purposes in the County Employees Retirement Law of 1937 the following procedure for treating a trade of bonds for similar bonds. Any loss or gain attributable to a trade of a like bond in the portfolio of any retirement system adopted pursuant to this chapter may be amortized over the life of the bond traded out by adding to or subtracting from the discount or premium attributable to the bond traded in. Like bonds for purposes of this section are considered to be bonds which will mature within seven years of the life of the bond traded out. Bonds to be traded must be of the first four grades. The fact that one bond may be a debenture and another a mortgage bond, or that the bonds may have different rates of return, shall not keep them from being like bonds.

This section shall not be operative in any county until such time as the board shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31590. (a) All warrants, checks, and electronic fund transfers drawn on the retirement fund shall be signed or authorized by at least two board officers or employees, designated by the board or by the treasurer if designated by the board. If the treasurer is designated by the board, the board shall also designate the auditor to sign or authorize warrants, checks, and electronic fund transfers.

The authorization may be by blanket authorization of all warrants, checks, or electronic fund transfers appearing on a list or register, or may be by a standing order to draw warrants, checks, or electronic fund transfers, which shall be good until revoked. If the treasurer and auditor are designated by the board, a warrant, check, or electronic fund transfer is not valid until it is signed or authorized, numbered, and recorded by the county auditor, except as provided in subdivision (c).

(b) Any person entitled to the receipt of benefits may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of the person's choice under a program for direct deposit by electronic transfer established by the board or treasurer if authorized by the board. The direct deposit shall discharge the system's obligation in respect to that payment.

(c) The board may, or, if authorized by the board, the treasurer shall, authorize a trust company or trust department of any state or national bank authorized to conduct the business of a trust company in this state or the Federal Reserve Bank of San Francisco or any branch thereof within this state, to process and issue payments by check or electronic fund transfer.

31591. (a) Regular interest shall be credited semiannually on June 30th and December 31st to all contributions in the retirement fund which have been on deposit for six months immediately prior to that date. Interest at the rate of 2 1/2 percent per annum, until otherwise determined by the board, compounded semiannually, shall be used in the calculation of benefits under any mortality table adopted by the board of supervisors.

(b) No interest shall be credited to a member's account after the membership of the member in the retirement association has ceased, except under any of the following circumstances:

(1) The former member has left his or her accumulated contributions in the retirement fund and has either elected, in writing, a deferred retirement allowance, or is eligible to so elect under Section 31700 but has failed to do so.

(2) The surviving spouse of a deceased member or the legally appointed guardian of the member's unmarried children under age 18 has elected to leave a death benefit on deposit as provided for in Section 31781.2.

(3) The former member, regardless of service, has left his or her accumulated contributions in the retirement fund and has not terminated employment.

31592. Earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies

in interest earnings in other years, losses on investments and other contingencies, except as provided in Sections 31529.5 and 31592.2.

31592.2. In any county, earnings of the retirement fund during any year in excess of the total interest credited to contributions and reserves during such year shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, except that, when such surplus exceeds 1 percent of the total assets of the retirement system, the board may transfer all, or any part, of such surplus in excess of 1 percent of the said total assets into county advance reserves for the sole purpose of payment of the cost of the benefits described in this chapter.

Where the board of supervisors has provided for the payment of all, or a portion, of the premiums, dues, or other charges for health benefits, Medicare, or the payment of accrued sick leave at retirement to or for all, or a portion, of officers, employees, and retired employees and their dependents, from the county general fund or other sources, the board of retirement may authorize the payment of all, or a portion, of payments of the benefits described in this paragraph from the county advance reserves.

31592.3. In any county, earnings of the retirement fund, in excess of the total interest credited to contributions and reserves shall remain in the fund as a reserve against deficiencies in interest earnings in other years, losses on investments, and other contingencies, except that when the total amount in the reserve exceeds 1 percent of the total assets of the retirement system, the board may transfer all or any part of such reserve in excess of 1 percent of the total assets into a special fund which shall be used for the sole purpose of providing an increase in monthly retirement allowance pursuant to Section 31681.7 or Section 31739.4. In the event the amount credited to the special fund is not sufficient to pay the entire amount of the increase provided for by Section 31681.7 or Section 31739.4 then the amount of the increase shall be reduced in proportion to the amount of the balance on hand in the special fund at the close of the fiscal year preceding the fiscal year during which such increase is operative.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance, make the provisions of this section applicable in such county. The board of supervisors may in such ordinance provide that the increase in monthly retirement allowance provided for by Section 31681.7 or 31739.4 shall be effective only subject to the provisions of this section.

31592.4. (a) Notwithstanding Article 5.5 (commencing with Section 31610) and Article 8.6 (commencing with Section 31694), the amount of excess earnings available at the end of a fiscal year of the retirement fund, shall, subject to the limitations in this section, be treated in the immediately succeeding fiscal year, for all purposes under this chapter, as appropriations, transfers, and contributions made to the retirement fund by the county and districts. That treatment shall be solely for the purposes of

meeting the applicable requirements of Section 401 of the Internal Revenue Code of the United States. That treatment shall also occur only to the extent that, in the immediately succeeding fiscal year, the county and districts pay for, or otherwise make reimbursement of, health benefits for members heretofore or hereafter retired and their dependents. For purposes of this section, "excess earnings" means earnings of the retirement fund at the end of any fiscal year that exceed the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board of supervisors and the board of retirement may take any actions otherwise authorized by law, necessary to ensure that the program provided by this section complies with all applicable federal and state income tax laws.

(b) This section shall not be operative in any county until the board of supervisors and the board of retirement of the county, by resolution adopted by a majority vote of each board, make this section operative in the county.

(c) Nothing in this section is intended to, or should be construed to, affect the validity of any agreement entered into by a county and a retirement association whereby a county has agreed to provide and fund a health insurance program for retired employees and their dependents for hospital services, medical services, dental services, and optical services, prior to the effective date of this section.

(d) In any county in which this section becomes operative, the payments provided pursuant to this section shall be in lieu of any similar payments which could be made pursuant to Section 31592.2 and no payments shall be made pursuant to Section 31592.2 for all, or a portion, of the premiums, dues, or other charges for health benefits for retired employees and their dependents.

31592.5. The board shall provide to any organization that is recognized by the board as representing the retired employees of the county or district reasonable advance notice of any proposed changes to the retirement benefits offered by the system or the use or uses of excess funds of the retirement system. The organization shall have a reasonable opportunity to comment prior to any formal action by the board on the proposed changes.

31593. The retirement board shall conduct an audit of the retirement system at least once every 12 months and report upon its financial condition. The retirement board may retain the services of a certified public accountant to perform the annual audit. That audit shall be performed in accordance with generally accepted auditing standards. The cost of the audit shall be considered a cost of the administration of the retirement system. The audit report shall address the financial condition of the retirement system, internal accounting controls, and compliance with applicable laws and regulations. A copy of the audit report shall be filed with the board of supervisors.

Nothing in this section shall preclude the retirement board from selecting the county auditor to perform the annual audit, and if so done, the cost of that audit shall be considered a cost of the administration of the retirement system.

At the request of the county board of supervisors, the county

auditor may audit the accounts of the retirement system. The expense of that audit shall not be a cost chargeable by the county to the retirement system.

31594. It is the intent of the Legislature, consistent with the mandate of the voters in passing Proposition 21 at the June 5, 1984, Primary Election, to allow the board of any retirement system governed by this chapter to invest in any form or type of investment deemed prudent by the board pursuant to the requirements of Section 31595. It is also the intent of the Legislature to repeal, or amend as appropriate, certain statutory provisions, whether substantive or procedural in nature, that restrict the form, type, or amount of investments that would otherwise be considered prudent under the terms of that section. This will increase the flexibility and range of investment choice available to these retirement systems, while ensuring protection of the interests of their beneficiaries.

31595. The board has exclusive control of the investment of the employees retirement fund. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system. Except as otherwise expressly restricted by the California Constitution and by law, the board may, in its discretion, invest, or delegate the authority to invest, the assets of the fund through the purchase, holding, or sale of any form or type of investment, financial instrument, or financial transaction when prudent in the informed opinion of the board.

The board and its officers and employees shall discharge their duties with respect to the system:

(a) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system.

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(c) Shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

31595.1. (a) The board may authorize the treasurer to control and safely keep some or all of the moneys of the retirement system. If authorized, the treasurer may invest and reinvest the moneys, and may from time to time sell any securities belonging to the system and may invest and reinvest the proceeds therefrom. An investment in or sale of securities shall not be made except upon the authorization of the board.

(b) The board, in lieu of acting pursuant to subdivision (a), may delegate to another entity some or all of the powers prescribed in that subdivision.

31595.41. All acts made or done by the board or its officers and employees, on or after January 1, 1983, and until the effective date of this section, with respect to exchange-traded call options and related matters, which would have been valid if Section 31595.4, as amended by Section 1 of the act which enacts this section, had been in effect at the time the acts were made or done are hereby ratified, confirmed, and validated.

31595.5. The board may also invest in any stocks or shares of a diversified management investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars (\$50,000,000); except that the total investment in such stocks and shares, together with stocks and shares of all other corporations, may not exceed 25 percent of the assets of such fund determined on the basis of the cost of the stocks or shares.

31595.6. In addition to such other investments as are authorized by this article, the board may invest in real estate and leases thereof and improvements thereon for business or residential purposes as an investment for the production of income. The phrase "business or residential purposes" shall not include real estate or leases primarily intended for use or valued as agricultural, horticultural, farm, ranch, or mineral property. Real estate and leases acquired and improvements made thereon for business and residential purposes under this section shall not in the aggregate exceed an amount equal to 25 percent of the assets of the system and real estate and leases acquired and improvements made thereon for residential purposes under this section shall not in the aggregate exceed an amount equal to 10 percent of the assets of the system.

31595.9. Notwithstanding the provisions of Section 31595, in addition to other investments authorized by this article, funds received by the county treasurer not required for current disbursements may be invested in repurchase agreements or reverse repurchase agreements of any securities authorized by this article.

For purposes of this section, "repurchase agreement" means a purchase of securities by the board pursuant to an agreement by which the seller will repurchase the securities on or before a specified date and for a specified amount.

For purposes of this section, "reverse repurchase agreement" means a sale of securities by the board pursuant to an agreement by which the board will repurchase the securities on or before a specified date and for a specified amount.

31596. (a) When securities belonging to or held for the retirement association are sold, the county treasurer shall deliver the securities to the purchaser upon receiving the proceeds, and may execute any and all documents necessary to transfer title. The duties imposed upon the county treasurer by this article are a part of his or her official duties, for the faithful performance of which he or she is liable on his or her official bond.

(b) The board may, or if authorized by the board, the treasurer shall authorize a state or federally chartered depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or any trust company licensed under state or federal law to conduct the business of a trust company or any Federal Reserve Bank, to act as custodian of any securities owned by the retirement association. In that case, the duties imposed by subdivision (a) upon the county treasurer shall instead be performed by the board and shall be included in any agreement for custodial services. Any of these banks or trust companies may be authorized to collect the income from the securities and deposit the proceeds in an account established by the board for the retirement association.

31596.1. The expenses of investing its moneys shall be borne solely by the system. The following types of expenses shall not be considered a cost of administration of the retirement system, but shall be considered as a reduction in earnings from those investments or a charge against the assets of the retirement system as determined by the board:

(a) The costs, as approved by the board, of actuarial valuations and services rendered pursuant to Section 31453.

(b) The compensation of any bank or trust company performing custodial services.

(c) When an investment is made in deeds of trust and mortgages, the fees stipulated in any agreement entered into with a bank or mortgage service company to service such deeds of trust and mortgages.

(d) Any fees stipulated in an agreement entered into with investment counsel for consulting or management services in connection with the administration of the board's investment program, including the system's participation in any form of investment pools managed by a third party or parties.

(e) The compensation to an attorney for services rendered pursuant to Section 31607 or legal representation rendered pursuant to Section 31529.1.

31597. Before June 30th of each year the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding December 31st and its financial transactions for the year ending on that day.

31597.1. Before December 31 of each year, the retirement board shall file in the office of the county auditor and with the board of supervisors a sworn statement that shall exhibit the financial condition of the retirement system at the close of the preceding June 30th and its financial transactions for the fiscal year ending that day.

This section is not operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county. After the filing of the first fiscal year accounting under this section, the

provisions of Section 31597 do not apply in the county.

31597.2. In those counties in which the retirement board has authorized the treasurer to control and hold the assets of the retirement system pursuant to subdivision (a) of Section 31595.1, the treasurer shall be responsible for filing the statement required by Section 31597 or Section 31597.1, as applicable.

31598. The annual statement shall be prepared in accordance with generally accepted accounting principles on the basis of pronouncements of the Government Accounting Standards Board or its successor organization.

31599. In addition to other records and accounts, the retirement board, or the treasurer if authorized by the board, shall keep records and accounts as are necessary to show at any time:

(a) The total accumulated contributions of members.

(b) The total accumulated contributions of retired members less the annuity payments made to the members.

(c) The accumulated contributions of the county or district held for the benefit of members on account of service rendered as members of the retirement system.

(d) All other accumulated contributions of the county or district, including the amounts available to meet the obligation of the county or district on account of benefits granted to retired employees and on account of prior service of members.

31600. A pension, annuity, or retirement allowance is payable in equal monthly installments, but a smaller pro rata amount may be paid for part of a month when the pension, annuity, or retirement allowance begins after the first day of the month or ends before the last day of the month.

31601.1. In counties having a board of investments pursuant to Section 31520.2, no investment shall be made in real property unless it is approved by six votes of the board or, where a county board of supervisors or a county board of education has a material interest in the property unless it is approved by nine votes of the board.

31602. Notwithstanding any other provision of law, the board of retirement, or, in counties that have established a board of investments, the board of investments, may establish a program utilizing the retirement fund to assist system members and annuitants, through financing, to obtain homes in this state.

The board shall adopt regulations governing the program which shall, among other things, provide:

(a) That home loans be made available to currently employed members and annuitants for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(b) That private lending institutions in this state shall originate and service its home loans pursuant to agreements entered

into between those institutions and the board.

(c) That the recipients of the loans occupy the homes as their permanent residences in accordance with the rules and regulations established by the board.

(d) That its home loans shall be available only for the purchase or refinancing of homes in this state and that under no condition shall a member or annuitant have more than one outstanding loan.

(e) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board which shall provide a loan to value ratio of: (1) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (2) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (3) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(f) That there may be prepayment penalties assessed on its loan in accordance with the rules and regulations established by the board.

(g) That the criteria and terms for its loans shall provide the greatest benefit to members and annuitants consistent with the financial integrity of the program and the sound investment of the retirement fund.

(h) Any other terms and conditions as the board shall deem appropriate.

31603. The board of retirement or the board of investments, as applicable, may obtain a loan and pledge a portion of the assets of the retirement fund as security for the repayment of the loan if the board finds all of the following:

(a) An emergency exists affecting the national banking system or financial markets.

(b) The emergency prevents the association from readily accessing its funds.

(c) The loan is necessary to promptly deliver benefits when due.

The assets of the retirement fund pledged as security for the loan shall be subject to execution and other processes of the court only in connection with a proceeding to enforce the loan. The costs associated with securing and repaying the loan, including interest, shall be a charge against investment earnings of the fund.

31607. To assist in carrying out its investment powers and duties the board may employ an attorney in private practice.

Article 5.5 Alternative Financial Provisions

31610-31619

31610. This article shall not become operative in any county unless and until it is adopted by resolution of the county board of retirement and the county board of supervisors, whereupon, the following sections shall not be operative as to that county: Sections 31453, 31529.5, 31591, 31592, 31592.2, 31592.3, and 31871.

31611. An actuarial valuation shall be made within one year after the date on which any system established under this chapter becomes effective, and thereafter at intervals not to exceed three years. The valuation shall be conducted under the supervision of an enrolled actuary and shall cover the mortality, service, and compensation experience of the members and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 60 days prior to the beginning of the succeeding fiscal year, recommend to the board of supervisors such changes in the rates of interest, in the rates of contributions of members, in county and district appropriations as are necessary, and appropriate mortality tables. In making recommendations to the board of supervisors, the board shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. No adjustment shall be included in the new rates for time prior to the effective date of the revision. The cost of actuarial valuations and investigations may, in the sound discretion of the board, be charged against the earnings of the retirement fund.

31612. "Actuarial rate" means the interest assumption rate established by the most recent actuarial survey recommended by the board of retirement and adopted by the board of supervisors.

31613. "Net earnings" means the earnings of the retirement fund after accounting for any direct investment losses recognized during the year, less the amounts taken from the earnings as specified in subdivisions (a) and (b):

(a) The amounts specified in Sections 31580.2, 31580.3, if applicable, subdivisions (b) and (d) of Section 31596, if applicable and Section 31611 and 31614.

(b) Any reductions from earnings required by Sections 31588.1 and 31589.1, if applicable. Part or all of any amounts required by Sections 31588.1 and 31589.1 may be deducted, at the discretion of the board of retirement, from the Contingency Reserve Account as described in Section 31616.

31614. Notwithstanding Section 31529, the board may contract for the legal services of an attorney in private practice when the board determines, after consultation with the county counsel, that the

county counsel cannot provide the board with legal services due to a conflict of interest or other compelling reason. The compensation of the attorney shall be charged against the earnings of the retirement fund or paid from the county general fund.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31615. Regular interest at the actuarial rate, or at the highest rate possible if net earnings, as defined in Section 31613 are not sufficient to credit the full actuarial rate, shall be credited semiannually on June 30 and December 31 to all contributions, reserves, and accounts in the retirement fund, except the Contingency Reserve Account, which have been on deposit for six months immediately prior to those dates.

Interest at the actuarial rate, compounded semiannually, shall be used in the calculation of benefits under any mortality table adopted by the board of supervisors. No interest shall be credited to a member's account after the termination of the member's county service, unless the member has elected, in writing, to leave his or her accumulated contributions in the retirement fund and be granted a deferred retirement allowance, or the surviving spouse of a deceased member or the legally appointed guardian of the member's unmarried children under age 18 has elected to leave a death benefit on deposit as provided for in Section 31781.2.

31616. After the semiannual application of Section 31615, earnings of the retirement fund in excess of the total interest credited to contributions and reserves shall remain in the fund as a reserve against deficiencies in interest earnings, losses on investments, or payments made pursuant to Section 31588.1 or 31589.1, if applicable.

These funds shall be placed in an account known hereafter as the Contingency Reserve Account. The size of this account shall be determined semiannually by the board but shall not exceed 3 percent of the total assets of the retirement fund.

If, at the end of any semiannual period, the balance of the Contingency Reserve Account falls below 1 percent of system assets, the board shall, by the end of the subsequent semiannual period, provide funds from earnings of fund assets from the subsequent semiannual period, to bring the level of the Contingency Reserve Account to at least 1 percent of system assets.

No funds in the Contingency Reserve Account shall be available for the payment of benefits.

Net earnings remaining after the application of this section shall be applied as provided in Sections 31617, 31618, and 31619.

31617. In each county having an agreement prior to January 1, 1983, that a fixed part of the required Article 16.5 (commencing with Section 31870) cost-of-living contributions shall come from excess interest earnings on the fund, after the semiannual application of Sections 31615 and 31616, the balance of the net earnings, as defined in Section 31613, shall be used to pay those contributions.

31618. The board shall establish a Supplemental Retiree Benefit Reserve in the retirement system consisting of any amount previously in the reserve against deficiencies, which on the date of adoption of this article, exceeds 3 percent of the assets of the retirement fund, or any lesser amount, as determined by the board. In no event, however, shall the balance of the Contingency Reserve Account be reduced below 1 percent of system assets for this purpose. The Supplemental Retiree Benefit Reserve shall be used only for the benefit of retired members and beneficiaries.

Commencing on the date of adoption of this article, there shall be a semiannual transfer into this reserve of 50 percent of the balance of net earnings, as defined in Section 31613, after crediting all accounts pursuant to Section 31615, rebuilding the Contingency Reserve Account pursuant to Section 31616 and paying the part of the cost-of-living contributions pursuant to Section 31617, if applicable.

The distribution of the Supplemental Retiree Benefits Reserve shall be determined by the board.

31619. Remaining net earnings, after the sequential application of Sections 31615 and 31616 and Section 31617, if applicable, and Section 31618 shall be credited to all contributions, reserves, and accounts in the retirement fund, except the Contingency Reserve Account, in the manner prescribed in Section 31615, except that no further interest shall be credited to the Supplemental Retiree Benefit Reserve, established pursuant to Section 31618.

Article 6 Members' Contributions 31620-31630

31620. The normal rates of contribution of members shall be based on age at the nearest birthday at the time of entrance into the retirement system.

Notwithstanding any provisions of this chapter to the contrary, separate rates of contribution, allowances, or benefits for male and female members shall not be maintained or established.

31621. The normal rates of contribution except for members covered by Article 6.8 shall be such as will provide an average annuity at age 60 equal to one one-hundred-twentieth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

31621.1. In counties adopting Section 31676.11 the normal rates of contribution except for members covered by Article 6.8 shall be such as will provide an average annuity at age 55 equal to 1/120 of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors for each year of service rendered after entering the system.

31621.2. In counties adopting Section 31676.12, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter, shall be such as will provide an average annuity at age 60 equal to one one-hundredth of the final compensation of members not covered by Article 6.8 according to tables adopted by the board of supervisors, for each year of service rendered after entering the system.

31621.3. In counties adopting Section 31676.11, 31676.13, or 31676.14, or adopting one of such sections and then subsequently adopting another of such sections, the normal rate of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter shall be such as will provide an average annuity at age 55 equal to one two-hundred-fortieth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in such counties on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county.

31621.4. The normal rates of contribution except for members covered by Article 6.8 shall be such as will provide an average annuity at age 60 equal to one two-hundred-fortieth of the final compensation of members not covered by Article 6.8 (commencing with

Section 31639) of this chapter, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in such counties on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county.

31621.5. In counties adopting Section 31676.12, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter, shall be such as will provide an annual annuity at age 60 equal to one two-hundredth of the final compensation of members not covered by Article 6.8, according to tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in such counties, on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county.

31621.6. In counties adopting Section 31676.15, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639) of this chapter, shall be such as to provide an average annuity at age 55 equal to one one-hundredth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

31621.7. The normal rates of contribution for members covered by Section 31751 shall be such as will provide an average annuity at age 55 equal to one-three hundredth of the member's final compensation, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

Until revised pursuant to Sections 31453 and 31454, the normal rate of contribution of each member is that percentage of the member's earnable compensation, shown in the following table according to the member's age at the time of entry into the retirement system:

Age of entry into system	Percentage of contribution
16	2.93
17	2.93
18	2.93
19	2.93
20	2.93
21	2.93
22	2.93
23	2.94
24	2.94
25	2.95
26	2.96
27	2.97

28	2.98
29	3.00
30	3.02
31	3.04
32	3.06
33	3.08
34	3.10
35	3.12
36	3.15
37	3.17
38	3.20
39	3.22
40	3.25
41	3.28
42	3.31
43	3.34
44	3.37
45	3.40
46	3.43
47	3.46
48	3.50
49	3.54
50	3.57
51	3.61
52	3.65
53	3.69
54 and over	3.72

31621.8. In counties adopting Section 31676.17, 31676.18, or 31676.19, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639), shall be rates that provide an average annuity at the age of 55 years equal to one one-hundredth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

31621.9. In counties adopting Section 31676.14, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639), shall be that which will provide an average annuity at age 55 equal to 1/120 of the final compensation of members not covered by Article 6.8 (commencing with Section 31639), according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in counties on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution adopting this section.

This section shall apply only to a county of the 10th or 20th class, as provided by Sections 28020, 28031, and 28041.

31621.11. Instead of the normal rates of contribution required by Section 31621, 31621.1, 31621.2, or 31621.8 the board may, upon actuarial advice, establish a single rate of contributions applicable

to all persons becoming members after this section is made operative in that county by the board. However, this rate shall be such as to provide the average annuity described in Section 31621, 31621.1, 31621.2, or 31621.8.

31622. Until revised pursuant to Sections 31453 and 31454, the rate of contribution of each member not covered by Article 6.8 is that percentage of his earnable compensation shown in the following tables according to age and sex at the time of entry into the retirement system:

Age of Entry into system	Percentage of Contribution Male	Percentage of Contribution Female
16.....	6.55	7.02
17.....	6.59	7.07
18.....	6.63	7.13
19.....	6.67	7.19
20.....	6.71	7.25
21.....	6.75	7.31
22.....	6.80	7.38
23.....	6.85	7.45
24.....	6.90	7.52
25.....	6.96	7.61
26.....	7.01	7.69
27.....	7.07	7.78
28.....	7.14	7.87
29.....	7.20	7.96
30.....	7.27	8.06
31.....	7.34	8.16
32.....	7.42	8.26
33.....	7.49	8.37
34.....	7.58	8.48
35.....	7.66	8.58
36.....	7.75	8.69
37.....	7.84	8.80
38.....	7.93	8.92
39.....	8.02	9.03
40.....	8.12	9.15
41.....	8.22	9.27
42.....	8.33	9.38
43.....	8.43	9.51
44.....	8.54	9.63
45.....	8.64	9.75
46.....	8.75	9.88
47.....	8.86	10.00
48.....	8.97	10.13
49.....	9.08	10.26
50.....	9.20	10.39
51.....	9.31	10.52
52.....	9.42	10.65
53.....	9.54	10.79

54.....	9.65	10.97
55.....	9.76	11.07
56.....	9.88	11.21
57.....	10.00	11.35
58.....	10.12	11.49
59.....	10.25	11.64
60.....	_____	_____

31623. The normal rate of contribution established for age 59 is the rate for any member not covered by Article 6.8 who has attained a greater age before entrance into the retirement system, and that established for age 16 is the rate for any member not covered by Article 6.8 who enters the retirement system at a lesser age.

31625. Except as provided in Section 31625.1, unless otherwise provided by the regulations of the board the contribution shall be deducted by the county auditor or other officer charged with the duty of drawing salary or wage warrants from the first salary or wage warrant drawn in each month in favor of each member and shall be paid to the county treasurer and placed to the credit of each individual member's account.

31625.1. In those counties in which salary or wage warrants are drawn semimonthly, not to exceed one-half the contribution shall be deducted by the county auditor or other officer charged with the duty of drawing salary or wage warrants from the first salary or wage warrant drawn in each month in favor of each member, and not to exceed one-half of such deduction shall be deducted from the second salary or wage warrant drawn in each month in favor of each member. Such deductions shall be paid to the county treasurer and placed to the credit of each individual member's account.

31625.2. (a) Notwithstanding any other provisions of this chapter, contributions shall not be deducted from the salary of any member having credit for 30 years' service providing the member was a member on March 7, 1973, and remained in membership continuously until credited with 30 years' service.

(b) Notwithstanding subdivision (a), contributions shall not be deducted from the salary of any member having credit for 30 years' of continuous service in the retirement association of a county of the seventh class as established by Sections 28020 and 28028.

31625.3. Notwithstanding any other provision of this chapter, contributions shall not be deducted from the salary of any member who was a member before or after March 7, 1973, of the retirement association, another county retirement system established under this chapter, or the Public Employees' Retirement System, and has total reciprocal service credit of not less than 30 years in the retirement association, or in the retirement association and another county retirement system established under this chapter, or the Public

Employees' Retirement System, or a combination thereof.

This section shall not apply in any county unless and until it is adopted by a majority vote of the board of supervisors.

31626. Payment of salaries and wages less the contribution is full and complete discharge and acquittance of all claims and demands whatsoever for service rendered by members during the period covered by such payment, except the benefits afforded by this chapter.

31627. Subject to the regulations prescribed by the board, any member may elect to make additional contributions at rates in excess of his or her normal contributions, for the purpose of providing additional benefits. The exercise of this privilege by a member does not require the county or district to make any additional contributions. Upon application, the board shall furnish to the member information concerning the nature and amount of additional benefits to be obtained by the additional contributions.

31627.1. A member who has additional contributions under Section 31627 of the Government Code, or under Section 31504 of the Government Code, may, within 30 days prior to retirement, elect in writing to have all or any part of his accumulated additional contributions returned to him. The portion returned shall not be included in the calculation of the member's annuity.

31627.2. In any county in which the provisions of Section 31676.1 apply, any member who has additional contributions under Section 31504 of the Government Code, or under Section 31627 of the Government Code, may elect in writing to have all or any part of his accumulated additional contributions returned to him. The portion returned shall not be included in the calculation of the member's annuity. The board may order payment in whole or in part withheld for a period not to exceed 90 days after receipt of such written election.

31627.6. Whenever any member elects to receive credit for any time during which he was employed by a district and was not a member, under any provision of this chapter, such district shall make an additional appropriation equal to the amount which it would have appropriated had such member been a member during the time for which he has elected to obtain credit.

31628. If the service of a member is discontinued other than by death or retirement, upon proper application submitted to the retirement board, he or she shall be paid all of his or her accumulated contributions, in accordance with this chapter, minus a withdrawal charge, if a withdrawal charge has been provided for by the regulations of the board. The board may order payment in whole or in part withheld for a period not to exceed six months after date of separation. If a member does not file the proper application, the board shall send to the member, not more than 90 days after termination of service, at his or her last known address, a

registered or certified letter, return receipt requested, stating that he or she has money to his or her credit on the books of the retirement system and that if he or she does not claim the money within 10 years after date of notice, in the case of persons first employed before January 1, 1976, or within five years in the case of persons first employed on and after January 1, 1976, the money will be deposited in and become a part of the current pension reserve fund.

31629. If a former member does not file proper application for the return of his accumulated contributions within five years after date of such notice to him, such accumulated contributions shall be deposited in and become a part of the current pension reserve fund, and thereafter the fund shall not be liable to such member for any portion of his accumulated contributions.

However, notwithstanding the fact that such an application has not been filed, the board of retirement may, in its sound discretion authorize the return of any deposit account 90 days after the 90-day notice referred to in Section 31628, provided that the former employee had less than five years' service credit with the county.

No return of any deposit account may be made by mail pursuant to this section unless the letter provided for in Section 31628 was receipted for by the former member and the signed receipt is in the possession of the board of retirement or the county treasurer.

The amendment of this section enacted during the 1975-76 Regular Session shall be effective with respect to persons first becoming members of a retirement system on and after January 1, 1976.

31629.5. (a) Notwithstanding Sections 31628 and 31629, on and after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund.

(b) An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time except: (1) while the member is employed in county service in a position in which the member is not excluded from membership in this system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service, entered within six months after discontinuing county service, as a member of a reciprocal retirement system. All accumulated contributions contributed up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements that apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer

contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) Notwithstanding Section 31467, for purposes of this section, "accumulated contributions" means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

31630. Notwithstanding any other provisions in this chapter, the South Coast Air Quality Management District and in any county which has adopted Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, 31676.15, or 31751, the board of supervisors or district board, as the case may be, may agree to pay any portion of the members' normal contributions to the system. All the contributions paid by the county or district, as the case may be, shall remain its contributions, and no right therein shall accrue to any employee prior to the employee's election to take a regular, deferred, or disability retirement.

Any contributions paid by the board of supervisors or the district board on behalf of the members shall be as determined by upon actuarial advice, and approved by the board of retirement.

Article 6.8 Safety Members' Contributions 31639-31639.95

31639. This article shall apply in a county subject to the provisions of Sections 31676.1 and 31695.1.

31639.1. The normal rates of contribution of safety members shall be based on age at the nearest birthday at the time of entrance into the retirement system.

Notwithstanding any other provision of this chapter to the contrary, separate rates of contribution for male and female safety members shall not be maintained or established, nor shall different allowances or benefits be established for male and female members.

31639.25. The normal rates of contributions shall be such as will provide an average annuity at age 50 equal to one one-hundredth of the final compensation of safety members, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

The provisions of this section shall supersede the provisions of Section 31639. 2.

31639.26. Instead of the normal rates of contribution required by Section 31639.25 the board may, upon actuarial advice, establish a single rate of contributions applicable to all persons becoming members after this section is made operative in that county by the board. However, this rate shall be such as to provide the average annuity described in Section 31639.25.

31639.3. Until revised pursuant to Sections 31453 and 31454, the rate of contribution of each safety member is that percentage of his or her earnable compensation shown in the following tables according to age at the time of entry into the retirement system:

Age	Percentage
18	9.27
19	9.29
20	9.32
21	9.34
22	9.43
23	9.53
24	9.63
25	9.73
26	9.83
27	9.94
28	10.04
29	10.15
30	10.25
31	10.36
32	10.48

33	10.59
34	10.71
35	10.82
36	10.94
37	11.06
38	11.17
39	11.30
40	11.42
41	11.55
42	11.66
43	11.79
44	11.92
45	12.04
46	12.17
47	12.30
48	12.43
49 and over	12.56

31639.4. The normal rate of contribution established for age 35 is the rate for any safety member who has attained a greater age before entrance into the retirement system, and that established for age 21 is the rate for any safety member who enters the retirement system at a lesser age.

31639.5. The normal rate of contribution shall be such as will provide an average annuity at age 50 equal to one two-hundredth of the final compensation of safety members according to the table adopted by the board of supervisors for each year's service rendered after entering the system.

This section shall become operative in any county on the first day of the calendar month after the board of supervisors adopts a resolution making it operative in the county.

31639.7. If a member not previously within the field of membership as a safety member is brought within such field of safety membership by amendment to this chapter, he may receive credit as a safety member for all or any part of the time during which his duties would have made him eligible to become a safety member if such amendment had then been in effect by filing with the board at the time he elects to become a safety member his election to pay into the retirement fund an amount equal to the difference between the contributions actually made during the time for which he claims credit and the contributions he would have made during such time, including all additional contributions, if any, required by Article 7.5 of this chapter, had he been a safety member, together with regular interest on the amount required to be deposited.

31639.75. A safety member not previously within the field of membership as a safety member may receive not more than five years of credit as a safety member for all or any part of the time during which he or she was a general member by paying into the retirement fund by lump sum or by installment payments an amount equal to the

difference between the member and employer contributions actually made as a general member and the member and employer contributions that would have been made had he or she been a safety member during the time for which he or she claims credit together with regular interest on the amount required to be deposited. A member who elects to receive credit for only a part of his or her county service shall elect that county service latest in time and may not receive credit for any portion of that county service prior in time to any county service for which he does not elect to receive credit. This section is applicable only to active members with five or more years of service as a safety member.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

31639.76. Notwithstanding Section 31639.7, a safety member described in subdivision (b) of Section 31470.2 may receive credit as a safety member for all or any part of the time during which he or she was not within the field of membership as a safety member to the extent and subject to the terms and conditions provided in a memorandum of understanding between the employer and the designated employee representative.

This section shall apply only to a county of the eighth class, as defined in Sections 28020 and 28029, both as amended by Chapter 1204 of the Statutes of 1971, if the board of supervisors in that county has elected to make subdivision (b) of Section 31470.2 applicable in the county.

31639.8. The additional contributions of such members shall be paid by regular monthly salary deductions in the amount specified by the member, but in no case less than six dollars (\$6) per month. The total amount due shall be paid prior to the effective date of his death or retirement, except that his spouse, or his minor children if no spouse survives him, may elect to pay any balance due within 90 days after the death of a member. If the total amount due is not paid the member, his spouse or his minor children shall receive credit for service as a safety member for only the time for which such additional contributions are made. Any member who has elected to make such additional payments in installments by salary deductions may complete payment thereof by a single lump-sum payment at any time prior to the effective date of his retirement.

31639.85. Notwithstanding any other provisions in this chapter, in any county which has adopted Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, or 31676.15 the board of supervisors may agree to pay any portion of the safety members' normal contributions to the system. All contributions paid by the county shall remain county contributions, and no right therein shall accrue to any employee prior to the employee's election to take a regular, deferred or disability retirement.

Any contributions paid by the board of supervisors on behalf of the safety members shall be as determined upon actuarial advice, and

approved by the board of retirement.

31639.9. In any county of the ninth class, as defined by Sections 28020, and 28030, as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may meet and confer pursuant to the Meyers-Milias-Brown Act with a recognized employee organization which represents county employees who are not safety members because the board of supervisors has not made Section 31469.4 applicable in the county, and endeavor to reach agreement on any conditions to be required of employees or an employee organization seeking to have Section 31469.4 made applicable, including, but not limited to, whether the employees shall be required to pay all or part of the employer's normal and cost-of-living contributions, in excess of those it would have paid if the employees had remained general members, including any increased employer normal and cost-of-living contribution rates attributable to employees who have become safety members electing to purchase credit as a safety member, pursuant to Section 31639.7, for time served in an eligible position prior to becoming a safety member.

Any contributions paid by the employees on behalf of the employer to cover the increased cost of safety retirement shall be as determined upon actuarial advice and approved by the board of retirement.

The provisions of this section shall not be applicable in any county until the board of supervisors by resolution makes the provisions applicable.

31639.95. (a) This section shall only apply to the retirement system of Contra Costa County and only if the board of supervisors of that county adopts, by majority vote, a resolution making this section applicable in the county. Notwithstanding any other provision of law, the board of supervisors may make this section applicable in the county on a date specified in the resolution, which date may be different than the date of the resolution.

(b) (1) When the board of supervisors meets and confers pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) with any recognized employee organization that represents county employees who are safety members, the parties may agree, pursuant to a memorandum of understanding, to any of the following:

(A) Whether the employees shall be required to pay all or part of the employer's contributions required to fund the benefits of Section 31664.1, the amount or percentage of that contribution, the method that the contribution is made, and the commencement date, which may predate the effective date of the memorandum of understanding.

(B) Subject to an agreement reached pursuant to Section 31484.9, whether the employees shall be required to pay all or part of the employer's contributions required to fund the benefits of Section 31664.2, the amount or percentage of that contribution, the method that the contribution is made, and the commencement date, which may predate the effective date of the memorandum of understanding.

(C) Changing any of those conditions described in subparagraph (A) or (B), including, but not limited to, increasing or reducing, for any years, the portion and the amount of the employer's contributions

that employees are required to pay.

(2) The terms of any agreements reached with a recognized employee organization pursuant to this subdivision may be made applicable by the board of supervisors to unrepresented county employees who are safety members.

(c) (1) After the board of supervisors has adopted the resolution described in subdivision (a), the governing body of a district within the county may make this section applicable to its employees who are safety members pursuant to a memorandum of understanding under the Meyers-Miliias-Brown Act with any recognized employee organization that represents district employees who are safety members on any of the matters described in subdivision (b).

(2) The terms of any agreements reached with a recognized employee organization pursuant to this subdivision may be made applicable by the governing body of the district to unrepresented district employees who are safety members.

(d) Any contributions paid by a member pursuant to this section shall be deemed to be part of the member's accumulated contributions.

Article 7 Service 31640-31658

31640. "County service" means the employment of a person by a county, district, municipal court, or superior court.

31640.5. Where service for which a member receives credit, either prior to or during membership, is on a tenure which is temporary, seasonal, intermittent, or part time only, the member shall receive credit as continuous service for that proportion of the time he or she held the position as the time he or she actually was engaged in the performance of the duties of the position bears to the time required to perform the same duties in a full-time position.

A "year of service" in the position shall be construed to mean the time during which the member has earned one full year of credit, calculated as provided in this section.

31640.7. (a) A member of a retirement system shall not receive credit for service or contributions for credit for service in violation of the prohibitions provided in Section 23007.5 or 50033.

(b) Nothing in this section shall prohibit an elective officer from purchasing service credit pursuant to Section 31658.

31641. "Service" means uninterrupted employment of any person appointed or elected for that period of time:

(a) For which deductions are made from his earnable compensation from the county or district for such service while he is a member of the retirement association.

(b) In military service for which the county or district or member is authorized by other provisions of this chapter to make, and does make, contributions.

(c) For which he receives credit for county service or for public service or for both pursuant to the provisions of this article.

(d) Allowed for prior service.

31641.01. In any county of the eighth or ninth class as established in Sections 28020, 28029 and 28030 as amended by Chapter 1204 of the Statutes of 1971, the board of supervisors may provide by ordinance that each member shall be credited, at the rate of one day for each one day earned, with sick leave accumulated as of the date of his retirement and that sick leave credit shall be in addition to service credit. The additional cost to the retirement system shall be borne by the county or district.

31641.02. In any county of the third class as established in Section 28024, the board of supervisors may provide by ordinance that members specified in the ordinance shall be credited, for up to the full amount of sick leave accumulated as of the date of their retirement, and that sick leave credit shall be in addition to service credit. The additional cost to the retirement system shall be borne by the county or district.

31641.03. In any county the board of supervisors may provide by ordinance that members specified in the ordinance shall be credited, for up to 100 percent of sick leave accumulated as of the date of their retirement, and that sick leave credit shall be in addition to service credit. The additional cost to the retirement system shall be borne by the county or district.

This section shall not apply to members who are employed by a district unless the governing board of the district provides by resolution for its application to such members.

31641.04. (a) When the board of supervisors, by resolution, determines that because of an impending curtailment of service or change in the manner of performing service, savings of money, or other economic benefit resulting to the county, the best interests of the county would be served, a member shall be eligible to receive additional service credit if the following conditions exist:

(1) The member is employed in a job classification, county department, or other county organizational unit included in the resolution adopted by the board of supervisors.

(2) The member retires on or between dates specified by the board of supervisors in its resolution. In no event shall the specified period exceed 180 days.

(3) The county transmits to the retirement fund an amount determined by the board of retirement which is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount he would have received without such service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the county and the board of retirement.

(b) The amount of service credit shall be that amount as the board of supervisors determines but shall not be more than two years regardless of credited service and shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age.

(c) A county which elects to make the payment prescribed by subdivision (a) shall make such payment with respect to all eligible employees who retire during the period specified by the board of supervisors.

(d) This section shall not be applicable to any member otherwise eligible if such member receives any unemployment insurance payments during the period six months prior to the period specified pursuant to subdivision (a). This section shall not be applicable to any member if the member is not eligible to retire without the additional credit available under this section.

(e) This section shall not be applicable in any county until it is adopted by ordinance of the board of supervisors. Any county may adopt or readopt this section from time to time as conditions may warrant. This section shall not be applicable in any district whose employees are members of the system pursuant to Section 31557 until it is adopted by ordinance by the governing body of the district. Any district whose employees are members of the system pursuant to Section 31557 may adopt or readopt this section from time to time as conditions warrant.

(f) Any member who qualifies under this section upon subsequent reentry to county employment shall forfeit the service credit

acquired under this section, unless the reentry is a result of a temporary callback limited to a maximum of 720 hours of service in any one year.

(g) This section shall not be subject to the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

31641.05. (a) Notwithstanding Section 31641.04 or any other provision of this part, for only the 1994-95, 1995-96, 1996-97, 1997-98, and 1998-99 fiscal years, when the board of supervisors, by resolution, determines that because of an impending curtailment of service or change in the manner of performing service, savings of money, or other economic benefit resulting to the county, the best interests of the county would be served, a member shall be eligible to receive additional service credit if all of the following conditions exist:

(1) The member is employed in a job classification, county department, or other county organizational unit included in the resolution adopted by the board of supervisors.

(2) The member is credited with 10 or more years of service and retires on or between dates specified by the board of supervisors in its resolution. In no event shall the specified period exceed 120 days.

(3) The county transmits to the retirement fund an amount determined by the board of retirement that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount he or she would have received without that service credit.

The transfer to the retirement fund shall be made in a manner and time period acceptable to the county and the board of retirement. However, the payment period shall not exceed five years.

(b) The amount of service credit shall be the amount that the board of supervisors determines, but shall not be more than four years regardless of credited service and shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age and shall not be combined with any additional service credit granted under Section 31641.04.

(c) The resolution described in subdivision (a) shall either identify sufficient deleted positions whose total cost equals or exceed the lump-sum actuarial cost of the additional service credit granted or proclaim that all positions vacated due to the additional service credit granted pursuant to this section shall remain vacant for at least five years and until the lump-sum actuarial cost of the additional service credit granted has been recaptured from position vacancy salary savings.

(d) The board of supervisors shall certify to the board of retirement the extent to which savings will exceed necessary payments to the board of retirement, and the specific measures to be taken to assure that outcome. The board of retirement may require the board of supervisors to provide verification of its certification through independent review.

(e) At the time the county has achieved savings that are more than adequate to meet necessary payments to the board of retirement, or five years after commencement of the retirement period specified in paragraph (2) of this section, whichever occurs first, the board of

supervisors shall certify to the retirement board the amount of actual savings and the measures taken to achieve the savings. The board of supervisors shall maintain records for each worker retiring pursuant to this section. The board of retirement may require the board of supervisors to provide verification of its certification through independent review. The board of supervisors shall report these certifications to the Controller, who should summarize the cost and savings information therein in his or her annual report prepared pursuant to Sections 7501 through 7504. The Controller shall perform a postaudit to verify that the savings equal or exceed the lump-sum actuarial cost of the additional service credit granted pursuant to this section. The county shall pay the cost of the postaudit.

(f) A county that elects to make the payment prescribed by subdivision (a) shall make the payment with respect to all eligible employees who retire during the period specified by the board of supervisors.

(g) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments during the period six months prior to the period specified pursuant to subdivision (a). This section shall not be applicable to any member if the member is not eligible to retire without the additional credit available under this section.

(h) This section shall not be applicable in any county until it is adopted by ordinance of the board of supervisors. Any county may adopt or readopt this section from time to time as conditions warrant.

(i) Any member who qualifies under this section upon subsequent reentry to county employment shall forfeit the service credit acquired under this section, unless the reentry is a result of a temporary callback pursuant to Section 31680.2, 31680.3, or 31680.6. Any member who receives credit under this section shall not be temporarily employed as an annuitant pursuant to Section 31680.2, 31680.3, or 31680.6 for five years following the date of retirement.

(j) The board of supervisors shall certify to the retirement board that the county has complied with Section 7507.

(k) This section shall not be subject to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

(l) No additional service credit shall be granted pursuant to this section on or after July 1, 1999.

31641.1. A member who was in public service before becoming a member may elect by written notice filed with the board to make contributions pursuant to Section 31641.2 and to receive credit in the retirement system for all allowed public service time. Credit for part-time service shall be calculated as provided in Section 31641.5.

31641.2. Any member of the retirement system who elects pursuant to Section 31641.1 to make contributions and receive credit as service for time for which he or she claims credit because of public service 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 five years, an amount equal to

the sum of:

(a) Twice the contributions he or she would have made to the retirement fund if he or she had been a member during the same length of time as that for which he or she has elected to receive credit as service, computed by applying the rate of contribution first applicable to him or her upon commencement of his or her membership in this system to the monthly compensation first earnable by him or her at the time as provided in Section 31641.3, multiplied by the number of months for which he or she has elected to receive credit for county service, including time, if any, prior to the establishment of the system, and which will constitute current service under this system.

(b) The "regular interest" that would have accrued to the member contributions if they had been made on the date used to determine on what earnable compensation contributions pursuant to this section shall be based, from that date until the completion of payment of those contributions, computed at the current interest rate.

(c) Except as prohibited by Section 31640.7, the governing body by a four-fifths vote may provide that it shall make on behalf of officers and employees eligible to receive credit for prior service under this chapter, and who so elect prior to filing an application for retirement, part of the contributions specified in paragraphs (a) and (b) of this section. The contributions made by a governmental agency pursuant to this section shall be available only for purposes of retirement for service or for disability and a member resigning from county service shall be entitled to withdraw only that portion of his or her accumulated contributions made by him or her.

31641.20. Any member of the retirement system who elects pursuant to Section 31641.1 to make contributions and receive credit as service for time for which he or she claims credit because of public service 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 five years, an amount equal to the sum of:

(a) Twice the contributions he or she would have made to the retirement fund if he or she had been a member during the same length of time as that for which he or she has elected to receive credit as service, computed by applying the rate of contribution at the time of the election to the monthly compensation earnable by him or her at the time of the election pursuant to Section 31641.1, multiplied by the number of months for which he or she has elected to receive credit for county service, including time, if any, prior to the establishment of the system, and which will constitute current service under this system.

(b) The "regular interest" which would have accrued to the member contributions if they had been made on the date used to determine on what earnable compensation contributions pursuant to this section shall be based, from that date until the completion of payment of those contributions, computed at the current interest rate.

(c) The governing body by a four-fifths vote may provide that it shall make on behalf of officers and employees eligible to receive credit for prior service under this chapter, and who so elect prior to filing an application for retirement, part of the contributions specified in paragraphs (a) and (b) of this section. The

contributions made by a governmental agency pursuant to this section shall be available only for purposes of retirement for service or for disability and a member resigning from county service shall be entitled to withdraw only that portion of his or her accumulated contributions made by him or her.

(d) This section shall only apply in counties of the third class, as established by Sections 28020 and 28024, as amended by Chapter 1204 of the Statutes of 1971, but it shall not apply in those counties unless and until it is adopted by a majority vote of the board of supervisors.

31641.21. Regular interest computed at the current interest rate as used in subdivision (b) of Section 31641.2 shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contribution required by that section had been on deposit from the date used to determine the earnable compensation on which such contributions are based until the amount required to be deposited has been paid.

31641.3. In Section 31641.2 compensation first earnable shall be that earnable by the member at the time of the commencement of his membership in the retirement system, except that if a member who, prior to January 1, 1952, was a member of any retirement system in the same county which was superseded by a system established under this act, if such member so requests, the compensation first earnable by him at the later of the following times shall be used:

(a) The commencement of his membership in such superseded retirement system.

(b) The date on which this retirement system first became operative.

31641.4. A member shall receive credit for employment in public service only for such service as he is not entitled to receive a pension or retirement allowance from such public agency. The service for which he elects to contribute and the fact that no pension or retirement allowance will accrue to such member by virtue of his employment in such public agency must be certified to by an officer of the public agency where he rendered such public service or must be established to the satisfaction of the board.

Notwithstanding any other provision of law, 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 services of the United States during time of war or national emergency, shall have his pension or retirement allowance for such service calculated on the same basis as the calculation of the retirement allowance such member would receive as a safety member under Section 31664.

A safety member who entered the service as a peace officer prior to the establishment of the safety membership provisions in his county shall be considered a safety member from his initial hiring date, for the purposes of this section, notwithstanding any other provision of law.

31641.45. Whenever a member is entitled to redeposit funds previously withdrawn from a retirement system and thereby becomes eligible to receive a pension or retirement allowance for the service for which he was granted public service credit as authorized in Section 31641.1, regardless of whether or not the member elects to exercise such entitlement, the member shall be refunded the amount deposited by him in accordance with Section 31641.2 plus interest which has been credited to such amount and shall receive no credit in the system for such service.

This section applies only to a member who would be eligible to receive the benefit of Section 31835 or 20023.1 on making the redeposit.

31641.5. A member who prior to his entrance into the retirement system held a position in the county service the tenure of which was such as to exclude him from membership, or a coroner, public administrator or coroner-public administrator who was excluded because of the means by which he was compensated, shall have the right to receive credit in the retirement association for all or any part of the county service he rendered, whether interrupted or not, during the time he was in county service before becoming a member if he elects to pay, and thereafter pays, in accordance with such election, and prior to retirement, into the retirement fund an amount equal to the contributions he would have made to the retirement fund if he had been a member during the time for which he has elected to receive credit, computed by applying the contribution rate first applicable to him upon becoming a member to the aggregate compensation he actually received during the time he was in county service and for which he has elected to receive credit, together with interest at the current rate on that amount from the time he became a member until completion of payment. Such payment may be made by lump sum or by installment payments over a period not to exceed the length of time for which the member has elected to receive credit, in such manner and at such times as the board may by rule prescribe. No member shall receive credit under this section for any service for which he has not completed payment pursuant to this section before the effective date of his retirement. A member who has elected to make such payment in installments may complete payment thereof by lump sum at any time prior to the effective date of his retirement. Any sums paid by a member pursuant to this section shall be considered to be and administered as normal contributions by the member.

Where county service prior to membership was rendered on a part-time basis, the member may receive credit for such proportion of the time he held the part-time position as the time he was actually engaged in the performance of the duties of such position bears to the time required to perform the same duties in a full-time position.

A member who elects to receive credit for only a part of such county service shall elect that county service latest in time and may not receive credit for any portion of such county service prior in time to any county service for which he does not elect to receive credit.

31641.51. "Interest at the current rate" means that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contribution required by that section had been on deposit from the time he became a member of the system until the amount required to be deposited has been paid.

31641.55. (a) A member described in Section 31470.4 who was in public service before becoming a member, and that service was terminated as a consequence of the closure, downsizing, or realignment of a federal military installation, may elect by written notice filed with the board to make contributions pursuant to subdivision (b) and to receive credit in the retirement system for all allowed public service time.

(b) Any member described in subdivision (a) who elects pursuant to subdivision (a) to make contributions and receive service credit for time for which he or she claims credit because of public service 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 equal to the sum of the following:

(1) The contributions he or she would have made to the retirement fund if he or she had been a member during the same length of time as that for which he or she has elected to receive service credit, computed by applying the rate of contribution first applicable to him or her upon commencement of his or her membership in this system to the monthly compensation first earnable by him or her at the time, multiplied by the number of months for which he or she has elected to receive service credit for public service.

(2) Interest at the current rate, as defined in Section 31641.51, from the date of his or her first membership in the system until the completion of payment of those contributions.

(c) The governing body by a majority vote may provide that it shall make part of the contributions specified in paragraphs (1) and (2) of subdivision (b) on behalf of its members eligible to receive credit for public service under this section who so elect prior to filing an application for retirement.

(d) A member who has elected to make the payment in installments may complete payment by lump sum at any time prior to the effective date of his or her retirement. Any contributions made by a member pursuant to this section shall be considered and administered as normal contributions by the member.

(e) For purposes of this section, the following definitions shall apply:

(1) Notwithstanding Section 31478, "public agency" means the United States of America, this state, or any department or agency of either, or any city, county, city and county, special district, or other public or municipal corporation or political subdivision that is within this state or is situated in whole or in part within a county.

(2) Notwithstanding Sections 31479, 31479.2, and 31479.3, "public service" means service as a permanent career civilian federal firefighter or permanent career state firefighter in a position whose principal duties consist of active fire suppression or law

enforcement, for which the officer or employee received compensation from the public agency, and with respect to which he or she is not entitled to receive credit in any retirement system supported wholly or in part by public funds after he or she becomes a member of this system.

(f) This section shall apply only to a county or district beginning on the first day of the month after the board of supervisors for that county or the governing body of a district adopts a resolution, by majority vote, that provides that this section shall apply to the county or district.

31641.56. A member who returns to county service after having been on deferred status while rendering county service in a position excluded from membership, shall have the right to receive credit in the retirement association for all or any part of the county service he or she rendered during the time he or she was on deferred status if he or she elects to pay, and thereafter pays, in accordance with the election, and prior to retirement, into the retirement fund an amount equal to the contributions he or she would have made to the retirement fund if he or she had not been on deferred status during the time for which he or she has elected to receive credit, computed by applying the contribution rate first applicable to him or her upon returning to county service to the aggregate compensation he or she actually received during the time he or she was in county service and for which he or she has elected to receive credit, together with regular interest on that amount from the time he or she was on deferred status until completion of payment. The payment may be made by lump sum or by installment payments over a period not to exceed the length of time for which the member has elected to receive credit, in the manner and at the times as the board may by rule prescribe. No member shall receive credit under this section for any service for which he or she has not completed payment pursuant to this section before the effective date of his or her retirement. 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. Any sums paid by a member pursuant to this section shall be considered to be administered as normal contributions by the member.

A member who elects to receive credit for only a part of that county service shall elect that county service latest in time and may not receive credit for any portion of that county service for which he or she does not elect to receive credit.

This section shall not be operative in any county until the time that the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in the county.

31641.6. An employee of a city who has become a county employee upon the assumption by the county of the functions of the city department in which he was employed, may, if he is not covered by the city under a contract with the Public Employees' Retirement System, elect to receive credit in the county retirement system for service for the city prior to the cessation of his employment by the city. When such person elects to receive credit, membership in the

retirement system shall commence with the first day of the month in which credit is granted.

Any such person shall be entitled to credit in the county retirement system for service performed for the city when and if (a) the board of retirement receives certification from the city of the city service and earnable compensation of the employee; and (b) the employee deposits into the employees' retirement system the amount of contributions he would have made had he been a county employee during his city employment; and (c) there is also deposited in the employees' retirement system by the city, the employee, or both, the amount that the county would have been required to deposit to the employees' retirement fund based on the city salary paid to such employee.

Upon deposit of such funds, the employee's age at entry shall be considered to be his age at time of employment with the city or at the time this chapter was effective in the county whichever is later.

Such money deposited under (b) above shall be considered as accumulated normal contributions of the employee and any such money deposited under (c) above shall be considered as contributions of the employer county.

If all of the money called for under (b) above is not paid within 90 days after employment by the county, only the part of city employment latest in date covered by such deposit shall be credited and the age at entry and the amount under (c) above shall be adjusted accordingly.

An employee shall receive credit for city employment prior to his employment by the county only for such service for which he is not entitled to receive a pension or retirement from such city.

This section shall become operative in any county on the first day of the calendar month after the board of supervisors adopts by four-fifths vote a resolution making it operative in the county.

31641.7. If the member is unable to furnish the information necessary to establish his aggregate compensation for the period of service for which he seeks credit pursuant to Section 31641.5, then the rate of compensation applicable to him at the time he first became a member of this system after the period to be credited shall be used in making the computation required by Section 31641.5.

31641.8. Any member who has elected to make contributions pursuant to this chapter by installment payments may, at any time prior to the effective date of his retirement, complete payment thereof by lump sum.

31641.9. All contributions made by a member, pursuant to Sections 31641.1, 31641.2, 31641.3 and 31641.4 shall be considered to be, and shall be administered as, normal contributions but shall not be matched by the county upon retirement of the member.

31641.95. Sections 31470.7, 31478, 31479, 31480, 31641.1, 31641.2, 31641.3, 31641.4, 31641.8, and 31641.9 may only be applicable in any county or district on the first day of the month after the governing

board of such county or district adopts, by majority vote, a resolution providing that those sections shall become applicable in such county or district. Such resolution may limit the applicability of such sections to any one or more of the public agencies as defined by Section 31478.

At any time after such a resolution has been adopted, the governing board of the county or district, by majority vote, may adopt a further resolution declaring that from and after a future date stated further in the resolution, the benefits of the resolution described in the first paragraph of this section shall not be available to any employees who are hired by the county or district after that date.

31641.96. Notwithstanding any other provisions of this chapter, Section 31641.9 shall not be applicable to any county subject to the provisions of Section 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, or 31676.15.

31641.97. (a) This section shall be applicable in the retirement system of any county of the 10th class, as defined by Sections 28020 and 28031, as amended by Chapter 1204 of the Statutes of 1971, if the board of supervisors adopts, by majority vote, a resolution implementing this section.

(b) The purpose of this section is to authorize persons hired by the county before January 1, 1993, and employed by the county on December 31, 1992, to receive credit in the retirement system for prior military service by contributing to the retirement system an amount equal to the full cost, including interest, of the employee and county liability for the additional credit.

(c) Notwithstanding any other provision of this chapter, an eligible person must meet the following requirements in order to receive credit for prior military service:

(1) The person must have been hired by the county before January 1, 1993, and must have been an active employee on December 31, 1992.

(2) The person must file written notice with the retirement board before January 1, 1995, electing to receive credit and providing such information as the board may require.

(3) The person must contribute to the retirement system prior to the effective date of his or her retirement, by lump-sum payment or by installment payments over a period not to exceed five years, an amount equal to the full cost, including interest, of the employee and county liability for the additional credit.

(4) The person must not be entitled to receive a pension or retirement allowance for the prior military service and must provide the certification required by Section 31641.4.

(5) A person who was hired by the county before January 1, 1993, who was actively employed by the county on December 31, 1992, and who retired or elected deferred retirement after December 31, 1992, and before December 31, 1993, may also elect to receive credit under this section by filing the written notice and making the entire contribution before July 1, 1994, less whatever additional amounts would have been paid to that person by the retirement system if the person had made the entire contribution prior to retirement.

(d) The board of supervisors may include additional terms and

conditions in the resolution implementing this section, provided the terms and conditions do not include the system paying for any of the employee or county cost of the military service credit.

(e) The full cost, including interest, of the employee and county liability for the additional credit under this section shall be determined by the board of retirement on actuarial advice, and shall be the actuarial equivalent of the difference between the retirement benefits the person will receive after receipt of credit for prior military service under this section and the retirement benefits the person would have received without that credit.

31642. The following shall not be considered as breaking the continuity of service:

(a) A temporary layoff because of illness or for purposes of economy, suspension, or dismissal, followed by reinstatement or re-employment within one year.

(b) A leave of absence followed by reinstatement or re-employment within one year after the termination of the leave of absence.

(c) A resignation to enter, followed by entrance into, the armed forces of the United States, followed by re-employment by the county or district within six months after the termination of such service.

(d) Resignation of a member who has elected in writing to come within the provisions of Article 9 followed by re-employment before withdrawal of any accumulated contributions.

The withdrawal of accumulated contributions followed by the redeposit of the contributions upon re-entrance into service does not constitute a break in the continuity of service.

31643. Unless otherwise provided in the regulations of the board, "prior service" means service prior to the date of entry of a member into the retirement system.

31644. In its regulations the board may provide what service shall constitute prior service. Such service may include employment which is not service as defined in Sections 31641 and 31642.

31645. Except as provided in Sections 31641.5 or 31648 credit for prior service, whether interrupted or not, shall be granted to each person who has rendered such service as defined in or pursuant to this chapter, and who has become a member of the retirement system within one year after it becomes operative or at any time prior to October 1, 1953, whichever is the later, or within six months after discharge from military service.

One who performed service otherwise qualifying for credit under this section, who re-entered county employment subsequent to September 1, 1953 and prior to December 31, 1953, shall receive credit for such service, subject to Section 31648, provided such person is employed, as of the effective date of this section, in a position for which service credit is given under this article.

31645.5. Prior service includes service rendered for a district as

defined by subdivisions (i) and (j) of Section 31468 at any time after the date of execution of the first contract between the county and the nonprofit corporation relative to the operation of one or more museums or after the date of employment with the economic development association.

31646. A member who returns to active service following an uncompensated leave of absence on account of illness may receive service credit for the period of such absence upon the payment of the contributions that the member would have paid during such period, together with the interest that such contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit may not be received for any period of such absence in excess of 12 consecutive months.

31646.1. A member who returns to active service following an uncompensated leave of absence on account of illness or injury arising out of and in the course of employment which exceeds 12 consecutive months and for which the member receives temporary disability benefits pursuant to the Labor Code during the absence may receive service credit for the full period in excess of 12 consecutive months during which the member received temporary disability benefits pursuant to the Labor Code upon the payment of the contributions which the member would have paid during that period, together with the interest which the contributions would have earned had they been on deposit, if the member was not absent, provided, that the member has rendered sufficient service, other than the service for which credit in excess of 12 consecutive months is to be purchased pursuant to this section, to meet the minimum service credit requirements for benefits. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31646.5. (a) A member who wishes to apply for a nonservice-connected disability retirement allowance may, to the extent necessary to qualify for that allowance, receive service credit for a period of continuous, uncompensated leave immediately preceding the filing of the application upon satisfaction of all of the following:

- (1) The member has exhausted all compensated leave, including any catastrophic leave to which the member may be eligible.
- (2) The leave of absence was due to the member's medical condition that has been determined by the board to be a terminal illness.
- (3) Payment by the member of the contributions the member would have paid during the leave of absence, together with interest those contributions would have earned had they been on deposit if the member were not absent. The contributions may be paid in a lump sum, or may be paid on a monthly basis for a period of not more than the

length of the period for which service credit is claimed; provided, however, that payment shall be completed prior to the effective date of the member's retirement, or in accordance with Section 31485.7 or 31485.8 if either section has been adopted by the board of supervisors.

(b) Credit may not be received pursuant to this section for a period in excess of 12 consecutive months.

(c) This section shall not apply in any county unless and until it is adopted by a majority vote of the board of supervisors.

31647. A person is not entitled to credit as prior service for time during which he was not in service as defined in this chapter.

31648. If any officer or employee not previously included within the field of membership of the association is brought within the field of membership or if any elected official chooses to come within the field of membership subsequent to the establishment of the association, he shall not receive credit for service or for prior service unless either (1) he elects to and does pay into the association within one year thereafter, or within such longer time as is provided in the regulations of the board, and before an application for retirement is filed, an amount equal to the contributions he would have made if he had been a member of the association from the date of its organization, or from the date of his entry into county service, whichever is the later, together with regular interest thereon or (2) the governing body, by a four-fifths vote, provides that it shall make, on behalf of all such officers or employees eligible to receive credit for prior service under this section and who so elect subsequent to the effective date of the amendment to this section at the 1963 Session of the Legislature, all or a part of the contributions to the association that the officer or employee would be required to make for his prior service, except that the contributions made by the governmental agency pursuant to this section shall be available only for the purpose of retirement for service or for disability and a member resigning from county service shall be entitled to withdraw only that portion of his accumulated contributions made by him.

31648.2. In any county in which the board of supervisors has entered into an agreement as permitted by Section 20569.1, the governing body of the contracting agency from which the firemen were transferred or the governing body of the district to which the firemen were transferred may pay all or part of the cost, as determined by the board, of the liabilities which were assumed by the county system under Section 20569 and which exceed the value of the cash or securities or both transferred by the Public Employees Retirement System to the county system. The governing bodies of the contracting agency and of the district may determine the proportion of the liabilities each pays.

31648.3. A member who is a full-time employee and returns within 12 months of the date of layoff to full-time service following a period

of layoff commencing on or after January 1, 1981, but not to exceed 12 months, may receive service credit for the period of the absence, but not to exceed one year, upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. The service credit provided by this section shall be provided only to persons who have returned to employment under the procedures of the employer for returning laid-off employees to work and shall not exceed one year of service credit for each layoff period. The decision of the member to redeposit withdrawn contributions shall be made within five years from the date the member is rehired or the effective date of the adoption by the county board of supervisors of this section. Upon completion of the redeposit with interest, the entry age of the member shall be adjusted to the original age of entry and membership is reestablished to that date.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31648.4. In any county in which the board of supervisors has entered into an agreement as permitted by Section 20569.2, the governing body of the contracting agency from which the employees were transferred or the governing body of the district or the county service area to which the employees were transferred may pay all or part of the cost, as determined by the board, of the liabilities which were assumed by the county system under Section 20569 and which exceed the value of the cash or securities of both transferred by the Public Employees' Retirement System to the county system. The governing bodies of the contracting agency and of the district or the county service area may determine the proportion of the liabilities each pays.

31648.5. Any elective officer (a) who has filed a declaration of election to become a member of a county retirement association established pursuant to this chapter and (b) who rendered any county service after the effective date of the system so established and prior to the effective date of his membership in the association and (c) who would not otherwise be entitled to credit for such service, shall be entitled to credit for such service as current service if he contributes to the retirement association the contributions which he would have made if he had been a member of the association during the time such service was rendered, together with regular interest thereon.

31648.55. Any member who is an elective officer, and who has had a break in service, may receive credit for the previous service as current service, if all of the following conditions are met:

- (a) The member serves in the same office.
- (b) The service is not a basis for any other present or future

public retirement benefits.

(c) The member, prior to the effective date of retirement, by lump-sum payment or by installment over a period not to exceed five years, (1) contributes an amount equal to twice the contributions the members would have made to the retirement fund if the member had been a member during the same length of time as that for which the member has elected to receive credit as service, computed by applying the rate of contribution first applicable to the member upon commencement of membership and (2) pays any interest that would have accrued to that amount.

This section shall not be operative in any county, until adopted by resolution of the board of supervisors.

31648.6. Any elective officer whose term of office expires at a time when the total period of his incumbency divided into months results in a fractional month greater than 20 days shall be deemed to have rendered service sufficient to receive credit for a full month provided that such officer contributes to the retirement association prior to the receipt of the first payment of his retirement allowance the contributions required for that month.

31649. (a) Any member who resigns to enter and does enter the armed forces of the United States on a voluntary or involuntary basis, and within 90 days after the termination of that service under honorable conditions, reenters county service, or

(b) Any member who obtains a leave of absence to enter and does enter the armed forces of the United States on a voluntary or involuntary basis, and within one year after the termination under honorable conditions of leave of absence reenters county service, if he or she has not contributed to the retirement fund the total percentage of his or her compensation earnable due pursuant to Section 31461 due under this chapter for the entire period during which he or she was out of county service and in military service, may, not more than 90 days after his or her reentrance into county service, file with the board his or her election that no further contributions be deducted from his or her compensation except contributions due because of current service.

(c) A member who reenters county service under either (a) or (b) above may be allowed up to five years credit for vesting in the system.

31649.1. Any employer who reemploys a member who is subject to the provisions of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall, within 30 days after the date of that reemployment, provide information in writing as required by the board notifying the system of that reemployment, and shall provide the returning employee written notification of the right to purchase that service credit.

31649.5. (a) Notwithstanding Section 31649, any member who resigned, or obtained a leave of absence, to enter and did enter the armed forces of the United States on a voluntary or involuntary basis

and returned to county service within one year after separation therefrom, under honorable conditions, shall receive credit for service and prior service for all or any part of his or her military service, if, before retirement from the county, he or she contributes what he or she would have paid to the fund based on his or her compensation earnable pursuant to Section 31461 at the time he or she resigned or received the leave of absence, together with regular interest thereon, and if, when he or she contributes, the military service is not a basis for present or future military retirement pay.

(b) This section shall not be operative in any county until the board of supervisors so orders.

31650. Unless the returning member reenters the service as a new member or files an election pursuant to Section 31649, the county auditor or other officer charged with the duty of drawing salary or wage warrants shall deduct past due contributions pursuant to the regulations of the board, or if there are no such regulations pursuant to this chapter. The filing of an election shall apply only to salary or wage warrants delivered 30 or more days after the filing of an election, and no deduction legally made shall be refunded because of an election.

31651. If the returning member files an election pursuant to Section 31649, the auditor or other officer charged with the duty of drawing salary or wage warrants shall deduct current contributions only from salary or wage warrants delivered 30 or more days after the filing of the election. Member contributions shall be calculated upon the basis of the age of the member upon his or her first entry into the retirement system.

31652. (a) Any member may redeposit in the retirement fund, prior to filing an application for retirement, by lump sum payment or by installment payments over a period of one year or for a longer time upon approval of the board, an amount equal to all of the accumulated normal contributions which he has withdrawn, plus regular interest thereon from the date of separation from the retirement system, and his membership is the same as if unbroken by such termination. Except as provided in this section his rate of contribution shall be based on age at the nearest birthday at time of reentrance into the system. If he does not redeposit all of the accumulated normal contributions previously withdrawn he shall be considered as a new member without credit for any previous service.

"Regular interest" as used in this section shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contributions required by this section had been on deposit from the date of separation from the retirement system until the amount required to be deposited has been paid.

(b) Any member who left county service on or before December 31, 1971, and thereafter again became a member of the county system which he left and (1) who did not withdraw his accumulated normal contributions, or (2) who elected to leave his accumulated normal

contributions on deposit pursuant to Article 9 (commencing with Section 31700), or (3) who redeposited or redeposits withdrawn accumulated normal contributions plus interest as authorized in this section, shall be eligible for all benefits granted a member entering a reciprocal retirement system under Article 15 (commencing with Section 31830), including the benefits granted to members who left their accumulated contributions on deposit or who redeposited their accumulated contributions pursuant to Section 31831.1. This paragraph shall not be applicable to any member entering service after December 31, 1977.

(c) Any member who left county service on or after January 1, 1972, and who within 90 days thereafter again became a member of the county system which he left and (1) who did not withdraw his accumulated normal contributions, or (2) who elected to leave his accumulated normal contributions on deposit pursuant to Article 9 (commencing with Section 31700), or (3) who redeposits or redeposited his withdrawn accumulated normal contributions plus interest as authorized by Section 31652 within 180 days after leaving county service, shall be eligible for all benefits granted a member entering a reciprocal retirement system under Article 15 (commencing with Section 31830), except that Section 31831.1 shall not apply to such members.

(d) This section shall not apply to members who are retired or who are not in service of an employer making him a member of this system.

31652.1. (a) Any member may redeposit in the retirement fund, prior to filing an application for retirement, by lump-sum payment or by installment payments over a period of one year or for a longer time upon approval of the board, an amount equal to all of the accumulated normal contributions which he has withdrawn, plus regular interest thereon from the date of separation from the retirement system, and his membership is the same as if unbroken by such termination. Except as provided in this section his rate of contribution shall be based on age at the nearest birthday at time of reentrance into the system. If he does not redeposit all of the accumulated normal contributions previously withdrawn he shall be considered as a new member without credit for any previous service.

"Regular interest" as used in this section shall mean that amount of interest which would have been credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contributions required by this section had been on deposit from the date of separation from the retirement system until the amount required to be deposited has been paid.

(b) Any member who left county service on or before December 31, 1974, and thereafter again became a member of the county system which he left and (1) who did not withdraw his accumulated normal contributions, or (2) who elected to leave his accumulated normal contributions on deposit pursuant to Article 9 (commencing with Section 31700), or (3) who redeposited or redeposits withdrawn accumulated normal contributions plus interest as authorized in this section, shall be eligible for all benefits granted a member entering a reciprocal retirement system under Article 15 (commencing with Section 31830), including the benefits granted to members who left

their accumulated contributions on deposit or who redeposited their accumulated contributions pursuant to Section 31831.1. This paragraph shall not be applicable to any member entering service after December 31, 1979.

(c) Any member who left county service on or after January 1, 1975, and who within 90 days thereafter again became a member of the county system which he left and (1) who did not withdraw his accumulated normal contributions, or (2) who elected to leave his accumulated normal contributions on deposit pursuant to Article 9 (commencing with Section 31700), or (3) who redeposits or redeposited his withdrawn accumulated normal contributions plus interest as authorized by Section 31652 within 180 days after leaving county service, shall be eligible for all benefits granted a member entering a reciprocal retirement system under Article 15 (commencing with Section 31830), except that Section 31831.1 shall not apply to such members.

(d) This section shall not apply to members who are retired or who are not in service of an employer making him a member of this system.

(e) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022 but shall not be operative in a county until adopted by resolution of the board of supervisors.

31652.2. (a) Any member of a retirement system established pursuant to this chapter who was previously a member of the same county retirement system and who thereafter became a member of the Public Employees' Retirement System as a result of employment by a public agency contracting with the Public Employees' Retirement System, shall receive credit in the county retirement system for service rendered as an officer or employee of such public agency, provided that he or she makes the contributions specified by Section 31641.2, and provided further that he or she is not entitled to receive any other pension or retirement allowance from any public agency for such service.

(b) Notwithstanding any other provision of law, any person who would otherwise qualify under subdivision (a) who elected to leave his or her contributions on deposit with the Public Employees' Retirement System and receive the benefits of reciprocity, may rescind that election and withdraw his or her contributions plus accrued interest from the Public Employees' Retirement System and deposit the same in the county retirement system of which he or she is a member as payment in full or in part for the service credit described in this section. The person shall not thereafter have the right to redeposit the withdrawn contributions in the Public Employees' Retirement System or to receive any credit for such service in that system. Any member of a county retirement system who is eligible to receive credit for other public service pursuant to this section shall receive the benefit of any motion or resolution adopted by the board of supervisors pursuant to subdivision (c) of Section 31641.2 which was in effect during the member's county service.

(c) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022, but shall not be operative in a county until adopted by resolution of the board of supervisors.

31653. Notwithstanding the provisions of this article, the governing board of the county or district may elect to contribute for any member of this system who is absent from and reenters the service of the county or district pursuant to Section 31649 of this code, amounts equal to the contributions which would have been made by the member and his employer to the system on the basis of his compensation earnable at the commencement of his absence, if he had not been so absent.

If the governing board elects to make any member's contributions pursuant to this section:

(a) Any such member who exercises or did exercise the right to contribute to the system during the period of military service shall have such contributions refunded or credited to his account.

(b) Any such member who withdraws or has withdrawn his accumulated contributions during his military service and who does not or did not redeposit the amount withdrawn upon his return to employment with the county or district is entitled to be credited with any contribution the governing board elects to make, and to receive credit for service during the period he was absent on military service, the same as if he had not withdrawn his accumulated contributions, and his rate for future contributions shall be based upon his age at the commencement of his absence on military service.

(c) The contributions made by the governing board pursuant to this section shall be available only for the purpose of retirement for service or for disability, and shall be made available only for the purpose of retirement, and a member resigning from the service of the county or district after reinstatement from military service shall be entitled to withdraw only that portion of his accumulated contributions personally made by him.

(d) This section shall be retroactively applied to extend its benefits to such members of this system as the governing board may determine whose absence from county service on military service commenced on or after September 16, 1940, and who return or have returned to this service upon the termination of their military service.

31654. Whenever, as a result of the resumption by the counties pursuant to Article XXVII of the Constitution of functions relating to the administration of aid to the aged and aid to the needy blind theretofore performed by the state, any person ceases to be employed by the state and is employed by a county in which this chapter has become operative, the person shall become a member of the retirement association of the county immediately upon his entrance into the county service.

Any such member of a county retirement system shall be entitled to credit in the county retirement system for service for which he was entitled to credit in the Public Employees' Retirement System at the time of cessation of his employment by the state, without the necessity of payment of any additional contributions in respect to that service, when and if (a) the board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the state service with which the person was entitled to be credited by the Public Employees' Retirement System at the time of cessation of his state employment;

and (b) there is paid into the employees' retirement fund of the county an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with the interest credited thereto, which amount shall be credited to the individual account of the member in the county employee's retirement system, and shall thereafter for all purposes be deemed to be the member's contribution to the county retirement system in respect to the service so certified; and (c) there is paid into the employees' retirement fund of the county an additional amount equal to the amount of such normal contributions, together with the interest credited thereto, which additional amount shall thereafter for all purposes be deemed to be the contributions of the employer county to the county retirement system in respect to the service so certified.

31655. Any member may receive credit for war relocation absence if the member elects to pay and does pay prior to retirement into the retirement fund an amount equal to the contributions the member would have made to the fund on the member's compensation earnable at the time of the absence together with regular interest thereon.

"War relocation absence" means the period of absence from county service occasioned by the evacuation and relocation of a member pursuant to orders issued by the commanding officer of the Western Defense Command in March 1942, for the evacuation of persons of Japanese descent from such area, where the member was in county service on March 5, 1942, and later returned to county service prior to July 1, 1947.

This section shall not be operative in any county until adopted by resolution of the board of supervisors.

31656. Nothing in this chapter shall be construed to prohibit any district established pursuant to Part 4 (commencing with Section 40000) of Division 10 of the Public Utilities Code, from extending retirement service credit pursuant to Section 40127 of the Public Utilities Code to any employee of the district who is on an authorized leave of absence to serve as an official of a recognized employee bargaining unit, under all of the following conditions:

(a) The employee or the recognized employee organization, or both, as determined pursuant to applicable provisions of this part, agree to pay the total contributions which would otherwise be paid if the employee were not on leave, as well as any additional costs which may accrue to the system as a result of this extension of coverage.

(b) The maximum service credit accumulated under this section shall not exceed 12 years.

(c) Employees covered under this section shall not be eligible for disability benefits under any public employees' retirement system in this state while on such leave of absence.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in the county.

31657. Subject to Section 20588, whenever, as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions performed by a public agency or the

state subject to the Public Employees' Retirement Law, any person ceases to be employed by a public agency or the state and is employed by a county, fire authority, or district in which this chapter has become operative, that person shall become a member of the retirement system of a county immediately upon entering county service. That member of the county retirement system shall be entitled to service credit in the county retirement system for the service for which he or she was entitled to credit in the Public Employees' Retirement System at the time of cessation of employment by the public agency or the state, without necessity of payment of any additional contributions in respect to that service, when and if all of the following occur:

(a) The board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the service with which the person was entitled to be credited by the Public Employees' Retirement System at the time of cessation of his or her public agency or state employment.

(b) There is paid into the county retirement fund of the county, an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with all interest credited thereto, which amount shall be credited to the individual account of the member in the county retirement system, and shall thereafter for all purposes be deemed to be the member's contribution to the county retirement system with respect to the service so certified.

(c) There is paid to the retirement system of the county an amount equal to all contributions of the public agency or the state made to the Public Employees' Retirement System on account of service rendered by the person together with interest credited to the public agency or the state thereto.

(d) The board of retirement elects to apply this section as a prudent means of mitigating against potential adverse financial impact upon the county retirement system from the cost of disability retirements that may be applied for in the future by persons injured while being employed by the county, fire authority, or district after ceasing to be employed by a public agency or the state as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions.

This section shall apply in a county of the first, the second, or the fourteenth class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, and Section 28023, as amended by Chapter 1204 of the Statutes of 1971.

31658. (a) An active member may elect, by written notice filed with the board, 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.

**Article 7.5 Retirement of Safety Members for Service 31662-
31664.65**

31662. This article shall apply in a county subject to the provisions of Sections 31676.1 and 31695.1.

31662.2. Retirement of a safety member in a county subject to the provisions of Section 31676.1 who has met the requirements for age and service shall be made by the board pursuant to this article.

31662.4. At the expiration of two years after a retirement system pursuant to this chapter becomes operative, or on January 1, 1954, whichever is later, every safety member except an elective officer, the sheriff and undersheriff, who has attained age 60 shall be retired forthwith. On the said date a sheriff who is a safety member, is not an elective officer, and who has attained age 70 and an undersheriff who is a safety member and who has attained age 70 shall be retired forthwith.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31662.6. Two years after a retirement system established by this chapter becomes operative, a safety member except an elective officer, the sheriff and undersheriff, and the marshal appointed to serve the superior court within the county, shall be retired as of the first day of the calendar month next succeeding that in which he or she attains age 60.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31662.8. Every safety member holding an elective office shall be retired at the end of the first term to which he or she is elected which expires on the date following his or her seventieth birthday, except that if the term expires within two years after the date on which a retirement system becomes operative or prior to January 1, 1954, whichever is later, he or she shall be retired at the end of the next term to which he or she is elected.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31663. After January 1, 1954, or two years after a retirement system established by this chapter becomes operative, whichever is later, a sheriff who is a safety member and not elective, and an undersheriff, who is a safety member shall be retired as of the first day of the calendar month next succeeding that in which he or she attains age 70.

The marshal appointed to serve the superior court within the county who is a safety member shall be retired as of the first day of the calendar month next succeeding that in which he or she attains age 65.

In San Bernardino County, a sheriff's inspector, a chief inspector in a sheriff's office, or a chief deputy in a sheriff's office, who is a safety member and whose primary duties are administrative, shall be retired as of the first day of the calendar month next succeeding that in which the person attains age 70.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31663.1. (a) Sections 31662.6 and 31663 shall not apply to an assistant sheriff or a chief in a sheriff's office who is a safety member and whose primary duties are administrative.

(b) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(c) This section shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

31663.15. (a) Sections 31662.4, 31662.6, 31662.8, and 31663 shall not apply to a person who is an active safety member described in Section 31469.3 or 31470.4 if a physician employed or approved by the county certifies that the safety member is capable of performing his or her assigned duties pursuant to standards set forth by the member's employer.

(b) This section shall also apply to a member who reinstates from retirement pursuant to Section 31680.8.

(c) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(d) This section shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this section and Section 31680.8 applicable in the county. The resolution of the board of supervisors may designate a date, which may be prior to the date of the resolution or the effective date of this section, upon which the resolution and this section shall be operative in the county.

31663.2. (a) (1) Sections 31662.4 and 31662.6 shall not apply to the fire chief of a fire district who is a safety member and whose primary duties are administrative, if the fire chief was employed as fire chief on May 1, 2005.

(2) A fire chief who is exempted from the requirements of Sections 31662.4 and 31662.6, pursuant to paragraph (1), shall retire before April 1, 2009, and, subsequent to the operative date of this section, that fire chief shall not receive a salary increase that is disproportionate to any salary increase granted to other department

heads of the same jurisdiction at the same time.

(b) This section applies only to a county of the first class, as defined by Sections 28020 and 28022.

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

(d) This section shall become inoperative on April 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

31663.25. Except as provided in Section 31663.26, any safety member who has reached the applicable compulsory age of retirement, if any, or any safety member who has completed 10 years of continuous service and who has reached the age of 50, or any safety member who has completed 20 years of service regardless of age, may be retired upon filing with the board a written application setting forth the date upon which he or she desires his or her retirement to become effective which shall be not more than 60 days after the date of filing the application.

The provisions of this section shall supersede the provisions of Section 31663. 2.

31663.26. Notwithstanding Section 31663.25, any safety member who has reached the applicable compulsory age of retirement, if any, or any safety member who is a full-time employee, has completed 10 years of service, has reached the age of 50, and has no service break which exceeds 12 months, or any safety member who has completed 20 years of service regardless of age, may be retired upon filing with the board a written application setting forth the date upon which he or she desires his or her retirement to become effective which shall be not more than 60 days after the date of filing the application.

The provisions of this section shall supersede the provisions of Section 31663. 2.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance, make this section applicable in the county.

31663.3. Notwithstanding any other provision of law, in any county having a population in excess of 199,000 but less than 200,000 as determined by Section 28020 as amended in 1961, an undersheriff upon attaining the age of 70 shall thereafter be employed from year to year at the discretion of the county.

31664. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for safety members purchased by the contributions of the county or district sufficient when added to the service retirement annuity to equal the fraction of one-fiftieth of the member's final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year in the following table, multiplied by the number of years of

current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the limitation of the safety member's final compensation as set forth in Section 31676.1 as it now reads or may hereafter be amended to read:

Age at retirement	Fraction
41	.6258
41 1/4	.6350
41 1/2	.6442
41 3/4	.6533
42	.6625
42 1/4	.6720
42 1/2	.6814
42 3/4	.6909
43	.7004
43 1/4	.7102
43 1/2	.7200
43 3/4	.7299
44	.7397
44 1/4	.7499
44 1/2	.7601
44 3/4	.7703
45	.7805
45 1/4	.7910
45 1/2	.8016
45 3/4	.8121
46	.8226
46 1/4	.8339
46 1/2	.8452
46 3/4	.8566
47	.8678
47 1/4	.8780
47 1/2	.8882
47 3/4	.8983
48	.9085
48 1/4	.9194
48 1/2	.9304
48 3/4	.9413
49	.9522
49 1/4	.9641
49 1/2	.9761
49 3/4	.9880
50	1.0000
50 1/4	1.0130
50 1/2	1.0259
50 3/4	1.0387
51	1.0516
51 1/4	1.0656
51 1/2	1.0796
51 3/4	1.0937
52	1.1078
52 1/4	1.1231
52 1/2	1.1384
52 3/4	1.1538

53	.....	1.1692
53 1/4	.....	1.1859
53 1/2	.....	1.2028
53 3/4	.....	1.2195
54	.....	1.2366
54 1/4	.....	1.2547
54 1/2	.....	1.2730
54 3/4	.....	1.2915
55 and over	.....	1.3099

The fraction herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by that board.

Contributions shall not be made by safety members having credit for 30 years of continuous service.

31664.1. (a) This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county.

(b) Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for safety members purchased by the contributions of the county or district sufficient when added to the service retirement annuity to equal 3 percent of the member's final compensation set forth opposite his or her age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement. In no event shall the total retirement allowance exceed the limitation of the safety member's final compensation as set forth in Section 31676.1, as it now reads or may hereafter be amended to read.

Age at Retirement	Fraction
41	.6258
41 1/4	.6350
41 1/2	.6442
41 3/4	.6533
42	.6625
42 1/4	.6720
42 1/2	.6814
42 3/4	.6909
43	.7004
43 1/4	.7102
43 1/2	.7200
43 3/4	.7299
44	.7397
44 1/4	.7499
44 1/2	.7601
44 3/4	.7703
45	.7805

45 1/4 .....	.7910
45 1/2 .....	.8016
45 3/4 .....	.8121
46 .....	.8226
46 1/4 .....	.8339
46 1/2 .....	.8452
46 3/4 .....	.8586
47 .....	.8678
47 1/4 .....	.8780
47 1/2 .....	.8882
47 3/4 .....	.8983
48 .....	.9085
48 1/4 .....	.9194
48 1/2 .....	.9304
48 3/4 .....	.9413
49 .....	.9522
49 1/4 .....	.9641
49 1/2 .....	.9761
49 3/4 .....	.9880
50 and over	1.0000

(c) Contributions shall not be made by safety members having credit for 30 years of continuous service.

31664.15. Notwithstanding any other provisions of this chapter, a safety member who enters the system with credit for prior service and retires upon completion of 20 years of continuous service and a total of 25 years of service after attaining age 50 whose retirement allowance is less than one-half of his final compensation, his prior service pension shall be increased so as to cause his total retirement allowance to amount to one-half of such final compensation.

The provisions of this section shall supersede the provisions of Section 31664. 1.

31664.2. (a) This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county.

(b) Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for safety members purchased by the contributions of the county or district sufficient when added to the service retirement annuity to equal 3 percent of the member's final compensation set forth opposite his or her age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement. In no event shall the total retirement allowance exceed the limitation of the safety member's final compensation as set forth in Section 31676.1, as it now reads or may hereafter be amended to read.

Age at Retirement	Fraction
41 . . . . .	.4777
41 1/4 . . . . .	.4848
41 1/2 . . . . .	.4918
41 3/4 . . . . .	.4987
42 . . . . .	.5058
42 1/4 . . . . .	.5130
42 1/2 . . . . .	.5202
42 3/4 . . . . .	.5274
43 . . . . .	.5347
43 1/4 . . . . .	.5422
43 1/2 . . . . .	.5497
43 3/4 . . . . .	.5572
44 . . . . .	.5647
44 1/4 . . . . .	.5725
44 1/2 . . . . .	.5803
44 3/4 . . . . .	.5881
45 . . . . .	.5958
45 1/4 . . . . .	.6039
45 1/2 . . . . .	.6120
45 3/4 . . . . .	.6200
46 . . . . .	.6280
46 1/4 . . . . .	.6366
46 1/2 . . . . .	.6452
46 3/4 . . . . .	.6555
47 . . . . .	.6625
47 1/4 . . . . .	.6703
47 1/2 . . . . .	.6781
47 3/4 . . . . .	.6858
48 . . . . .	.6936
48 1/4 . . . . .	.7019
48 1/2 . . . . .	.7103
48 3/4 . . . . .	.7186
49 . . . . .	.7269
49 1/4 . . . . .	.7360
49 1/2 . . . . .	.7452
49 3/4 . . . . .	.7543
50 . . . . .	.7634
50 1/4 . . . . .	.7733
50 1/2 . . . . .	.7832
50 3/4 . . . . .	.7930
51 . . . . .	.8028
51 1/4 . . . . .	.8135
51 1/2 . . . . .	.8242
51 3/4 . . . . .	.8349
52 . . . . .	.8457
52 1/4 . . . . .	.8574
52 1/2 . . . . .	.8691
52 3/4 . . . . .	.8808
53 . . . . .	.8926
53 1/4 . . . . .	.9053
53 1/2 . . . . .	.9182
53 3/4 . . . . .	.9310
54 . . . . .	.9418

54 1/4 .....	.9579
54 1/2 .....	.9718
54 3/4 .....	.9860
55 and over	1.0000

(c) Contributions shall not be made by safety members having credit for 30 years of continuous service.

31664.3. This section shall apply in any county having a population in excess of 2,000,000. A safety member shall receive no credit for prior service subsequent to June 30, 1921, and prior to January 1, 1938, in calculating a retirement allowance pursuant to this article unless prior to January 1, 1952, he files with the board his written election to pay into the retirement fund six dollars (\$6) for each month of prior service for which he claims credit. If a safety member files an election pursuant to this section and has accumulated contributions to his credit as of December 31, 1937, which with interest to December 31, 1951, are less than payments due for prior service credit subsequent to June 30, 1921, the amount due or balance thereof shall be paid by additional salary deductions in the amounts specified by the member but in no case less than six dollars (\$6) per month. The total amount due shall be paid prior to the effective date of his retirement. If the accumulated contributions with interest exceed the amount due for prior service credit the balance shall be refunded.

31664.4. Any person who elects to become a safety member who was a former member of a retirement system established pursuant to Chapter 3 or Chapter 5 shall have his contributions to the retirement association for membership service prior to January 1, 1952, calculated by the same rates and under the same conditions as those applicable to a member of the retirement system established pursuant to Chapter 4.

31664.5. Notwithstanding any other provisions of this chapter, a safety member may exercise the option of retiring upon completion of 25 years of service, and if such option is exercised, the safety member shall receive a retirement allowance equal to no less than 30 percent of his final compensation.

31664.65. If a member retires with credit for time during which he was not a safety member or a member of a system established pursuant to either Chapter 4 or Chapter 5 of this part, he shall receive for such time:

(a) A retirement allowance calculated pursuant to Section 31664 for time during which he was employed principally in active law enforcement or active fire suppression as described in Section 31470.2 or Section 31470.4 by a county, or by a district or court organized or existing within such county, or was a member of a system established pursuant to either Chapter 4 or Chapter 5 of this part, plus a retirement allowance calculated under either (b) or (c) of this section, whichever is applicable.

(b) A retirement allowance calculated pursuant to Section 31664 for all prior county service with such county, and for any public service credit for which the member has elected to receive pursuant to Section 31641.1 or 31641.5.

This subdivision shall apply only to a member who, when the board of supervisors pursuant to Section 31695.1 provides that provisions of this chapter relating to safety members shall apply to all employees of the county whose principal duties consist of active law enforcement or active fire suppression as defined in Section 31470.2 or 31470.4, was employed by the county principally in active law enforcement or active fire suppression as defined by such sections and who elected to be included within such safety member provisions at the time and in the manner prescribed by Section 31695.2.

(c) A retirement allowance calculated pursuant to Article 8 of this chapter for time during which he was not engaged principally in active law enforcement or active fire suppression as described in Section 31470.2 or Section 31470.4, nor a member of a system established pursuant to either Chapter 4 or Chapter 5 of this part.

This subdivision shall apply to any member to whom subdivision (b) is not applicable.

The provisions of this section shall be applicable irrespective of whether a member is, at the time of retirement, a safety member or a general member.

The provisions of this section shall supersede the provisions of Section 31664. 6.

Article 8 Retirement for Service 31670-31683

31670. Retirement of a member who has met the requirements for age and service shall be made by the board pursuant to this article.

31671. The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of the retirement system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

31671.05. A member who, on December 31, 1978, was a member of a retirement system under this chapter which imposed a mandatory retirement age less than age 70 applicable to that member may, notwithstanding the repeal of Section 31671 by the same act amending this section during the 1983 portion of the 1983-84 Regular Session of the Legislature and the repeal of Sections 31671.01 and 31671.02 by Chapter 385 of the Statutes of 1978, retire from that system upon reaching the mandatory retirement age in effect for that system on December 31, 1978.

This section shall not become operative in any county until the board of supervisors adopts a resolution making it operative in the county.

31672. A member who has reached 70 years of age or a member who has completed 10 years of service and who has reached 55 years of age, or a member who has completed 30 years of service regardless of age, may be retired upon filing with the board a written application, setting forth the date upon which he or she desires his or her retirement to become effective not earlier than the date the application is filed with the board and not more than 60 days after the date of filing the application. Fifty-five years of age in the preceding sentence may be reduced to 50 years of age in a county by resolution of the board of supervisors.

31672.1. Any employee who has reached the age of 55 years, has held a position in the county service for 10 years, and on the date of his retirement is employed in a temporary, seasonal, intermittent, or part-time position in which he has received credit for five full years of service, may be retired upon filing with the board a written application, setting forth the date upon which he desires his retirement to become effective which shall not be more than 60 days

after the date of filing the application. The age of 55 in the preceding sentence may be reduced to age 50 in any county by resolution of the board of supervisors if such reduction has also been made under Section 31672.

31672.2. Any elective officer who filed a declaration with the board to become a member, pursuant to Section 31553, who has served two complete consecutive terms in an elective office, and who has reached the minimum age for retirement provided in Section 31672, may be retired upon filing with the board a written application setting forth the date upon which he or she desires his or her retirement to become effective which shall be not more than 60 days after the date of filing the application.

This section shall become operative only in any county of the 16th class, as defined by Section 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, and on the first day of the calendar month after the board of supervisors adopts a resolution making it operative in the county.

31672.5. Notwithstanding any other provision of this chapter, when any member of a retirement system of any other public agency becomes a member of a county retirement association, established pursuant to this chapter, as a result of the transfer to and assumption by the county of any function of the other public agency, and the member retains rights in the retirement system of the other public agency in respect to service theretofore rendered to that agency, such member shall be eligible for retirement under the county retirement system at any time at which he would have been eligible for such retirement if the service rendered to the other public agency had been rendered instead to the county. A certificate of any officer of the other public agency authorized to determine service rendered to that agency that certain service was rendered to such agency shall be accepted by the retirement board of the county retirement association as prima facie evidence of service so rendered.

This section shall be applied only to enable such members of county retirement systems to qualify for retirement. Nothing in this section entitles any member of a county retirement system to any pension or other benefit based upon service rendered to any other public agency, but such a member upon his retirement shall be entitled to a retirement allowance under the county retirement system, calculated according to the formula applicable under such system, and on the basis of his county service even though such service be less than the minimum county service required for retirement under such system. The provisions in this chapter for minimum retirement allowances, shall not apply to any retired person who would not have qualified for retirement without including under this section service rendered to such public agency, nor shall such provisions apply unless the sum of the retirement allowances to which such person is entitled under the county retirement system and the retirement system of the other public agency, is less than the otherwise applicable minimum allowance under such provisions.

This section shall become operative in any county on the first day of the calendar month after the board of supervisors adopts by four-fifths vote a resolution making it operative in the county.

31673. Upon retirement for service a member is entitled to receive a retirement allowance which shall consist of:

- (a) His service retirement annuity.
- (b) His current service pension.
- (c) His prior service pension.

31674. The service retirement annuity is an annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement.

31675. The current service pension is a pension, purchased by the contributions of the county or district, equal to that portion of the annuity purchased by the accumulated normal contributions of the member.

31676. The prior service pension is an additional pension for members purchased by the contributions of the county or district, equal to one-sixtieth of the average annual compensation earnable by him during the last three years prior to the establishment of the system and the last three years of service, multiplied by the number of years of prior service credited to him.

31676.01. This section shall be operative in a county at such time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative in the county. Notwithstanding any other provisions of this chapter, the current service pension, or the current service pension combined with the prior service pension, is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-ninetieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age of Retirement	Fraction
50 .....	.7091
50 1/4 .....	.7183
50 1/2 .....	.7274
50 3/4 .....	.7366
51 .....	.7457
51 1/4 .....	.7547
51 1/2 .....	.7637
51 3/4 .....	.7726
52 .....	.7816
52 1/4 .....	.7907

52 1/2	.7999
52 3/4	.8090
53	.8181
53 1/4	.8275
53 1/2	.8369
53 3/4	.8462
54	.8556
54 1/4	.8656
54 1/2	.8755
54 3/4	.8855
55	.8954
55 1/4	.9061
55 1/2	.9168
55 3/4	.9275
56	.9382
56 1/4	.9498
56 1/2	.9614
56 3/4	.9730
57	.9846
57 1/4	.9972
57 1/2	1.0098
57 3/4	1.0224
58	1.0350
58 1/4	1.0487
58 1/2	1.0625
58 3/4	1.0762
59	1.0899
59 1/4	1.1049
59 1/2	1.1199
59 3/4	1.1349
60	1.1500
60 1/4	1.1611
60 1/2	1.1723
60 3/4	1.1835
61	1.1947
61 1/4	1.2097
61 1/2	1.2247
61 3/4	1.2398
62	1.2548
62 1/4	1.2707
62 1/2	1.2867
62 3/4	1.3026
63	1.3186
63 1/4	1.3355
63 1/2	1.3525
63 3/4	1.3695
64	1.3865
64 1/4	1.4047
64 1/2	1.4229
64 3/4	1.4411
65 and over	1.4593

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each such board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

31676.1. This section may be made applicable in any county on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county. Notwithstanding any other provisions of this chapter the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-sixtieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age of Retirement	Fraction
50	.7091
50 1/4	.7183
50 1/2	.7274
50 3/4	.7366
51	.7457
51 1/4	.7547
51 1/2	.7637
51 3/4	.7726
52	.7816
52 1/4	.7907
52 1/2	.7999
52 3/4	.8090
53	.8181
53 1/4	.8275
53 1/2	.8369
53 3/4	.8462
54	.8556
54 1/4	.8656
54 1/2	.8755
54 3/4	.8855
55	.8954
55 1/4	.9061
55 1/2	.9168
55 3/4	.9275
56	.9382
56 1/4	.9498
56 1/2	.9614
56 3/4	.9730
57	.9846
57 1/4	.9972
57 1/2	1.0098
57 3/4	1.0224
58	1.0350

58 1/4	1.0487
58 1/2	1.0625
58 3/4	1.0762
59	1.0899
59 1/4	1.1049
59 1/2	1.1199
59 3/4	1.1349
60	1.1500
60 1/4	1.1611
60 1/2	1.1723
60 3/4	1.1835
61	1.1947
61 1/4	1.2097
61 1/2	1.2247
61 3/4	1.2398
62	1.2548
62 1/4	1.2707
62 1/2	1.2867
62 3/4	1.3026
63	1.3186
63 1/4	1.3355
63 1/2	1.3525
63 3/4	1.3695
64	1.3865
64 1/4	1.4047
64 1/2	1.4229
64 3/4	1.4411
65 and over	1.4593

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each such board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

31676.11. This section may be made applicable in any county on the first day of the month after the board of supervisors of such county adopts, by majority vote, a resolution providing that this section shall become applicable in such county. Notwithstanding any other provisions of this chapter the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-sixtieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50	.7454

50 1/4	.7561
50 1/2	.7668
50 3/4	.7775
51	.7882
51 1/4	.7998
51 1/2	.8114
51 3/4	.8230
52	.8346
52 1/4	.8472
52 1/2	.8598
52 3/4	.8724
53	.8850
53 1/4	.8987
53 1/2	.9125
53 3/4	.9262
54	.9399
54 1/4	.9549
54 1/2	.9699
54 3/4	.9849
55	1.0000
55 1/4	1.0111
55 1/2	1.0223
55 3/4	1.0335
56	1.0447
56 1/4	1.0597
56 1/2	1.0747
56 3/4	1.0898
57	1.1048
57 1/4	1.1207
57 1/2	1.1367
57 3/4	1.1526
58	1.1686
58 1/4	1.1855
58 1/2	1.2025
58 3/4	1.2195
59	1.2365
59 1/4	1.2547
59 1/2	1.2729
59 3/4	1.2911
60	1.3093
60 1/4	1.3221
60 1/2	1.3350
60 3/4	1.3479
61	1.3608
61 1/4	1.3736
61 1/2	1.3865
61 3/4	1.3994
62	1.4123
62 1/4	1.4251
62 1/2	1.4380
62 3/4	1.4509
63	1.4638
63 1/4	1.4766
63 1/2	1.4895
63 3/4	1.5024
64	1.5153

64 1/4	1.5281
64 1/2	1.5410
64 3/4	1.5539
65	1.5668

In any county operating under this section any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

31676.12. This section may be made applicable in any county on the first day of the month after the board of supervisors of such county adopts by majority vote, a resolution providing that this section shall become applicable in such county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50 .....	.6681
50 1/4 .....	.6775
50 1/2 .....	.6869
50 3/4 .....	.6962
51 .....	.7056
51 1/4 .....	.7156
51 1/2 .....	.7255
51 3/4 .....	.7355
52 .....	.7454
52 1/4 .....	.7561
52 1/2 .....	.7668
52 3/4 .....	.7775
53 .....	.7882
53 1/4 .....	.7998
53 1/2 .....	.8114
53 3/4 .....	.8230
54 .....	.8346
54 1/4 .....	.8472
54 1/2 .....	.8598
54 3/4 .....	.8724
55 .....	.8850
55 1/4 .....	.8987
55 1/2 .....	.9125
55 3/4 .....	.9262

56	.....	.9399
56 1/4	.....	.9549
56 1/2	.....	.9699
56 3/4	.....	.9849
57	.....	1.0000
57 1/4	.....	1.0111
57 1/2	.....	1.0223
57 3/4	.....	1.0335
58	.....	1.0447
58 1/4	.....	1.0597
58 1/2	.....	1.0747
58 3/4	.....	1.0898
59	.....	1.1048
59 1/4	.....	1.1207
59 1/2	.....	1.1367
59 3/4	.....	1.1526
60	.....	1.1686
60 1/4	.....	1.1855
60 1/2	.....	1.2025
60 3/4	.....	1.2195
61	.....	1.2365
61 1/4	.....	1.2547
61 1/2	.....	1.2729
61 3/4	.....	1.2911
62 and over	.....	1.3093

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Whenever in this chapter reference is made to survivorship and other benefits and rights under Section 31676.1, the same shall apply to this section.

31676.13. Notwithstanding any other provisions of this chapter the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-sixtieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50	..... .8181
50 1/4	..... .8275
50 1/2	..... .8369
50 3/4	..... .8462
51	..... .8556
51 1/4	..... .8656

51 1/2	.8755
51 3/4	.8855
52	.8954
52 1/4	.9061
52 1/2	.9168
52 3/4	.9275
53	.9382
53 1/4	.9498
53 1/2	.9614
53 3/4	.9730
54	.9846
54 1/4	.9972
54 1/2	1.0098
54 3/4	1.0224
55	1.0350
55 1/4	1.0487
55 1/2	1.0625
55 3/4	1.0762
56	1.0899
56 1/4	1.1049
56 1/2	1.1199
56 3/4	1.1349
57	1.1500
57 1/4	1.1611
57 1/2	1.1723
57 3/4	1.1835
58	1.1947
58 1/4	1.2097
58 1/2	1.2247
58 3/4	1.2398
59	1.2548
59 1/4	1.2707
59 1/2	1.2867
59 3/4	1.3026
60	1.3186
60 1/4	1.3355
60 1/2	1.3525
60 3/4	1.3695
61	1.3865
61 1/4	1.4047
61 1/2	1.4229
61 3/4	1.4411
62 and over	1.4593

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each such board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

This section shall not be operative in any county until adopted by a resolution of the board of supervisors.

Whenever in this chapter reference is made to the survivorship and other benefits and rights under Section 31676.1, the same shall apply to this section.

31676.14. Notwithstanding any other provisions of this chapter the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-sixtieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50	.8850
50 1/4	.8987
50 1/2	.9125
50 3/4	.9262
51	.9399
51 1/4	.9549
51 1/2	.9699
51 3/4	.9849
52	1.0000
52 1/4	1.0111
52 1/2	1.0223
52 3/4	1.0335
53	1.0447
53 1/4	1.0597
53 1/2	1.0747
53 3/4	1.0898
54	1.1048
54 1/4	1.1207
54 1/2	1.1367
54 3/4	1.1526
55	1.1686
55 1/4	1.1855
55 1/2	1.2025
55 3/4	1.2195
56	1.2365
56 1/4	1.2547
56 1/2	1.2729
56 3/4	1.2911
57	1.3093
57 1/4	1.3221
57 1/2	1.3350
57 3/4	1.3479
58	1.3608
58 1/4	1.3736
58 1/2	1.3865
58 3/4	1.3994
59	1.4123
59 1/4	1.4251
59 1/2	1.4380

59 3/4	1.4509
60	1.4638
60 1/4	1.4766
60 1/2	1.4895
60 3/4	1.5024
61	1.5153
61 1/4	1.5281
61 1/2	1.5410
61 3/4	1.5539
62 and over	1.5668

In any county operating under this section any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall not be operative in any county until adopted by a resolution of the board of supervisors.

31676.15. (a) Except as provided in subdivision (d), this section may be made applicable in any county which has implemented the provisions of Article 15.6 (commencing with Section 31855). This section shall be applicable if a majority of all the members of the board of supervisors vote to adopt a resolution so to do and a majority of the members of the affected class or classes voting at an election held during 1974, with more than 50 percent of the members participating, favor the termination of retirement benefits under social security. The resolution may specify a date subsequent to the date of adoption of the resolution as the operative date for this section.

(b) (1) Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50.....	.7454
50 1/4.....	.7561
50 1/2.....	.7668
50 3/4.....	.7775
51.....	.7882
51 1/4.....	.7998
51 1/2.....	.8114
51 3/4.....	.8230

52.....	.8346
52 1/4.....	.8472
52 1/2.....	.8598
52 3/4.....	.8724
53.....	.8850
53 1/4.....	.8987
53 1/2.....	.9125
53 3/4.....	.9262
54.....	.9399
54 1/4.....	.9549
54 1/2.....	.9699
54 3/4.....	.9849
55.....	1.0000
55 1/4.....	1.0111
55 1/2.....	1.0223
55 3/4.....	1.0335
56.....	1.0447
56 1/4.....	1.0597
56 1/2.....	1.0747
56 3/4.....	1.0898
57.....	1.1048
57 1/4.....	1.1207
57 1/2.....	1.1367
57 3/4.....	1.1526
58.....	1.1686
58 1/4.....	1.1855
58 1/2.....	1.2025
58 3/4.....	1.2195
59.....	1.2365
59 1/4.....	1.2547
59 1/2.....	1.2729
59 3/4.....	1.2911
60.....	1.3093
60 1/4.....	1.3221
60 1/2.....	1.3350
60 3/4.....	1.3479
61.....	1.3608
61 1/4.....	1.3736
61 1/2.....	1.3865
61 3/4.....	1.3994
62.....	1.4123
62 1/4.....	1.4251
62 1/2.....	1.4380
62 3/4.....	1.4509
63.....	1.4638
63 1/4.....	1.4766
63 1/2.....	1.4895
63 3/4.....	1.5024
64.....	1.5153
64 1/4.....	1.5281
64 1/2.....	1.5410
64 3/4.....	1.5539
65.....	1.5668

(2) In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used

for computing rates of contributions shall be disregarded.

(c) Whenever in this chapter reference is made to survivorship and other benefits and rights under Section 31676.1, the same shall apply to this section.

(d) Notwithstanding the requirements of subdivision (a), the provisions of this section shall be applicable in a county of the 12th Class, as described in Sections 28020 and 28033, after the board of supervisors of the county adopts a resolution to do so. The provisions adopted pursuant to this subdivision may be made applicable without regard to the requirement of implementing Article 15.6 (commencing with Section 31855) or the requirement of terminating benefits under social security. The provisions adopted pursuant to this subdivision shall apply only to either of the following:

(1) Members first hired by the county on and after the date this section becomes operative in the county.

(2) Members represented by Service Employees International Union Local 521 whose retirement benefits were established pursuant to Section 31676.16 prior to the date this section becomes operative in the county.

31676.16. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50	0.713
50 1/4	0.725
50 1/2	0.737
50 3/4	0.749
51	0.761
51 1/4	0.775
51 1/2	0.788
51 3/4	0.801
52	0.814
52 1/4	0.828
52 1/2	0.843
52 3/4	0.857
53	0.871
53 1/4	0.886
53 1/2	0.902

53 3/4	0.917
54	0.933
54 1/4	0.950
54 1/2	0.966
54 3/4	0.983
55	1.000
55 1/4	1.007
55 1/2	1.013
55 3/4	1.020
56	1.026
56 1/4	1.033
56 1/2	1.039
56 3/4	1.046
57	1.052
57 1/4	1.059
57 1/2	1.065
57 3/4	1.072
58	1.078
58 1/4	1.085
58 1/2	1.091
58 3/4	1.098
59	1.105
59 1/4	1.111
59 1/2	1.118
59 3/4	1.124
60	1.131
60 1/4	1.137
60 1/2	1.144
60 3/4	1.150
61.....	1.157
61 1/4	1.163
61 1/2	1.170
61 3/4	1.176
62	1.183
62 1/4	1.189
62 1/2	1.196
62 3/4	1.202
63 and over	1.209

The fractions herein set forth shall be used until adjusted by each board for its retirement system in accordance with the interest and mortality tables adopted by each board with respect to its retirement system.

In any county operating under this section any limitation in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

31676.17. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the

current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55	1.2500
55 1/4	1.2625
55 1/2	1.2750
55 3/4	1.2875
56	1.3000
56 1/4	1.3125
56 1/2	1.3250
56 3/4	1.3375
57	1.3500
57 1/4	1.3625
57 1/2	1.3750
57 3/4	1.3875
58	1.4000
58 1/4	1.4125
58 1/2	1.4250
58 3/4	1.4375
59	1.4500
59 1/4	1.4625
59 1/2	1.4750
59 3/4	1.4875
60 and over	1.5000

In any county operating under this section, any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

31676.18. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

In any county operating under this section, any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to

this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

31676.19. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation:

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0175
50 1/2	1.0350
50 3/4	1.0525
51	1.0700
51 1/4	1.0875
51 1/2	1.1050
51 3/4	1.1225
52	1.1400
52 1/4	1.1575
52 1/2	1.1750
52 3/4	1.1925
53	1.2100
53 1/4	1.2275
53 1/2	1.2450
53 3/4	1.2625
54	1.2800
54 1/4	1.2975
54 1/2	1.3150
54 3/4	1.3325
55 and over	1.3500

In any county operating under this section, any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

31676.3. This section shall apply only to counties coming under the provisions of Section 31676.1 prior to January 1, 1953. A member shall receive no credit for prior service subsequent to June 30, 1921, in calculating a retirement allowance pursuant to Section 31676.1 unless, within 90 days after the effective date of this section, he files with the board his written election to pay into the retirement fund six dollars (\$6) for each month of prior service subsequent to June 30, 1921, for which he claims credit, and unless he makes such payments as provided in this article.

31676.56. In any county coming under the provisions of Section 31676.1 subsequent to January 1, 1953, any member having in excess of 30 years of service may within 90 days from the effective date of this amendment elect in writing not to come under the provisions of Section 31676.1.

31676.6. This section shall apply only to counties coming under the provisions of Section 31676.1 prior to January 1, 1953. If a member files an election pursuant to Section 31676.3 and does not file an election pursuant to Section 31676.4, and either he has no accumulated additional contributions to his credit or the accumulated contributions to his credit are less than payments due for credit for prior service subsequent to June 30, 1921, the amount due or balance thereof shall be paid by additional salary deductions in the amounts specified by the member but in no case less than six dollars (\$6) per month. The total amount due shall be paid prior to the effective date of his retirement.

31676.9. In every county in which a retirement system was established prior to January 1, 1952, the prior service pension is an additional pension for members purchased by the county or district, equal to one-sixtieth of the average annual compensation earnable by him during any three years of service elected by the member at or before the time he files an application for retirement, or, if he fails to elect, during the three years immediately preceding his retirement, multiplied by the number of years of prior service credited to him.

31676.95. In every county coming under the provisions of Section 31676.1 subsequent to January 1, 1953, every current service pension and prior service pension payable for time commencing on the effective date of this section to any member who was retired prior to said effective date by reason of having attained the age of compulsory retirement, is hereby increased to the amount it would be if the provisions of this chapter, including Sections 31676.1 and 31760.1, as they existed on the date that Section 31676.1 became applicable to the members' retirement system, had been in effect on the date of the actual retirement of the member; but this section does not authorize any decrease in any such pension, nor does this section give any such retired member, or his successors in interest, any claim against the county or district for any increase in any pension paid or payable for time prior to its effective date.

Calculations of pensions under this section shall be made on the basis of current interest rate and mortality tables.

This section shall not apply to any retirement system established under the provisions of this chapter, nor to the members or retired members of any such system unless and until the governing board of the county or district covered by such retirement system elects to be subject to the provisions of this section in the manner provided by Article 2 of this chapter with respect to the establishment of a retirement system hereunder; except that an election among the employees is not required.

31676.96. In every county coming under the provisions of Section 31676.1, every current service pension and prior service pension payable for the time commencing on the first day of the month after the effective date of this section to any member who was retired prior to such effective date is hereby increased to the amount it would be if the provisions of this chapter, including Section 31676.1, as they exist on the effective date of this section had been in effect on the date of the actual retirement of the member, but this section does not authorize any decrease in any such pension, nor does this section give any such retired member, or his successors in interest, any claim against the county or district for any increase in any pension paid or payable for time prior to its effective date. Calculations of pensions under this section shall be made on the basis of current interest rate and mortality tables.

This section shall not apply to any retirement system established under the provisions of this chapter, nor to the members or retired members of any such system unless and until the governing board of the county or district covered by such retirement system elects to be subject to the provisions of this section in the manner provided by Article 2 (commencing with Section 31500) of this chapter with respect to the establishment of a retirement system hereunder, except that an election among the employees is not required.

31676.97. In every county coming under the provisions of Section 31676.1 subsequent to January 1, 1964, and prior to October 1, 1964, every current service pension and prior service pension payable for time commencing October 1, 1965, is hereby increased to the amount it would be if the provisions of this chapter, including Sections 31676.1 and 31760.1, as they existed on the date that Section 31676.1 became applicable to the members' retirement system, had been in effect on the date of the actual retirement of the member; but this section does not authorize any decrease in any such pension, nor does this section give any such retired member, or his successors in interest, any claim against the county or district for any increase in any pension paid or payable for time prior to October 1, 1965. Calculations of pensions under this section shall be made on the basis of current interest rate and mortality tables.

31676.98. Any county under the provisions of Section 31676.1, on the effective date of this section, whose retired employees were not included in the benefits of Section 31676.1 on the date the county or district adopted the provisions of Section 31676.1, may now include

under Section 31676.1 all retirees who retired during the period of time from the establishment of such retirement system and the date such county or district passed a resolution bringing the county or district under the provisions of Section 31676.1, subject to the following conditions:

(a) The benefits of this section shall not apply to any beneficiary or successor in interest of any deceased member and shall apply only to the living retired members on the date such section is adopted by resolution of the county or district.

(b) No increases, cost of living adjustments or grants to such retired members shall be considered in the calculations of the retirement allowance, and only such pensions received by the retired members, computed at the date of the original retirement of the members shall be used in the computation of any such benefits. All living retired members shall have their benefits computed as general members. Calculations shall be made on the basis of current interest rates and mortality tables.

(c) This section shall not decrease any such pension or retirement allowance, nor shall this section give any such retired members or their beneficiary or successor in interest, any claim against the county or district for any increases in pension or retirement allowance paid or payable for the time prior to the effective date of this section.

(d) This section shall not apply to any retirement system established under the provisions of this chapter, nor to the members or retired members of such system unless and until the governing board of the county or district, adopts by majority vote, a resolution providing that this section shall become applicable in such county or district. Upon adoption the effective date shall be the first of the month following such date of adoption.

A county or district upon the adoption of the benefits prescribed by this section shall determine and shall prescribe increases in employer or member rates of contribution or make such other adjustments as it deems appropriate to fully fund such benefits on a sound actuarial basis.

31677. If a member retires for service before attaining age 60, the prior service pension shall be reduced to that amount which the value of the pensions as deferred to age 60 will purchase at the actual age of retirement.

31678. Notwithstanding any other provision of this chapter, any member of a retirement association established in any county pursuant to this chapter, who upon retirement receives a retirement allowance calculated in accordance with Sections 31676.1, 31676.11, 31676.12, 31676.13, 31676.14, and 31676.15, shall have his or her retirement allowance calculated under each such section only for the period of time that the section was effective in the county.

The Legislature recognizes that counties subject to this chapter may adopt two or more of the enumerated retirement allowance calculation sections when changing from a section providing a lesser allowance to a section providing a larger allowance and thereby creates a windfall for a person who retires immediately after the adoption of a section providing the larger allowance because the

retirement allowance is calculated as if the section had been in effect during the entire career of the member. The purpose of this section is to prevent this practice. This section shall apply only to persons who become members of the retirement system after January 1, 1981.

31678.1. (a) In a county of the 14th class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28035, as amended by Chapter 1204 of the Statutes of 1971, Section 31678 shall only be applicable to persons who first became members of the retirement system on and after January 1, 1994.

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

(c) Notwithstanding any other provision of law, this section shall only apply to members who retire on or after January 1, 1994.

31678.2. (a) Notwithstanding Section 31678 or any other provision of this chapter, a board of supervisors or a governing body of a district may, by resolution adopted by majority vote, make any section of this chapter prescribing a formula for calculation of retirement benefits applicable to service credit earned on and after the date specified in the resolution, which date may be earlier than the date the resolution is adopted.

(b) A resolution adopted pursuant to this section may, if approved in a memorandum of understanding executed by the board of supervisors and the employee representatives, require members to pay all or part of the contributions by a member or employer, or both, that would have been required if the section or sections specified in subdivision (a), as adopted by the board or governing body, had been in effect during the period of time designated in the resolution. The payment by a member shall become part of the accumulated contributions of the member.

(c) This section shall only be applicable to members who retire on or after the effective date of the resolution described in subdivision (a).

31678.3. (a) Notwithstanding any other provision of this chapter, a resolution adopted by a board of supervisors to make any formula for calculation of retirement benefits described in this section applicable to the employees of the county does not apply to make that formula applicable to the employees of any district within the county. The governing body of a district may elect, by resolution adopted by majority vote, to make any formula for calculation of retirement benefits described in this section applicable to the employees of the district irrespective of whether the board of supervisors has made that election with respect to employees of the county.

(b) Notwithstanding any other provision of this chapter, the board of supervisors or the governing body of a district may, by resolution adopted by majority vote, pursuant to a memorandum of understanding made under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 2), do any or

all of the following:

(1) Apply Section 31621.8, 31676.17, 31676.18, or 31676.19 for the calculation of retirement benefits for general members to the employees in a bargaining unit comprised of general members.

(2) Apply Section 31664.1 for the calculation of retirement benefits for safety members to the employees in a bargaining unit comprised of safety members.

(3) Apply Section 31664 for the calculation of retirement benefits for safety members to the employees of the Probation Services Unit and the Probation Supervisory Management Unit.

(c) Any nonrepresented employees within similar job classifications as employees in a bargaining unit described in subdivision (b) or supervisors and managers thereof shall be subject to the same formula for the calculation of retirement benefits applicable to the employees in that bargaining unit.

(d) A resolution adopted pursuant to subdivision (b) may require members to pay a portion of the contributions attributable to past service liability, that would have been required if the benefits specified in the resolution, as adopted by the board of supervisors or the governing body of the district, had been in effect during the period of time designated in the resolution. Any payments required of represented employees shall first be approved in a memorandum of understanding made under the Meyers-Milias-Brown Act and executed by the board of supervisors or the governing body of the district and the employee representatives. The contributions paid by a member pursuant to this subdivision shall become part of the accumulated contributions of the member.

(e) This section shall only be applicable to members who retire on or after the effective date of the resolution described in subdivision (b).

(f) The board of supervisors or the governing body of a district may not unilaterally implement a retirement formula for any of its bargaining units.

(g) This section shall apply only in Orange County.

31678.4. The governing body of a district as defined in subdivision (1) of Section 31468 shall not elect to make a formula for the calculation of retirement benefits applicable to the personnel of the district appointed pursuant to Section 31522.5 who are employees of the retirement system unless the board of supervisors has made that formula applicable to personnel of that retirement system who are employees of the county.

31679. In every county in which a retirement system was established prior to January 1, 1953, if a member enters or has heretofore entered the retirement system with credit for prior service, and has heretofore retired or shall hereafter be retired after attaining the compulsory retirement age, or at age 65 with 20 years service, and his retirement allowance is less than one thousand two hundred dollars (\$1,200) a year, exclusive of any annuity based on additional contributions, an additional amount purchased by contributions of the county or district shall be added to his combined annuity and pensions which will cause his total retirement allowance to amount to one thousand two hundred dollars (\$1,200) a year, exclusive of any

annuity based on additional contributions.

31680. A member retired for service or disability shall not be paid for any service rendered by him to the county or district after the date of his retirement, except: (a) As specifically provided in this chapter. (b) Pursuant to Section 31733. (c) The county or district may pay and such retired member may receive: (1) rewards for ideas or suggestions made by such retired member for the improvement of county or district activities; (2) compensation for his services on the board. (d) If the member is subsequently elected to county office after retirement.

As herein used the term "services rendered" shall refer to service rendered as an officer or employee of the county or district and shall not refer to services performed by a retired officer or employee as an independent contractor engaged by a county or district under a bona fide contract for services within the purview of Section 31000 of this code.

31680.01. As used in Section 31680 service rendered as a member of a governing board of a joint agency created by two or more counties, under the authority of Chapter 5 (commencing with Section 6500) of Division 7, Title 1 of this code, shall not be deemed service rendered a county or district, provided that the county from whose service the employee was retired is a party to the agreement creating the joint agency.

31680.1. Any person who has retired under this chapter may, without reinstatement from retirement or loss or interruption of benefits under this chapter, serve as a juror, election officer, field deputy for registration of voters, member of the board of the association or temporarily as a judge when assigned by the Chairman of the Judicial Council and receive any fees payable for such service.

31680.2. (a) Any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing him or her, for not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives 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.

31680.3. (a) Notwithstanding Section 31680.2, any member who has been covered under the provisions of Section 31751 and has retired may be reemployed in a position requiring special skills or knowledge, as determined by the county or district employing the member, for not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend the person's retirement allowance, and no deductions shall be made from the person's salary as contributions to this system.

(b) (1) This section shall not apply to any retired member who is otherwise eligible for reemployment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives 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.

31680.4. Notwithstanding any other provision of law, a member retired for service and reemployed in a county or district under this chapter shall become again an active member of the retirement association upon (a) his or her application to the board for reinstatement, (b) the determination of the board, based upon medical examination, that he or she is not incapacitated for the duties assigned to him or her; and (c) meeting the conditions for membership in Article 4 (commencing with Section 31550) are met.

For the purposes of this section, the effective date of the member's reinstatement to active membership shall be the first day of the month following the date of reemployment.

Except as permitted in Section 31680.2 or 31680.3, the retirement allowance of the member shall be canceled on the effective date of the member's reemployment and shall be resumed only upon the subsequent termination of the member from employment.

This section shall not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section and Section 31680.5 operative in that county.

31680.5. (a) Upon reinstatement, pursuant to Section 31680.4, the member's rate of contributions and retirement allowance upon subsequent retirement shall be determined as if the member were first entering the system.

Solely for the purpose of determining the member's eligibility for service retirement under this section, service shall include the member's credited service prior to reinstatement.

(b) The member's allowance upon his or her service or disability

retirement or other termination subsequent to the reinstatement shall be the sum of (1) his or her retirement allowance calculated on the basis of credited service rendered after reinstatement in accordance with the formula applicable to him or her plus (2) his or her retirement allowance as it was prior to reinstatement, adjusted by any change after reinstatement in the provisions governing the calculation of his or her allowance which would have applied to him or her had he or she continued in retirement.

The retirement allowance otherwise payable under this section to a member whose allowance prior to reinstatement was paid pursuant to his or her election under Section 31810 shall be reduced as provided in Section 31810. However, for a member reinstated pursuant to Section 31680.4 prior to attaining age 62, the reduction required by Section 31810 shall be the amount which is the actuarial value of the increase in the allowance from date of retirement to date of reinstatement.

Notwithstanding any other provision of this chapter, the retirement allowance payable to any member subject to this section for any credited service for which a retirement allowance was paid prior to reinstatement shall not be less than the retirement allowance which would have been payable on the date of the subsequent retirement had the member not been reinstated, adjusted, however, by any reduction under this section because of an election under Section 31810.

(c) Notwithstanding Article 10 (commencing with Section 31720), upon retirement for disability subsequent to reinstatement, a member shall receive a disability retirement allowance as follows:

(1) A service-connected disability allowance shall be equal to one-half of his or her final compensation or an allowance computed as prescribed by subdivision (b), whichever is greater.

(2) A nonservice-connected disability allowance shall be computed using the method prescribed by subdivision (b).

(d) This section shall not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section and Section 31680.4 operative in that county.

31680.6. (a) Notwithstanding Section 31680.2, any county subject to Section 31680.2 may, upon adoption of a resolution by a majority vote by the board of supervisors, extend the period of time provided for in Section 31680.2 for which a person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing him or her, to not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend his or her retirement allowance, and no deductions shall be made from his or her salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives 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.

31680.7. (a) Notwithstanding any other provision of law, any person who has been retired for service may be reemployed by the county or district from which he or she has been retired. Upon reemployment, the member's retirement allowance shall be discontinued. The retirement allowance may be reinstated upon the discontinuance of reemployment, as specified in this section.

(b) (1) For purposes of this section, "original period of employment" means the period of service with the county or district upon which the member's original retirement allowance was based.

(2) For purposes of this section, "period of reemployment" means the service subsequently rendered by the member after he or she has been reemployed by the county or district.

(c) During the period of reemployment, the member shall accrue retirement service credit at the same tier or benefit level which was applicable to the member during his or her original period of employment. The member's contribution rate shall be based on the same age at entry, and the same statutory formula, which was used in calculating the member's contribution rate during his or her original period of employment.

(d) Upon termination of the member's period of reemployment for other than death or disability, the member shall begin receiving a monthly service retirement allowance which is the sum of all of the following:

(1) The monthly retirement allowance the member had been receiving immediately prior to the time the member was reemployed by the county or district.

(2) Any cost-of-living increases that would have been added to the monthly retirement allowance if the member's allowance had not been discontinued by reason of reemployment.

(A) A retirement allowance based on the amount of service credit the member accrued during the period of reemployment. This additional retirement allowance shall be calculated using the same benefit formula and tier upon which the member's original retirement allowance was calculated, but shall be based on the member's age upon termination of the period of reemployment and the member's final compensation during that period.

(B) The retirement allowance otherwise payable under this section to a member whose allowance prior to reinstatement was paid pursuant to an election under Section 31810 shall be reduced as provided in that section. However, for a member reinstated pursuant to Section 31680.4 prior to attaining age 62, the reduction required by Section 31810 shall be the amount that is the actuarial value of the increase in the allowance from the date of retirement to the date of reinstatement.

(e) If, after reemployment pursuant to this section, the member becomes disabled and is granted a service-connected or non-service-connected disability retirement by the board, the member's disability retirement allowance shall be the greater of either of

the following:

(1) The disability retirement allowance the member would have been entitled to receive if all of the member's service during his or her original period of employment and subsequent period of reemployment had been continuous.

(2) The service retirement allowance the member would have been entitled to receive if the member had not become disabled and had voluntarily terminated his or her period of reemployment.

(f) (1) If the member dies during his or her period of reemployment, and leaves an eligible survivor or survivors entitled to receive a survivor's allowance, the allowance shall be the same amount that it would have been if all of the member's service during his or her original period of employment and subsequent period of reemployment had been continuous. If a lump sum death benefit is payable to the member's designated beneficiary instead of a survivor's allowance, the member's accumulated retirement contributions for purposes of computing the death benefit shall be the sum of the contributions made by the member during the period of reemployment, plus interest credited thereon, and the excess, if any, of the member's total contributions during the original period of employment, including interest credited thereon, over the total amount of retirement benefits paid to the member between the member's original retirement from the county or district and the member's reemployment pursuant to this section.

(2) Upon or after service retirement, the continuance shall be paid upon the member's death to the respective elected beneficiaries from each of the separate retirement period elections.

(g) This section shall not apply to an employee who receives an additional retirement benefit as an inducement to retire early.

(h) This section shall not be operative in any county until the board of supervisors of that county, by resolution adopted by a majority vote, makes this section applicable in that county.

31680.8. (a) Notwithstanding any other provision of law, a safety member who was required to retire for service because of age during the operative dates of, and as described in, Section 31662.4, 31662.6, 31662.8, or 31663, may be reemployed by the county in the same position that he or she retired from and be reinstated to active membership upon all of the following:

(1) His or her application to the board for reinstatement to active membership.

(2) The determination of the board, based on medical advice, that the member is not incapacitated for the duties of the position assigned to him or her.

(b) The member shall be reinstated to active membership in the plan or tier that he or she retired from, effective the first day of the month following the date of reemployment, and his or her membership shall be the same as if unbroken by retirement. Notwithstanding any other provision of law, the credited service of the member rendered both before and after reinstatement shall be included for the purpose of determining the eligibility of the member for benefits under this chapter.

(c) Upon reemployment pursuant to this section, the retirement allowance of the member shall be cancelled. Upon the subsequent termination of the member from employment, the retirement allowance

of the member shall be recalculated on the basis of the credited service rendered both before and after reinstatement pursuant to the formula applicable to the member prior to reinstatement. Notwithstanding any other provision of law, the reinstatement rights conferred by this section shall not entitle a person to a retirement right or benefit that exceeds the limitations in the Internal Revenue Code that apply to public retirement systems.

(d) Upon reinstatement pursuant to this section, the rate of contribution of the member shall be based on the same age at entry that was used in calculating the contribution rate of the member during his or her original period of employment.

(e) This section shall apply only to a county of the first class as described in Section 28020 and shall not become operative in that county until the board of supervisors, by resolution adopted by majority vote, makes this section operative in that county.

31680.9. (a) The application of Section 31680.8 shall be limited by this section. Section 31680.8 shall not apply to either of the following:

(1) A safety member who was required to retire as described in Section 31663.2.

(2) A member who retired as a safety member described in Section 31470.4 or 31470.6.

(b) This section shall apply only to a county of the first class as described in Section 28020.

31681. In every county having a population in excess of 2,000,000, the minimum retirement allowance for every member who has heretofore or who shall be hereafter retired at compulsory retirement age and who is credited with 15 or more years of service, including prior service, or at age 65 with 20 years of service, shall receive a total retirement allowance of not less than one thousand two hundred dollars (\$1,200) per year, exclusive of any annuity based on additional contributions. This section shall be retroactively operative as of September 22, 1951.

31681.1. (a) Notwithstanding any other provisions of this chapter, every retirement allowance payable for time commencing on the effective date of this section to any previously retired member of a superseded system not established pursuant to either Chapter 4 or Chapter 5 is hereby increased, by increase of the pension portion thereof, to the amount it would be if the previously retired member of such superseded system had been retired under the provisions of this chapter, and the provisions of this chapter, as they are in effect on the effective date of this section, had been in effect at the time of the retirement of the previously retired member, assuming that all of the service with which he was credited at the time of his actual retirement constituted prior service under this chapter.

(b) However, if such retirement allowance payable for time after the effective date of this section, as increased by subdivision (a) of this section, is less than one thousand two hundred dollars (\$1,200) a year, and if the previously retired member of the superseded system (not established pursuant to either Chapter 4 or

Chapter 5) was credited at the time of his retirement with 20 or more years of service, or was retired after attaining the compulsory age of retirement, an additional amount provided by contributions of the county shall be added to his retirement allowance which will cause his total retirement allowance to amount to one thousand two hundred dollars (\$1,200) a year.

(c) This section does not authorize any decrease in any such retirement allowance, nor does this section give any such previously retired member of such superseded retirement system, or his successors in interest, any claim against the county for any increase in any retirement allowance paid or payable for time prior to its effective date. Calculations of retirement allowances under this section shall be made on the basis of current interest rate and mortality tables.

31681.2. Every retirement allowance payable for time commencing on the effective date of this section to or on account of any member of this system or of a superseded system, who was retired prior to January 1, 1948, is hereby increased by twenty-five dollars (\$25) per month if the retired member is entitled to be credited with 20 years or more of service, or, if the retired member is entitled to be credited with less than 20 years of service, by an amount which bears the same ratio to twenty-five dollars (\$25) as the member's completed years of service with which the member is entitled to be credited bears to 20 years.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31681.4. Every retirement allowance for time commencing on the effective date of this section to or on account of any member of this system or of a superseded system, who was retired or died on or after January 1, 1948 but prior to February 1, 1955, or such other date prior to February 1, 1955, as the board of supervisors in any county shall specify by resolution, is hereby increased by twenty-five dollars (\$25) per month if the retired member is entitled to be credited with 20 years or more of service, or, if the retired member is entitled to be credited with less than 20 years of service, by an amount which bears the same ratio to twenty-five dollars (\$25) as the member's completed years of service with which the member is entitled to be credited bears to 20 years.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31681.5. Every retirement allowance payable for time commencing on the effective date of this section to, or on account of any member of this system or of a superseded system, who has been retired for service, is hereby increased as follows:

Percentage of
increase in

Period during which retirement became effective	monthly retirement allowance
On or prior to June 30, 1956	10%
Twelve months ended June 30, 1957	8%
Twelve months ended June 30, 1958	6%
Twelve months ended June 30, 1959	4%
Twelve months ended June 30, 1960	2%

In no event shall any allowance be increased by an amount greater than fifty dollars (\$50) a month nor less than ten dollars (\$10) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county.

31681.51. Every retirement allowance or optional death allowance (including an allowance payable to a survivor of a member) payable to or on account of any member of this system or of a superseded system who has been or was retired for service is hereby increased as follows:

Period during which in retirement became effective	Percentage of increase monthly retirement allowance
On or prior to June 30, 1962	10%
12 months ended June 30, 1963	8%
12 months ended June 30, 1964	6%
12 months ended June 30, 1965	4%
12 months ended June 30, 1966	2%

In no event shall any allowance be increased by an amount greater than fifty dollars (\$50) a month nor less than ten dollars (\$10) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county.

31681.52. Every retirement allowance or optional death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system or of a superseded system who has been or was retired for service is hereby increased as follows:

in Period during which retirement became effective	Percentage of increase monthly retirement allowance
On or prior to June 30, 1967	10%
12 months ended June 30, 1968	8%

12 months ended June 30, 1969	6%
12 months ended June 30, 1970	4%
12 months ended June 30, 1971	2%

In no event shall any allowance be increased by an amount greater than seventy-five dollars (\$75) a month. A member with credit for 10 or more years of service in the system shall receive not less than twenty-five dollars (\$25) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by a majority vote, make the provisions of this section applicable in such county.

31681.53. (a) Except as provided in subdivision (b), a retirement allowance or optional death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system or of a superseded system who has been or was retired for service which did not on July 1, 1976 exceed five hundred dollars (\$500) per month is hereby increased as follows:

Number of years of county or district service	Percentage of increase in monthly retirement allowance
25 or more years	10%
20-25 years	8%
15-20 years	6%

(b) No allowance shall be increased to more than five hundred dollars (\$500) per month pursuant to subdivision (a).

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31681.54. (a) Except as provided in subdivision (b) of this section, a retirement allowance or optional death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system, or of a superseded system, who retired for service on or before December 31, 1971, is hereby increased as follows:

Number of Years of County or District Service	Percentage of Increase in Monthly Retirement Allowance
25 or more years	10%
20-25 years	8%
15-20 years	6%
10-15 years	4%

(b) No allowance shall be increased to more than five hundred dollars (\$500) per month pursuant to subdivision (a) of this section.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31681.55. Effective the first day of the first month after adoption of this section by the board of supervisors, the allowance paid with respect to any member of this system who retired or died prior to January 1, 2001, shall be increased by the percentage set forth opposite the year of retirement or death in the following schedule:

Period during which retirement or death occurred:	Percentage:
January 1, 1998, or later	0.0%
12 months ending Dec. 31, 1997	1.0%
24 months ending Dec. 31, 1996	2.0%
60 months ending Dec. 31, 1994	3.0%
60 months ending Dec. 31, 1989	4.0%
120 months ending Dec. 31, 1984	5.0%
12 months ending Dec. 31, 1974, or earlier	6.0%

The percentage shall be applied to the allowance payable on the effective date, and the allowance as so increased shall be paid for time on and after that date and shall be subject to annual cost-of-living adjustments.

(b) This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in that county.

31681.6. In any county which made Section 31676.1 of the Government Code applicable effective July 1, 1962, the board of supervisors may by resolution make the benefits provided by Section 31676.1 applicable to employees who retired prior to July 1, 1962, and after the board of supervisors first adopted a resolution providing that Section 31676.1 would become applicable provided that such employees' retirement was by reason of having reached the age of compulsory retirement prior to July 1, 1962. In such instance the employees shall be entitled to the benefits provided by Section 31676.1 as of July 1, 1962.

31681.7. Every retirement allowance payable during the time this section is operative in any county to, or on account of any member of this system or of a superseded system, who has been retired for service shall be increased by an amount equal to the product one dollar (\$1) times years of service, not to exceed 20 years, times the number in the following table:

Period during which retirement became effective	Multiply by
On or prior to June 30, 1957	2
Twelve months ended June 30, 1958	1.5
Twelve months ended June 30, 1959	1
Twelve months ended June 30, 1960	0.5

This section shall not be operative in any county except as follows:
The board of supervisors of a county at any time and from time to

time may find that economic conditions are such as to require either that this entire section, or this section as applied to one or more categories of members in the above table be applicable in such county. The board of supervisors of such county from time to time may either rescind or modify such finding and either find that economic conditions do not require that this section be applicable at all in such county or be applicable to a greater, lesser, or different extent than previously found. This section or this section as applied to one or more categories of members in the above table, as the case may be, shall be applicable in such county when and only during the time when such finding is in effect. The giving of additional retirement benefits pursuant to this section shall create no additional contractual rights and shall not preclude the withdrawal of such benefits either by action of the board of supervisors or of the Legislature.

31681.8. (a) The board of supervisors in any county under the County Employees Retirement Law of 1937 may provide, effective on a date determined by the board, for cost-of-living payments, in addition to those payable under Articles 16.5 and 16.6, to members of this system or a superseded system who retired and to their surviving beneficiaries who are receiving allowances under this system, provided the following conditions are met:

(1) On January 1 of the year of adoption or readoption of this section, the accumulations established by Section 31870, 31870.1, or 31870.2, as applicable, shall, for any member, equal or exceed 25 percent in order for that member to be eligible for such cost-of-living payment.

(2) The payments shall be made either quarterly or monthly to those members and survivors eligible for the first payment.

(3) The amount of each payment is equal to the product of a sum determined by the board of supervisors, but not to exceed fifteen dollars (\$15) times the member's full years of county service not exceeding 30 years.

(b) The payments made pursuant to this section and Section 31739.5 shall be made only during the lifetimes of the members or their survivors receiving allowances and to no other person.

(c) The payments made pursuant to this section and Section 31739.5 shall not be considered as a part of the monthly retirement allowance, optional death allowance, or annual death allowance, nor shall any such payments be construed as guaranteeing any similar payments in any subsequent year.

(d) Notwithstanding subdivision (a), the payments to beneficiaries of members pursuant to Section 31760.1, 31765.1, 31781.1, or 31785 or to beneficiaries who elected a combined benefit pursuant to Section 31781.3 shall be 60 percent of the payments which otherwise would have been payable under subdivision (a) to the members.

(e) Notwithstanding subdivision (a), the payments to beneficiaries of members who elected optional settlement 3 pursuant to Section 31763 shall be 50 percent of the payments which otherwise would have been payable under subdivision (a) to the member.

(f) This section shall not be operative in any county in any year, unless it is adopted or readopted in any year by the board of supervisors. Any such adoption or readoption in any particular year shall not be construed to require any adoption or readoption in any

subsequent year.

Before adoption by the board of supervisors in any year, the cost of the payments authorized by this section and Section 31739.5 shall be determined by a qualified actuary and the board of supervisors shall, with advice of the actuary, provide for the payment of such cost in such manner as to fully fund the benefits on a sound actuarial basis, including use of available funds in the reserves provided in Section 31592.2 with the approval of the retirement board, or an increase in the employer rates of contributions, or a combination of these sources of payments. This actuarial determination shall be made only upon authorization by the board of supervisors.

Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31510) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31510.8.

31682. The board of retirement of a county of the 13th class, as defined by Sections 28020 and 28034, as amended by Chapter 1204 of the Statutes of 1971, may elect to provide, by resolution, a vested supplemental retirement benefit of one hundred eight dollars and forty-four cents (\$108.44) per month to all current and future retired members and their survivors eligible for an optional settlement or a survivors allowance under this chapter.

Prior to the adoption of a resolution by the board of retirement to provide the supplemental retirement benefit provided for in this section, the cost of funding this supplemental retirement benefit into perpetuity shall be determined by a qualified actuary.

This section shall not be operative until such time as the board of supervisors shall, by majority vote, adopt a resolution making the provisions of this section applicable.

31682.2. If the board of retirement of a county of the 13th class adopts, or has adopted, a resolution pursuant to Section 31682, then for those persons who are first employed by an employer of the system on or after January 1, 2006, the vested supplemental benefit shall be paid only to a retiree who has accrued a minimum of five years' service credit in the system as a result of employment with the employer, except that a member who receives a disability retirement that is service connected is not subject to the five-year service requirement.

31683. (a) The board of supervisors in a county of the ninth class, as defined in Sections 28020 and 28030, may elect to provide an additional benefit to members who retired and to their surviving beneficiaries who are receiving allowances under this system, if the following conditions are satisfied:

(1) A qualified actuary determines the cost of the payments authorized by this section.

(2) The board of retirement fully funds the costs of the payments by this section through a transfer of funds from the reserves as provided in Section 31592.2.

(b) The payments shall be made monthly only to those members and their surviving beneficiaries who are receiving allowances under this system on a date established by the board of retirement.

(c) The first payment shall be effective on the first day of the first full month that occurs after adoption of this section by the board of supervisors.

(d) The amount of each additional monthly benefit to a retired member shall be two hundred dollars (\$200).

(e) Notwithstanding subdivision (d), the monthly payments to beneficiaries of members pursuant to Section 31760.1, 31765.1, 31781.1, or 31785, or to beneficiaries who elect a combined benefit pursuant to Section 31781.3 shall be one hundred twenty dollars (\$120).

(f) Notwithstanding subdivision (d), the monthly payments to beneficiaries of members who elected optional settlement three pursuant to Section 31763 shall be one hundred dollars (\$100).

(g) The payments made pursuant to this section shall be considered a part of the monthly allowance and shall be increased by any subsequent cost-of-living allowance under Article 16.5 (commencing with Section 31870).

Article 8.4 Community Property 31685-31685.96

31685. (a) Upon the legal separation or dissolution of marriage of a member, after joining the retirement system as a party to the proceeding pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the Family Code, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to Section 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
 - (2) The right to a refund of accumulated retirement contributions.
 - (3) The right to redeposit accumulated contributions that are eligible for redeposit by the member.
 - (4) The right to purchase service credit that is eligible for purchase by the member.
 - (5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.
 - (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.
- (d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

31685.1. "Nonmember," as used in this article, means the spouse or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

31685.2. (a) The nonmember who is awarded a separate account shall have the right to a refund of the accumulated contributions and interest credited in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund shall be effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file with the system.

(d) The nonmember is deemed to have permanently waived all rights

in the system and all rights to any future retirement benefits pertaining to the service credit accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once it has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit or to purchase service credit after the refund becomes effective.

(g) If at the time of the marriage dissolution or legal separation, the member does not have the necessary minimum credited service to elect deferred retirement, the nonmember shall receive a refund of the accumulated contributions and credited interest placed in the nonmember's account.

(h) If the nonmember receives a refund under this section, the member may elect to redeposit accumulated contributions and interest refunded to the nonmember and to receive credit for the service time that had been forfeited by the nonmember. The election shall be made within five years of receipt of notice from the board of eligibility to redeposit the contributions. The board shall establish the manner of payment and the time period within which the redeposit of contributions may be made. The interest rate established by the board shall be the same as that charged to members on all other redeposits.

31685.3. (a) The nonmember who is awarded a separate account may redeposit accumulated contributions and interest previously refunded to the member in accordance with the determination of the court required by Section 31685.

(b) The nonmember may redeposit only those accumulated contributions and interest that were previously refunded to the member and that the court has determined to be the community property interest of the nonmember in the accumulated contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions and interest.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions and interest previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember to redeposit is subject to the regulations of the board.

(f) The member has no right to the court-determined nonmember share of any previously refunded accumulated contributions and interest whether or not the nonmember elects to redeposit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before redeposit is completed.

However, any right to redeposit previously refunded accumulated contributions and interest not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) Any redeposit by the nonmember shall be made by lump sum before retirement.

31685.4. (a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by

Section 31685.

(b) The nonmember may purchase only that service credit that the court has determined to be the community property share of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement, the contributions and interest pursuant to the regulations of the board.

(d) The nonmember shall have no right to purchase the service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to the court-determined nonmember share of the service credit whether or not the nonmember elects to purchase the service credit until the effective date of any refund requested by the nonmember pursuant to Section 31685.2, or the nonmember dies before the service credit is purchased. However, any service credit eligible for purchase that is not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

31685.5. A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The member or nonmember has attained the minimum age prescribed by the applicable service retirement formula of the member.

(b) On the date of retirement, the member had sufficient credited service to retire for service, notwithstanding any service credit awarded to the nonmember.

31685.6. Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board.

31685.7. (a) If the nonmember retires before the member retires, "final compensation" means the highest average annual compensation earnable by the member during the three consecutive years, or one year where applicable, prior to the date the nonmember retires. The nonmember may designate an earlier period to be used where the time period of the nonmember's marriage to the member and membership correspond.

(b) If the member has retired before the nonmember, the "final compensation" for the nonmember shall be the final compensation used in calculating the member's retirement.

(c) Upon receipt of an application for retirement by the member, the board shall notify the nonmember that his or her final compensation will not increase any further and shall identify which options are available to the nonmember and the impact thereof.

31685.8. A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

31685.9. If a member becomes disabled, the combined benefit payments to both the member and nonmember shall not exceed the amount that would otherwise be paid to the member alone.

31685.95. (a) Under no circumstances shall a retirement plan be required to make payments in any manner that will result in an increase in the amount of benefits provided under the plan.

(b) All benefits determined pursuant to Part 5 (commencing with Section 2610) of Division 7 of the Family Code and this article shall be determined on the basis of the actuarial economic and demographic assumptions and values prescribed by the board of the affected retirement plan.

31685.96. (a) The age factor applicable to the nonmember shall be based on the age of the nonmember at the time of his or her retirement.

(b) The board shall adopt age factors as recommended by the actuary.

31685.96. This article shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make this article applicable in the county.

Article 8.5 Group Insurance 31691-31693

31691. (a) The board of supervisors of any county by ordinance, or the governing body of any district under the County Employees Retirement Law, by ordinance or resolution, may provide for the contribution by the county or district from its funds and not from the retirement fund, toward the payment of all or a portion of the premiums on a policy or certificate of life insurance or disability insurance issued by an admitted insurer, or toward the payment of all or part of the consideration for any hospital service or medical service corporation, including any corporation lawfully operating under Section 9201 of the Corporations Code, contract, or for any combination thereof, for the benefit of any member heretofore or hereafter retired or his or her dependents. At least one of these plans shall include free choice of physician and surgeon.

(b) The benefits provided by this section are in addition to any other benefits provided by this chapter.

(c) The board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member for one year prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for the benefits enumerated herein from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. The board may provide for the benefits enumerated from like sources when the board of supervisors or the governing body of a district has elected to provide these benefits to its active employees, even though the benefits are not provided to those who have retired from the service of the county or district.

(d) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

31691.1. (a) In lieu of the benefits prescribed by subdivision (d) of Section 31691, the board of retirement may provide on behalf of a member who has retired, or an eligible surviving spouse who was married to the member prior to the date of retirement of the member, or, if there is no such spouse, the surviving unmarried children of the member who are under 18 years of age, or under 22 years of age and full-time students, for an equivalent increase in allowance from the earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund. Any benefit provided by this section shall be subject to Section 31692.

(b) Except in a county of the first class, upon adoption by any county providing benefits pursuant to this section, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

31691.2. The board of retirement in a county of the first class may

permit active members and their dependents to enroll in any plan authorized in Section 31691. The board shall have exclusive control over the plan benefits and administration to the same degree and to the same extent it otherwise has control over plan benefits and administration for retired members, and may recover reasonable administrative costs from the county or plan participants.

This section shall not be operative until the board of supervisors, by resolution adopted by a majority vote, makes this section applicable in the county.

31692. The adoption of an ordinance or resolution pursuant to Section 31691 shall give no vested right to any member or retired member, and the board of supervisors or the governing body of the district may amend or repeal the ordinance or resolution at any time except that as to any member who is retired at the time of such an amendment or repeal, the amendment or repeal shall not be operative until ninety (90) days after the board or governing body notifies the member in writing of the amendment or repeal. In counties with a population of 5,000,000 or more, the adoption of an ordinance or resolution pursuant to Section 31691 shall remain in effect for any member heretofore or hereafter retired for as long as the board of supervisors or governing body provides similar types of benefits to any active member in current county service.

31693. In any county, district, or county retirement system providing benefits under this article, the county, district, or county retirement system shall provide any organization that is recognized by the retirement system of the county or district as representing the retired employees of that county or district reasonable advance notice of any proposed changes in employee health care benefits affecting those retired employees and the organization shall have a reasonable opportunity to comment prior to any formal action by the county, district, or county retirement system on the proposed changes. As used in this section, "proposed changes" means significant changes affecting health care benefits, including, but not limited to, changes in health care carriers, plan design, and premiums.

Article 8.6 Post-Employment Benefits 31694-31694.5

31694. (a) The board of supervisors of a county or the governing body of a district or other public entity may, by ordinance or resolution and with the agreement of the board of retirement, provide for the contribution of funds by the county, a district, or other public entity into a Post-Employment Benefits Trust Account. The retirement system may establish the Post-Employment Benefits Trust Account as a part of the retirement fund. The Post-Employment Benefits Trust Account shall be established for the sole purpose of funding the benefits provided under a post-employment group health, life, welfare, or other supplemental benefits plan or plans established and maintained by the county or district, which plan or plans may provide for self-insured coverage or the payment of all or a portion of the premiums on one or more insurance contracts or health care service plan contracts for retired employees of the participating county, district, or other public entity, and their qualified spouses, dependents and beneficiaries.

(b) Contributions to the Post-Employment Benefits Trust Account may include the proceeds of debt issued by the county, a district, or other public entity solely for the purpose of funding post-employment health, life, welfare, or other supplemental benefits.

(c) The post-employment benefits provided with the funds contributed to the Post-Employment Benefits Trust Account are in addition to any other benefits provided under this chapter.

(d) (1) Except as described in subdivision (b) of Section 31694.1, the assets of the retirement fund may not be used, directly or indirectly, to pay the cost of any benefits provided through the Post-Employment Benefits Trust Account or, except to the extent allowed by federal tax law, to pay any direct or indirect cost of administering the Post-Employment Benefits Trust Fund.

(2) Except as described in subdivision (c) of Section 31694.1, funds in the Post-Employment Benefits Trust Account may not be used, directly or indirectly, to pay the cost of any other benefits provided under this chapter.

31694.1. (a) The retirement system shall separately account for the funds contributed to the Post-Employment Benefits Trust Account by each participating employer and the earnings and expenses related to the investment and administration of those funds.

(b) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole, exclusive, and plenary authority and fiduciary responsibility over the investment of the funds in the Post-Employment Benefits Trust Account, consistent with Sections 31594 and 31595, and as provided for in Section 17 of Article XVI of the California Constitution. The board of retirement or board of investments may invest funds in the Post-Employment Benefits Trust Account with those of the retirement system, to the extent allowed by federal tax laws. The investment earnings and investment expenses attributable to the investment activity of the Post-Employment Benefits Trust Account shall be accounted for separately from the investment earnings and expenses of the retirement fund.

(c) The funds in and investment earnings of the Post-Employment Benefits Trust Account shall be used to pay the reasonable costs related to investment expenses and administration of the Post-Employment Benefits Trust Account to the extent allowed by federal tax law. Those expenses shall not be deemed to be an investment or administrative expense of a retirement system under this chapter.

(d) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, may establish rules and procedures governing the investments and administration of the Post-Employment Benefits Trust Account. The board of retirement or the board of investments shall determine the rate of interest to credit the funds in the Post-Employment Benefits Trust Account.

(e) The board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized to take any and all actions necessary to establish and administer the Post-Employment Benefits Trust Account in compliance with applicable federal tax laws or other legal requirements.

(f) The board of retirement, or the board of retirement acting jointly with a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, and a participating employer in the Post-Employment Benefits Trust Account shall establish, by written agreement, the respective roles and responsibilities of the retirement system and the participating employer with respect to the administration and investment of the Post-Employment Benefits Trust Account, consistent with Section 17 of Article XVI of the California Constitution. That agreement shall include, but is not limited to, funding, distribution, expenditure, actuarial, accounting, and reporting considerations, and any applicable investment parameters. The board may, in its discretion, authorize an employer to transfer assets into or out of the Post-Employment Retirement Account, however, any transfer of assets shall comply with the terms of the contract between the employer and the board, satisfy requirements under applicable rules of the Governmental Accounting Standards Board, and satisfy the requirements of federal tax law. Once the investment parameters are established, the board of retirement, or a board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, shall have sole control over the investment activity of the Post-Employment Benefits Trust Account as described in subdivision (b). Upon agreement and authorization of the board of retirement and the governing body of a participating employer, the retirement system may administer a post-employment health, life, welfare, or other supplemental benefit plan sponsored by the participating employer and funded through the Post-Employment Benefits Trust Account.

(g) In accordance with procedures established in the written agreement described in subdivision (f), the participating employer may elect to terminate participation in the Post-Employment Benefits Trust and instruct the retirement system to either (1) transfer the funds held in the Post-Employment Benefits Trust Account to a successor trustee named by the employer, or (2) disburse the trust assets in accordance with subdivision (i). In addition, the board of retirement may terminate the participation of a participating employer in the Post-Employment Benefits Trust Account if either:

(1) The board of retirement finds that the participating employer is unable to satisfy the terms and conditions required by this article, the rules and procedures established by the board, or the participation agreement between the participating employer and the board of retirement.

(2) The board of retirement elects to terminate the Post-Employment Benefits Trust Account.

(h) If the board of retirement terminates the participation of an employer in the Post-Employment Benefits Trust Account, as described in paragraph (1) or (2) of subdivision (g), the funds attributable to that employer shall remain in the Post-Employment Benefits Trust Account, for the continued payment of post-employment benefits for current and future participants and the costs of administration and investment.

(i) If the board of retirement elects to terminate the Post-Employment Benefits Trust Account, the retirement system shall disburse the funds in Post-Employment Benefits Trust Account in the following order and manner:

(1) The retirement system shall retain an amount sufficient to pay for the post-employment benefits for participants in the post-employment benefits plan or plans provided by the former participating employer.

(2) The retirement system shall retain an amount sufficient to pay reasonable administrative and investment costs described in this section.

(3) After the amounts in paragraphs (1) and (2) have been retained or disbursed, the retirement system shall pay any remaining funds to the former participating employer or employers.

31694.2. An employer who elects to participate in the Post-Employment Benefits Trust Account shall be required to establish, fund, and apply distributions from the Post-Employment Benefits Trust Account, and administer a post-employment health, life, welfare, or other supplemental benefit plan or plans funded through the Post-Employment Benefits Trust Account, pursuant to applicable federal tax requirements or other legal provisions. An employer may expressly delegate its responsibilities under this section to the retirement system as described in subdivision (f) of Section 31694.1, to the extent allowed by federal tax laws.

31694.3. (a) The board of supervisors of a county, or the governing body of a district, may establish, by resolution or ordinance, its own trust for the sole purpose of funding any post-employment benefits provided under a group health, life, or other welfare benefits plan or plans established and maintained by that county or district.

(b) The board of retirement and, if applicable, the board of investments, may, with the agreement of the county or district, act as one or more of the following for that employer-established trust: trustee, third-party administrator, or investment manager. The board of retirement and, if applicable, the board of investments, may enter a trust agreement, third-party administrative services agreement, investment manager agreement, or other appropriate agreement with the county or district, which shall establish the respective roles and

responsibilities of the parties with respect to the administration and investment of the employer-established trust. That agreement shall provide for the manner and method of payment for the reasonable costs related to investment expenses for, and administration of, the employer-established trust. Those expenses shall not be deemed to be an investment or administrative expense of a retirement system under this chapter.

(c) The county or district may contract with an entity other than the board of retirement or board of investments to act as trustee, third-party administrator, or investment manager for the trust.

(d) Contributions to the employer-established trust may include the proceeds of debt issued by the county or district solely for the purpose of funding post-employment health, life, or other welfare benefits.

31694.4. This article shall not apply to a county, district, or other public entity in a county of the first class as defined by Section 28020 until the provisions of this article are funded pursuant to the provisions of a ratified collective bargaining agreement by that county, district, or other public entity.

31694.5. A contract entered into between a public employer and a board of retirement or board of investments as described in Section 31694.1 shall not change the obligations of a public employer, board of retirement, or board of investments that are created under other contracts, laws, ordinances, regulations, or similar actions to provide benefits for employees or retired employees of a participating county, district, or other public entity, or their qualified spouses, dependents, and beneficiaries.

**Article 8.7 Extension of Safety Member Provisions 31695.1-
31695.3**

31695.1. Any provisions of this chapter to the contrary notwithstanding, the board of supervisors in any county not subject to the provisions of Section 31676.1 may, by majority vote, provide that all the provisions of this chapter relating to safety members, which apply to counties coming under the provisions of Section 31676.1 prior to January 1, 1953, shall apply in such county to all employees of such county whose principal duties consist of active law enforcement or active fire suppression as defined in Section 31470.2 or 31470.4, and the board in such county shall in its regulations provide for the time of election and terms of office of additional members of the board.

31695.2. All eligible employees may elect to be included within the safety member provisions of this chapter by written notice filed with the board not later than 60 days from and after the effective date of the approval of the board of supervisors of the provisions of this article, or within 60 days from and after the effective date of a selection of benefits by the board of supervisors under Section 31808.6, whichever is later.

31695.3. From and after the effective date of the approval of the board of supervisors under Section 31695.1, all of the provisions of this chapter relating to safety members which apply to counties coming under the provisions of Section 31676.1, prior to January 1, 1953, except as provided in Section 31695.2, shall apply in such county.

Article 8.8 Long-Term Care Group Insurance 31696.1-31696.5

31696.1. (a) The board of retirement may provide a long-term care insurance program for retired members and their spouses, their parents, and their spouses' parents.

(b) Subject to Section 31696.5, the board may permit active members and their spouses, their parents, and their spouses' parents to enroll in the long-term care insurance program.

(c) The long-term care insurance plan shall be made available periodically during open enrollment periods determined by the board.

(d) The board shall award contracts to carriers who are qualified to provide long-term care benefits.

(e) The long-term care insurance plan shall include home, community, and institutional care and shall provide substantially equivalent coverage to that required under Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code and shall meet those requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). However, the Department of Managed Health Care shall have no jurisdiction over the insurance plan authorized by this article.

(f) Notwithstanding subdivision (a), no person shall be enrolled unless he or she meets the eligibility and underwriting criteria approved by the board.

(g) The board shall approve eligibility criteria for enrollment, approve appropriate underwriting criteria for potential enrollees, approve the scope of covered benefits, approve the criteria to receive benefits, and approve any other standards as needed.

31696.2. (a) The full cost of enrollment in a long-term care insurance plan shall be paid by the enrollees.

(b) The long-term care insurance plan shall not become part of, or subject to, the retirement or health benefits programs administered by the system.

31696.3. (a) The board shall establish a trust fund designated as the Long-Term Care Fund for the purpose of the payment of the costs and administration of the long-term care plan. The Long-Term Care Fund shall be held for the exclusive benefit of enrollees and the payment of the costs and administration of the program.

(b) The board shall have exclusive control of the administration and investment of the Long-Term Care Fund, except that in a county having a board of investments, the board of investments shall have exclusive control of the investment of the fund. Funds in the Long-Term Care Fund shall be invested pursuant to the law governing the investment of the retirement fund.

(c) Income, of whatever nature, earned on the Long-Term Care Fund shall be credited to the fund.

31696.4. The board is authorized to recover the administrative costs of the long-term care insurance program from insurance carriers

and premiums paid by enrollees.

31696.5. Subdivision (b) of Section 31696.1 shall not be operative in any county until the board of supervisors shall, by resolution adopted by a majority vote, make that subdivision applicable in the county.

Article 8.9. Vision Care 31698-31698.4

31698. This article shall be known and may be cited as the County Retirement System Vision Care Program.

31698.1. A member who retires from a county retirement system covered by this chapter may enroll in a vision care program offered pursuant to this article subject to meeting the eligibility requirements established for the program.

31698.2. Each retired member that elects to participate in the program shall be solely responsible for the payment of premiums.

31698.3. The benefits in this article are in addition to any other benefits provided in this chapter.

31698.4. The sponsor of the vision care program may contract with a third-party administrator to provide vision care to the retired member, his or her survivors, and his or her eligible dependents.

Article 9 Deferred Retirement 31700-31706

31700. (a) Any member, whether over or under the minimum age of voluntary service retirement, who leaves county service after completing five years of service or who leaves county service and within 90 days, or six months if Section 31840.4 applies, becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, may elect in writing, within 90 days after establishing eligibility for reciprocity, to leave his or her accumulated contributions in the retirement fund and be granted a deferred retirement allowance to become effective either:

(1) Upon the option of the member, at any time at which he or she could have retired had he or she remained in county service in a full-time position.

(2) Not later than the first day of the month following that in which he or she attains the applicable compulsory retirement age, if any.

(b) Any member who is eligible to be granted a deferred retirement allowance under subdivision (a) because he or she has completed five years of service but who fails to so elect, shall be deemed to have elected a deferred retirement.

(c) Any member, regardless of service, whose retirement system coverage ceases but who does not terminate employment shall leave his or her accumulated contributions in the retirement fund, and interest shall continue to be credited pursuant to Section 31591, until the member retires or terminates employment.

31700.5. Notwithstanding any other provisions of this chapter, any member with more than 10 years service who resigns his position and is granted a deferred retirement under this chapter, to accept an appointment by any court of record or judge thereof in a reciprocal county, shall not be considered as breaking his continuity of service and such member shall be eligible for reinstatement within five years to the position from which he resigned or one in a lower class in the same or related series requiring similar qualifications, knowledges and abilities. The intent provision of Article 15 of this chapter shall apply to this section.

31701. Any member may elect to rescind in writing his election and withdraw his accumulated contributions pursuant to Section 31628 at any time before the effective date of his retirement except that if within 90 days after discontinuing service under this system, he became a member of the State Employees' Retirement System or a system established in another county under this chapter, he may not rescind or withdraw any of his accumulated contributions while in service as such a member.

31702. Upon the death of any member before the effective date of

his deferred retirement allowance, his accumulated contributions shall be paid to his estate or to such person as he nominates by written designation duly executed and filed with the board.

31703. Any member upon the effective date of the member's deferred retirement allowance shall be entitled to receive a retirement allowance as provided in Sections 31662 to 31664.65, inclusive, Sections 31673 to 31677, inclusive, or Section 31751, or Section 31808.5, or Section 31808.6, whichever is applicable.

Any member who elected deferred retirement while subject to Section 31751 shall have a retirement allowance computed in accordance with Sections 31676.11 and 31808 for service which occurred prior to the date Section 31751 was applicable to the member.

31704. If any member elects to have his or her deferred retirement allowance calculated in accordance with Section 31762, 31763, 31764, or 31764.5, he or she shall present his or her election in writing to the board at least six months prior to the effective date of his or her deferred retirement allowance.

31705. The retirement allowance shall be calculated according to the provisions of this chapter as they exist at the time of the commencement of the retirement allowance.

31706. Any member who has left county service and has elected to leave accumulated contributions in the retirement fund or who is deemed to have elected a deferred retirement pursuant to subdivision (b) of Section 31700 and has attained age 70 but has not yet applied for a deferred retirement allowance and who is not a reciprocal member of a retirement system established pursuant to this chapter or the Public Employees' Retirement Law shall be notified in writing by the treasurer, or other entity authorized by the board, that the member is eligible to apply for and shall begin receiving a deferred retirement allowance by April 1 of the year following the year in which the member attains age 70 $\frac{1}{2}$. The notification shall be made at the time the deferred member attains age 70 and shall be sent by certified mail to the member's last known address, or to the member's last known employer, as shown by the records of the retirement system. If the member can be located but does not make proper application for a deferred retirement allowance with retirement to be effective by April 1 of the year in which the member attains age 70 $\frac{1}{2}$, the retirement system shall commence paying an unmodified allowance to the member. If the member cannot be located by April 1 of the year following the year in which the member attains age 70 $\frac{1}{2}$, all of the member's accumulated contributions and interest thereon shall be deposited in, and become a part of, the current pension reserve fund of the retirement system. The board may at any time after transfer of proceeds to the reserve fund upon receipt of proper information satisfactory to it, redeposit the proceeds to the credit of the claimant, to be administered in the manner provided under this law. This section shall not apply to a member while the member

is actively employed past mandatory retirement age in a retirement system established under the provisions of this chapter or the Public Employees' Retirement Law.

Article 10 Disability Retirement 31720-31755.3

31720. Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if:

- (a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity, or
- (b) The member has completed five years of service, and
- (c) The member has not waived retirement in respect to the particular incapacity or aggravation thereof as provided by Section 31009.

The amendments to this section enacted during the 1979-80 Regular Session of the Legislature shall be applicable to all applicants for disability retirement on or after the effective date of such amendments.

31720.1. Notwithstanding Section 31720, any member covered under Section 31751 who is permanently incapacitated shall be retired for disability regardless of age if, and only if:

- (a) The member's incapacity is substantially caused by injury or disease arising out of and in the course of the member's employment, or
- (b) The member has completed a total of 10 years of service.

"Permanently incapacitated," for the purpose of this section, means that the member is unable permanently to engage in any substantial gainful employment.

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

As used in this section, "fireman member" includes a member engaged in active fire suppression who is not classified as a safety member.

As used in this section, "member in active law enforcement" includes a member engaged in active law enforcement who is not classified as a safety member.

31720.6. (a) If a safety member, a firefighter, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4

(commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200) or both or under this retirement system or under the Public Employees' Retirement System or under a retirement system established under this chapter in another county, and develops cancer, the cancer so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of employment. The cancer so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(b) Notwithstanding the existence of nonindustrial predisposing or contributing factors, any safety member, firefighter member, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of cancer shall receive a service-connected disability retirement if the member demonstrates that he or she was exposed to a known carcinogen as a result of performance of job duties.

"Known carcinogen" for purposes of this section means those carcinogenic agents recognized by the International Agency for Research on Cancer, or the Director of the Department of Industrial Relations.

(c) The presumption is disputable and may be controverted by evidence, that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, provided that the primary site of the cancer has been established. Unless so controverted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) "Firefighter," for purposes of this section, includes a member engaged in active fire suppression who is not classified as a safety member.

(e) "Member in active law enforcement," for purposes of this section, includes a member engaged in active law enforcement who is not classified as a safety member.

31720.7. (a) If a safety member, a firefighter, a county probation officer, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200), or both, or under this retirement system, under the Public Employees' Retirement System, or under a retirement system established under this chapter in another county, develops a blood-borne infectious disease, the disease so developing or manifesting itself in those cases shall be presumed to arise out of, and in the course of, employment. The disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(b) Any safety member, firefighter, county probation officer, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of a blood-borne infectious disease shall receive a service-connected

disability retirement.

(c) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) "Blood-borne infectious disease," for purposes of this section, means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including, but not limited to, those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(e) "Member in active law enforcement," for purposes of this section, means members employed by a sheriff's office, by a police or fire department of a city, county, city and county, district, or by another public or municipal corporation or political subdivision or who are described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or who are employed by any county forestry or firefighting department or unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member.

31720.9. (a) If a peace officer member, as defined in Sections 830.1 to 830.5, inclusive, of the Penal Code, or firefighter member, with service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200), or both, or under this retirement system, under the Public Employees' Retirement System, or under a retirement system established under this chapter in another county, becomes ill or dies due to exposure to a biochemical substance, the illness that develops or manifests itself in those cases shall be presumed to arise out of, and in the course of, employment. The illness that develops or manifests itself in those cases shall in no case be attributed to any illness existing prior to that development or manifestation.

(b) Any peace officer member or firefighter member, as described in subdivision (a), who becomes permanently incapacitated as a result of exposure to a biochemical substance shall receive a service-connected disability retirement.

(c) The presumption described in subdivision (a) is rebuttable by other evidence. Unless rebutted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) For purposes of this section, a peace officer member or firefighter member, as described in subdivision (a), does not include a member whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or

active firefighting services, such as stenographers, telephone operators, and other office workers.

(e) "Biochemical substance" means any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as these terms are defined in Section 11417 of the Penal Code.

31721. (a) A member may be retired for disability upon the application of the member, the head of the office or department in which he is or was last employed, the board or its agents, or any other person on his behalf, except that an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any eligible member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirement as provided in Article 9 (commencing with Section 31700).

(b) When a member appeals from a separation for disability, disputing the employer's assertion or assumption that he is not eligible for disability retirement, the official, entity other than the board, or court to whom appealed shall transfer the proceedings to the board for determination of the eligibility and of disability if so eligible.

The appointing authority shall have the burden of proving disability. Thereafter, the appellant shall have the burden of proving job causation.

This subdivision shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions applicable in that county.

31722. The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties.

31723. The board may require such proof, including a medical examination at the expense of the member, as it deems necessary or the board upon its own motion may order a medical examination to determine the existence of the disability.

31724. If the proof received, including any medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his duties in the service, it shall retire him effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member's consent to retirement prior to the expiration of such

leave of absence with compensation. His disability retirement allowance shall be effective as of the date such application is filed with the board, but not earlier than the day following the last day for which he received regular compensation. Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement at an earlier date.

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

31725. Permanent incapacity for the performance of duty shall in all cases be determined by the board.

If the medical examination and other available information do not show to the satisfaction of the board that the member is incapacitated physically or mentally for the performance of his duties in the service and the member's application is denied on this ground the board shall give notice of such denial to the employer. The employer may obtain judicial review of such action of the board by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure or by joining or intervening in such action filed by the member within 30 days of the mailing of such notice. If such petition is not filed or the court enters judgment denying the writ, whether on the petition of the employer or the member, and the employer has dismissed the member for disability the employer shall reinstate the member to his employment effective as of the day following the effective date of the dismissal.

31725.5. If the board finds, on medical advice, that a member in county employment, although incapacitated for the performance of his duties, is capable of performing other duties in the service of the county, the member shall not be entitled to a disability retirement allowance if any competent authority in accordance with any applicable civil service or merit system procedures offers and he accepts a transfer, reassignment, or other change to a position with duties within his capacity to perform with his disability. If this new position returns to the member compensation less than that of the position from which he was disabled, the board, in lieu of a disability retirement allowance, shall pay him the difference in such compensation until the compensation of the new position equals or exceeds the compensation (including later changes) of the former position, but such amount shall not exceed the amount to which he would otherwise be entitled as a disability retirement allowance. Such payments in lieu of disability retirement allowance shall be considered as a charge against county advance reserve for current service.

If a new position cannot be arranged at the time of eligibility for disability retirement allowance, such disability retirement allowance to which the member is entitled under this article shall be paid until such time as a new position is available and accepted.

If a disability retirement allowance is paid and the member later accepts such a new position, the period while on disability retirement shall not be considered as breaking the continuity of service and his rate of contributions shall be based on the same age as it was at the date of disability. The member's accumulated contributions shall be the same as at the date his disability retirement began less the amount charged to his accumulated normal contributions.

Nothing in this section shall be construed to require a member to accept reassignment or transfer in lieu of a disability retirement allowance.

The provisions of this section become effective in any county only when the board of supervisors adopts an ordinance providing for their implementation by the board of retirement which may include application to persons retired for disability before such effective date.

The provisions of this section shall only apply to members eligible to retire for nonservice-connected disability.

31725.6. (a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member is capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall inform the appropriate agency in county service of its findings and request that the agency immediately initiate a suitable rehabilitation program for the member pursuant to Section 139.5 of the Labor Code, whereby the member could become qualified for assignment to a position in county service consistent with the rehabilitation program.

(b) When the appropriate agency in county service receives such a request from the board, the agency shall immediately refer the member to a qualified rehabilitation representative for vocational evaluation. During the course of the evaluation, the rehabilitation representative shall consult with the appropriate agency in county service to determine what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities and whether rehabilitation services will enable the member to become qualified to perform the duties of the position.

(c) Upon completion of the vocational evaluation of the member, the rehabilitation representative shall develop a suitable rehabilitation plan and submit the plan for concurrence by the member and the appropriate agency in county service and, thereafter, the agency shall forward the plan to the Division of Industrial Accidents for approval pursuant to Section 139.5 of the Labor Code.

(d) Upon receipt of approval of the rehabilitation plan, the appropriate agency in county service shall notify the board that the agency is either proceeding to implement an approved rehabilitation plan that will qualify the member for a position in county service specified in the plan or is unable to provide a position in county service compatible with the approved rehabilitation plan.

(e) Upon commencement of service by the member in the position specified in the approved rehabilitation plan, the member shall not be paid the disability retirement allowance to which the member would

otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved rehabilitation plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved rehabilitation plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved rehabilitation plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(f) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved rehabilitation plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved rehabilitation plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions shall continue to be based on the same age at entrance into the retirement system as the member's rates were based on prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(g) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved rehabilitation plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(h) If, within one year from the date that the member has been eligible for a disability retirement allowance, the appropriate agency in county service has offered to the member, in writing, the position specified in the rehabilitation plan which had previously been concurred, in writing, by the member and approved by the Division of Industrial Accidents pursuant to Section 139.5 of the Labor Code, the member shall, within 30 days of receipt of the

notice, report for duty at the location specified in the notice. If the member refuses to report for duty within the time specified, the appropriate agency in county service may apply to the board to have the member's allowance discontinued. The board shall be authorized to discontinue the member's disability retirement allowance if based upon substantial evidence of the refusal of the member to report to work without reasonable cause. However, the board shall not be authorized to impair any other of the rights or retirement benefits to which the member would otherwise be entitled.

(i) This section shall apply only to members who were incapacitated for the performance of the member's duties prior to January 1, 2004, and who are eligible to retire for service-connected disability.

31725.65. (a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member may be capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall notify the appropriate agency in county service of its findings.

(b) When the appropriate agency in county service receives that notification from the board, the agency shall immediately inform the member of any vacant county positions that may be suitable for the member, consistent with his or her disability, and shall consult with the member in an effort to develop a reemployment plan that shall identify what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities.

(c) Upon approval by the member of the reemployment plan, the appropriate agency in county service shall notify the board that the agency is proceeding to implement the approved reemployment plan.

(d) Upon commencement of service by the member in the position specified in the approved reemployment plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved reemployment plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved reemployment plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved reemployment plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant

to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(e) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved reemployment plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved reemployment plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions shall continue to be based on the same age at entrance into the retirement system on which the member's rates were based prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(f) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved reemployment plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(g) This section shall apply only to members who are incapacitated for the performance of the member's duties on or after January 1, 2004, and who are eligible to retire for service-connected disability.

31725.7. (a) At any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of his or her entitlement to disability retirement. If he or she is found to be eligible for disability retirement, appropriate adjustments shall be made in his or her retirement allowance retroactive to the effective date of his or her disability retirement as provided in Section 31724.

(b) This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement he or she shall not be entitled to return to his or her job as provided in Section 31725.

(c) If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance

selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

(d) Notwithstanding subdivision (c), if the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary may be as selected by the member at the time of retirement for service, or as if the member had selected an unmodified allowance. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall not be binding as to the type of allowance the member receives if the member is awarded a disability retirement. A change to the optional or unmodified type of allowance shall be made only at the time a member is awarded a disability retirement and the change shall be retroactive to the service retirement date and benefits previously paid shall be adjusted. If a change to the optional or unmodified type of allowance is not made, the benefit shall be adjusted to reflect the differences in retirement benefits previously received. This paragraph shall only apply to members who retire on or after January 1, 1999.

31725.8. If any applicant for service-connected disability retirement is found by the board to be permanently physically or mentally incapacitated for the performance of his duties but not because of injury or disease arising out of and in the course of his employment, he may apply for, and the board in its discretion may grant, a non-service-connected disability retirement allowance while he is pursuing any rehearing before the board or judicial review concerning his right to service-connected disability retirement. If his disability is finally determined to have been service-connected, appropriate adjustments shall be made in his retirement allowance retroactive to the effective date of his disability retirement.

If any member dies after electing to receive non-service-connected disability retirement and before the question of his entitlement to service-connected disability retirement is finally resolved, the rights of his beneficiary shall be those selected by the member at the time he elected to receive non-service-connected disability retirement.

31726. Upon retirement for non-service-connected disability a member who has attained age 65 shall receive his or her service retirement allowance.

Every member under age 65 who is retired for non-service-connected disability and who is not simultaneously retired as a member on deferred retirement of the State Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of the following:

(a) The sum to which he or she would be entitled as service retirement.

(b) A sum which shall consist of any of the following:

(1) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(2) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful

misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(3) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district. This paragraph shall only apply to a person who becomes a member of the system on or after January 1, 1988.

31726.5. Upon retirement for nonservice-connected disability a safety member who has attained age 55 shall receive his or her service retirement allowance. Every safety member under age 55 who is retired for nonservice-connected disability and who is not simultaneously retired as a member on deferred retirement of the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of:

(a) The sum to which he or she would be entitled to as service retirement; or

(b) A sum which shall consist of:

(1) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(2) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(3) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district.

Paragraph (3) shall only apply to a person who becomes a member of the association on or after January 1, 1988.

31727. The non-service-connected disability retirement pension shall be such an amount as with that portion of his annuity provided by his accumulated normal contributions will make his disability retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal:

(a) Ninety percent of one-sixtieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system, and the disability retirement allowance computed under (a) does not exceed one-third of his final compensation, 90 percent of one-sixtieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 65, but in such case the retirement allowance shall not exceed one-third of his final compensation.

31727.01. Notwithstanding Sections 31727 and 31727.4, if the member is eligible to retire without relying upon service in another retirement system, the disability retirement pension of a member covered under Section 31751 shall be such an amount as with that portion of the member's annuity provided by the member's accumulated normal contributions will make the member's disability retirement allowance, exclusive of the annuity provided by the member's accumulated additional contributions, equal 40 percent of the member's final compensation as defined in Section 31462.

In addition to the above disability allowance, 10 percent of the member's final compensation shall be paid on behalf of each of the member's children up to a maximum of three children.

As used in this section, "child" means a member's child who is dependent upon such member at the time of the member's disability and while such child is unmarried and:

(a) Under 18 years of age, or

(b) Whether under or over 18 years of age, totally disabled and such disability occurred prior to such child attaining the age of 18 years, or

(c) Eighteen years of age or over, but has not attained the age of 22 years, and is enrolled as a full-time student in an accredited school, as determined by the board.

If the member is required to rely upon service in another retirement system to be eligible to retire, the above disability retirement pension and children's allowance shall be multiplied by one-tenth times the years of service.

Disability benefits shall be offset by the amounts of disability payments from other plans of the county and other governmental plans, except workers' compensation and federal social security payments.

31727.1. In counties adopting Section 31676.12, a member upon retirement for non-service-connected disability, who has attained age 62, shall receive his service retirement allowance.

The non-service-connected disability retirement pension for a member under age 62 shall be such an amount as with that portion of a member's annuity provided by his accumulated normal contributions will make his disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system and the disability retirement allowance computed under subdivision (a) does not exceed one-third of his final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 62, but in such case the retirement allowance shall not exceed one-third of his final compensation.

The amendments to this section during the 1975-76 Regular Session of the Legislature shall not apply in any county until adopted by majority vote of the county supervisors of that county.

31727.2. The non-service-connected disability retirement pension for a safety member shall be such an amount as with that portion of his annuity provided by his accumulated normal contributions, will make his disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system, and the disability retirement allowance computed under (a) does not exceed one-third of his final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 55, but in such case the retirement allowance shall not exceed one-third of his final compensation.

31727.3. In counties adopting Section 31676.15, the non-service-connected disability retirement pension shall be such an amount as with that portion of a member's annuity provided by his accumulated normal contributions will make his disability retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal:

(a) Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him, if (1) the member must rely upon service in another retirement system in order to be eligible to retire, or (2) such disability retirement allowance exceeds one-third of his final compensation.

(b) If the member is eligible to retire without relying upon service in another retirement system and the disability retirement allowance computed under subdivision (a) does not exceed one-third of his final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age 65, but in such case the retirement allowance shall not exceed one-third of his final compensation.

31727.4. Upon retirement of any member for service-connected disability, he shall receive an annual retirement allowance payable in monthly installments, equal to one-half of his final compensation.

Notwithstanding any other provisions of this chapter, any member upon retirement for service-connected disability shall receive a current service pension or a current service pension combined with a prior service pension purchased by the contributions of the county or district sufficient which when added to the service retirement annuity will equal one-half of his final compensation, or, if qualified for a service retirement, he shall receive his service retirement allowance if such allowance is greater but in no event shall it exceed the limitation as set forth in Section 31676.1 as it now reads or may hereafter be amended to read. The provisions of this section shall also apply to any employee who becomes disabled

for service-connected causes prior to the first day of the calendar month when he would normally become a member.

31727.5. The board of supervisors in any county, by a majority vote, may enact an ordinance providing that the maximum annual allowance payable to a member pursuant to Section 31727.4 who is totally disabled shall be increased to 60, 70, 80, or 90 percent of the member's final compensation, as determined by the board, on the operative date of such ordinance.

For purposes of this section, "totally disabled" means inability to perform substantial employment and the presumptions contained in Section 4662 of the Labor Code shall also be applied to the determination of total disability.

31727.6. Every retirement allowance payable for time commencing on the effective date of this section to or on account of any member of this system who was retired for service-connected disability prior to September 11, 1957, shall be calculated pursuant to the provisions of Section 31727.4.

31727.7. Upon retirement for nonservice-connected disability, in lieu of any other allowance, a member who has five years or more credited service shall receive a disability allowance equal to the percentage of final compensation set forth opposite the member's number of years of credited service in the following table:

Years of credited service: compensation:	Percentage of final
Five years, but less than six years	20.0
Six years, but less than seven years	22.0
Seven years, but less than eight years	24.0
Eight years, but less than nine years	26.0
Nine years, but less than ten years	28.0
Ten years, but less than eleven years	30.0
Eleven years, but less than twelve years.....	32.0
Twelve years, but less than thirteen years ..	34.0
Thirteen years, but less than fourteen years ..	36.0
Fourteen years, but less than fifteen years ...	38.0
Fifteen or more years	40.0

This section shall only apply to the following persons:

(a) Persons who become members of the retirement system after the operative date of this section in the county.

(b) Those persons who were members prior to such operative date who, pursuant to a memorandum of understanding with their bargaining unit, elect to be subject to this section on or after such operative date.

(c) Management and confidential employees and employees not a part of a bargaining unit who were members prior to such operative date and elect to be subject to this section on or after such operative date. The board of supervisors shall prescribe the time period and

conditions governing the election.

This section shall not be operative in any county until such time as the board of supervisors by majority vote makes the provisions of this section applicable in such county.

31728. If, in the opinion of the board, the disability is due to intemperate use of alcoholic liquor or drugs, wilful misconduct, or violation of law on the part of the member, and his annuity is less than two hundred forty dollars (\$240) a year, the board may pay the member his accumulated contributions in one lump sum in lieu of his annuity.

31728.1. Notwithstanding Section 31728, if, in the opinion of the board, the disability is due to willful misconduct or violation of law on the part of the member covered under Section 31751, and the member's annuity is less than two hundred forty dollars (\$240) a year, the board may pay the member's accumulated contributions in one lump sum in lieu of the member's annuity.

31728.2. Notwithstanding Sections 31728 and 31728.1, if, in the opinion of the board, the disability is due to or results from the conviction of the member of a felony under state or federal law or if the board determines that the criminal activity caused or resulted in the member's disability, the board may pay the member a lump-sum which is equal to the sum of his or her accumulated contributions in lieu of the benefits to which the member would otherwise be entitled as set forth in this article and provided that nothing in this section shall be construed to divest a member of any vested right to a service retirement allowance.

This section shall apply only to a person who becomes a member of the system on or after January 1, 1988.

31729. The board may require any disability beneficiary under age 55 to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board at the place of residence of the beneficiary or other place mutually agreed upon. Upon the basis of the examination the board shall determine whether the disability beneficiary is still physically or mentally incapacitated for service in the office or department of the county or district where he was employed and in the position held by him when retired for disability.

31730. If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.

31731. If any disability beneficiary under age 55 refuses to submit

to medical examination, his pension shall be discontinued until his withdrawal of such refusal, and if his refusal continues for one year, his retirement allowance shall be canceled.

31732. The board shall secure such medical, investigatory and other service and advice as is necessary to carry out the purpose of this article. Notwithstanding Section 31529, the board may contract with an attorney in private practice for the legal services and advice necessary to carry out the purpose of this article. It shall pay for such services and advice such compensation as it deems reasonable.

31733. If a disability beneficiary is determined by the board to be no longer incapacitated and re-enters the service of a public agency covered by the retirement system under which he retired, his disability retirement allowance shall cease immediately upon such re-entry. If such disability beneficiary again becomes a member of the retirement system, his rate of contribution for future years is that established for his age at the time of his re-entry into the system. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based upon the mortality table adopted by the board of supervisors for disabled lives, less any amount that has been refunded to him under Section 31737. The amount shall not exceed the amount of his accumulated contributions at the time of his retirement for disability. He shall also receive credit for his service as it existed at the time of his disability retirement.

31737. If the retirement allowance of any disability beneficiary is canceled for any cause other than under Section 31733, he shall be paid his accumulated contributions, less the annuity payments made to him.

31738. Each payment of a retirement allowance, after the effective date of this section, to a beneficiary who retired prior to September 20, 1947, shall be calculated according to the provisions of this chapter as they existed on September 20, 1947.

31739. Every retirement allowance payable for time commencing on the effective date of this section to or on account of any member of this system or of a superseded system, who was retired for disability prior to January 1, 1948, is hereby increased by twenty-five dollars (\$25) per month if the retired member is entitled to be credited with 20 years or more of service, or, if the retired member is entitled to be credited with less than 20 years of service, by an amount which bears the same ratio to twenty-five dollars (\$25) as the member's completed years of service with which the member is entitled to be credited bears to 20 years.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31739.2. Every retirement allowance for time commencing on the effective date of this section to or on account of any member of this system or of a superseded system, who was retired for disability on or after January 1, 1948, but prior to February 1, 1955, or such other date prior to February 1, 1955, as the board of supervisors in any county shall specify by resolution, is hereby increased by twenty-five dollars (\$25) per month if the retired member is entitled to be credited with 20 years or more of service, or, if the retired member is entitled to be credited with less than 20 years of service, by an amount which bears the same ratio to twenty-five dollars (\$25) as the member's completed years of service with which the member is entitled to be credited bears to 20 years.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31739.3. Every retirement allowance payable for time commencing on the effective date of this section to or on account of any member of this system, or of a superseded system, who has been retired for disability, is increased as follows:

Period during which retirement became effective	Percentage of increase in monthly retirement allowance
On or prior to June 30, 1956	10%
12 months ended June 30, 1957	8%
12 months ended June 30, 1958	6%
12 months ended June 30, 1959	4%
12 months ended June 30, 1960	2%

In no event shall any allowance be increased by an amount greater than fifty dollars (\$50) a month nor less than ten dollars (\$10) a month.

This section shall not be operative in any county until such time as the board of supervisors shall by ordinance adopted by majority vote make the provisions of this section applicable in such county, providing further that an actuarial survey of the system has been made by the adopting county's system prior to the passage of said ordinance.

31739.31. Every retirement allowance, optional death allowance, or annual death allowance (including an allowance payable to a survivor of a member) payable to or on account of any member of this system or of a superseded system who has been or was retired for disability is increased as follows:

Period during which retirement became effective	Percentage of increase in monthly retirement allowance
On or prior to June 30, 1962	10%
12 months ended June 30, 1963	8%
12 months ended June 30, 1964	6%
12 months ended June 30, 1965	4%

12 months ended June 30, 1966 2%

In no event shall any allowance be increased by an amount greater than fifty dollars (\$50) a month or less than ten dollars (\$10) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county.

31739.32. Every retirement allowance, optional death allowance, or annual death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system or of a superseded system who has been or was retired for disability is increased as follows:

in	Period during which retirement became effective	Percentage of increase monthly retirement allowance
	On or prior to June 30, 1967	10%
	12 months ended June 30, 1968	8%
	12 months ended June 30, 1969	6%
	12 months ended June 30, 1970	4%
	12 months ended June 30, 1971	2%

In no event shall any allowance be increased by an amount greater than seventy-five dollars (\$75) a month or less than twenty-five dollars (\$25) a month. A member with credit for 10 or more years of service in the system shall receive not less than twenty-five dollars (\$25) a month.

This section shall not be operative in any county until such time as the board of supervisors shall, by ordinance adopted by majority vote, make the provisions of this section applicable in such county.

31739.33. (a) Except as provided in subdivision (b), a retirement allowance, optional death allowance or annual death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system or of a superseded system who has been or was retired for disability which did not on July 1, 1976 exceed five hundred dollars (\$500) per month is hereby increased as follows:

Number of years of county or district service	Percentage of increase in monthly retirement allowance
25 or more years	10%
20-25 years	8%
15-20 years	6%

(b) No allowance shall be increased to more than five hundred dollars (\$500) per month pursuant to subdivision (a).

This section shall not be operative in any county until such time

as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31739.34. (a) Except as provided in subdivision (b) of this section, a retirement allowance, optional death allowance or annual death allowance, including an allowance payable to a survivor of a member, payable to or on account of any member of this system, or of a superseded system, who retired for disability on or before December 31, 1971, is hereby increased as follows:

Number of Years of County or District Service	Percentage of Increase in Monthly Retirement Allowance
25 or more years	10%
20-25 years	8%
15-20 years	6%
10-15 years	4%

(b) No allowance shall be increased to more than five hundred dollars (\$500) per month pursuant to subdivision (a) of this section.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31739.4. Every retirement allowance payable during the time this section is operative in any county to, or on account of any member of this system or of a superseded system, who has been retired for disability shall be increased by an amount equal to the product one dollar (\$1) times years of service, not to exceed 20 years, times the number in the following table:

Period during which retirement became effective	Multiply by
On or prior to June 30, 1957	2
Twelve months ended June 30, 1958	1.5
Twelve months ended June 30, 1959	1
Twelve months ended June 30, 1960	0.5

This section shall not be operative in any county except as follows:

The board of supervisors of a county at any time and from time to time may find that economic conditions are such as to require either that this entire section, or this section as applied to one or more categories of members in the above table be applicable in such county. The board of supervisors of such county from time to time may either rescind or modify such finding and either find that economic conditions do not require that this section be applicable at all in such county or be applicable to a greater, lesser, or different extent than previously found. This section or this section as applied to one or more categories of members in the above table, as the case may be, shall be applicable in such county when and only during the time when such finding is in effect. The giving of additional retirement benefits pursuant to this section shall create

no additional contractual rights and shall not preclude the withdrawal of such benefits either by action of the board of supervisors or of the Legislature.

31739.5. The provision in Section 31681.8, when adopted or readopted, shall apply to members of this system or a superseded system who retired for disability, except that payments to a member of this system or a superseded system who retired for service-connected disability or to the surviving beneficiary of such member shall be computed on the basis that the member's service had continued to age 60, if a safety member, or age 70, if any other category of member, provided, that this additional service credit shall not exceed 30 years.

31740. In any county which has implemented the provisions of Article 15.6 (commencing with Section 31855), any member who is thereafter retired for disability shall receive a supplemental disability retirement allowance in the sum of three hundred dollars (\$300) per month in addition to any other benefits due under this chapter, provided the member's disability is such that the member is incapable of gainful employment. The board may adopt regulations, including a requirement for periodic declarations of nonemployment, to administer this supplemental allowance.

31751. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may make this section, Tier Two, applicable to officers and employees of the county, by adopting a resolution specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable as Tier Two to its officers and employees on and after the future operative date it specifies.

(b) Except as otherwise provided in this section, Tier Two shall cover all officers and employees who become members or return to membership in the county on or after April 4, 1980, and in a district on or after the date of its applicability thereto.

(c) (1) This section may not cover any employee who is in, or eligible for, safety membership under this chapter.

(2) This section may not cover any person who is a member of the retirement system in the county or district on the operative date of its application thereto unless and until the person voluntarily in writing irrevocably requests coverage.

(3) This section may not cover any member who does not request coverage, is then laid off, and later returns to membership.

(4) This section may not cover any member who does not request coverage, then becomes a deferred member, and later returns to active membership.

(5) This section may not cover any person referred to in subparagraph (C) of paragraph (2) of subdivision (d) who does not request coverage.

(d) (1) The board of supervisors shall adopt regulations allowing individual county and district employees to irrevocably request

coverage under Tier Two.

(2) The regulations shall specify the period during which each person may request coverage.

(A) For persons who are employees on the applicability date of this section, Tier Two, to the county or district, this period may not exceed one year after that date.

(B) For persons not subject to subparagraph (A), who before the Tier Two applicability date chose deferred retirement under Article 9 (commencing with Section 31700) from the county's Tier One retirement system, and who thereafter while still in deferred status returned to active membership, this period may not exceed 90 days after that return.

(C) For persons not subject to subparagraph (A) who enter or reenter employment in the county or the district, for the first time after Tier Two is applicable thereto, with reciprocal rights under Article 15 (commencing with Section 31830), this period may not exceed 90 days after that entry or reentry.

(e) Anyone requesting coverage as provided for in this section, who becomes permanently incapacitated as defined in Section 31720.1, shall be granted a disability allowance under Section 31727.01 if the member has completed five years of service.

(f) This section is intended to, and shall, apply retroactively, from the effective date of the original enactment of Section 31751, April 4, 1980, forward so that its beneficial effects and those of the original enactment are available to all persons covered by this section as though it had been originally enacted in its present form.

(g) Notwithstanding any other provision of law, if a county adopts a resolution pursuant to subdivision (a) of Section 31755.1, this section may, pursuant to a memorandum of understanding in accordance with the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), be made inapplicable to those officers and employees of the county specified in the resolution for service performed on and after the operative date specified in the memorandum of understanding. In that event, this section shall also be inapplicable to nonrepresented employees within similar job classifications as employees in applicable bargaining units and to the supervisors and managers of those employees. If a district adopts a resolution pursuant to subdivision (a) of Section 31755.1, this section shall be inapplicable to the officers and employees of the district on and after the operative date of the resolution.

(h) No district may make this section applicable to any of its officers or employees on or after the effective date of the act adding this subdivision.

31752. This section shall apply to members subject to Section 31751. Notwithstanding any other provision of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal, as follows:

(a) The percentage of the member's final compensation, as defined in Section 31462, in the following table set forth in Column (A) opposite the member's age at retirement, taken to the preceding completed quarter year, multiplied by the number of years of service under Section 31751 with which the member is entitled to be credited

at retirement, less

(b) The percentage of the member's Primary Insurance Amount to which the member shall be entitled under federal social security, projected to age 62, if the member is less than age 62, or to which the member is now entitled, if the member is at least age 62, set forth in the following table in Column (B) opposite the member's age at retirement, taken to the preceding completed quarter year, multiplied by the number of years of service subject to Section 31751 during which the member was covered by social security while a member of the county retirement association. The maximum number of years used in this calculation shall not exceed 30.

Age at retirement	Percentages	
	(A)	(B)
50 .....	.830	.573
50 1/4 .....	.845	.585
50 1/2 .....	.860	.597
50 3/4 .....	.875	.609
51 .....	.890	.622
51 1/4 .....	.905	.635
51 1/2 .....	.920	.648
51 3/4 .....	.935	.661
52 .....	.950	.675
52 1/4 .....	.965	.689
52 1/2 .....	.980	.704
52 3/4 .....	.995	.719
53	1.010	.734
53 1/4	1.025	.750
53 1/2	1.040	.766
53 3/4	1.055	.782
54	1.070	.799
54 1/4	1.085	.816
54 1/2	1.100	.834
54 3/4	1.115	.853
55	1.130	.872
55 1/4	1.145	.891
55 1/2	1.160	.911
55 3/4	1.175	.931
56	1.190	.952
56 1/4	1.205	.973
56 1/2	1.220	.995
56 3/4	1.235	1.017
57	1.250	1.040
57 1/4	1.265	1.064
57 1/2	1.280	1.088
57 3/4	1.295	1.113
58	1.310	1.139
58 1/4	1.325	1.165
58 1/2	1.340	1.192
58 3/4	1.355	1.220
59	1.370	1.249
59 1/4	1.385	1.279
59 1/2	1.400	1.309
59 3/4	1.415	1.340

60	1.430	1.372
60 1/4	1.445	1.405
60 1/2	1.460	1.440
60 3/4	1.475	1.475
61	1.490	1.511
61 1/4	1.505	1.548
61 1/2	1.520	1.587
61 3/4	1.535	1.626
62	1.550	1.667
62 1/4	1.565	1.667
62 1/2	1.580	1.667
62 3/4	1.595	1.667
63	1.610	1.667
63 1/4	1.625	1.667
63 1/2	1.640	1.667
63 3/4	1.655	1.667
64	1.670	1.667
64 1/4	1.685	1.667
64 1/2	1.700	1.667
64 3/4	1.715	1.667
65 and over	1.730	1.667

31755. (a) (1) The Board of Supervisors of Contra Costa County may make this section, Tier Three, applicable to officers and employees for whom it is the governing body, by adopting an ordinance specifying the future operative date of its application.

(2) As used in this section, "Tier One" refers to the retirement plan covering general members not covered by Section 31751.

(3) After the board of supervisors has adopted an ordinance, the governing body of a district not governed by the board of supervisors may make this section applicable as Tier Three to its officers and employees on and after the future operative date it specifies.

(b) Except as otherwise provided in this section, this section shall cover all officers and employees who are members or return to membership in the county's Tier Two retirement system established by Section 31751 on or after the operative date specified in the ordinance adopted pursuant to subdivision (a), and in a district on or after the date of its applicability thereto.

(c) (1) This section shall not cover any employee who is in, or eligible for, Tier One or safety membership under this chapter.

(2) This section shall not cover any person who is a member of the retirement system in the county or district on or after the operative date of its application thereto unless and until the person voluntarily in writing irrevocably elects coverage.

(3) This section shall not be applicable to any eligible member who does not elect coverage, is then laid off or terminates employment, regardless of whether voluntarily or involuntarily, and later returns to membership employment.

(4) This section shall not be applicable to any eligible member who does not elect coverage, then retires or becomes a deferred member, and later returns to active membership.

(5) This section shall not be applicable to any person referred to in subparagraph (D) of paragraph (2) of subdivision (d) who does not elect coverage.

(d) Upon adoption of this section by the board of supervisors, the

following provisions shall become applicable:

(1) Subject to the provisions of paragraph (2) of subdivision (d), any qualified individual county or district employee may irrevocably elect coverage under Tier Three.

(2) (A) County or district employees who are members of the county's Tier Two retirement system and who have attained five years' credited service with the county or district on the applicable date of this section, must elect Tier Three coverage in writing within six months after that date.

(B) Persons not subject to subparagraph (A), who thereafter attain five years' credited service in the county's Tier Two retirement system, must elect Tier Three coverage in writing within 90 days after attaining the five years' credited service.

(C) Persons not subject to subparagraph (A) or (B), who, before the Tier Three applicability date, elected deferred retirement under Article 9 (commencing with Section 31700) from the county's Tier Two retirement system, and who had at least five years' credited Tier Two service, and who thereafter while still in deferred status return to active membership, must elect coverage in writing within 90 days after that return.

(D) Persons not subject to subparagraph (A), (B), or (C), who enter or reenter employment in the county or the district for the first time after Tier Three is applicable thereto, and who have reciprocal rights under Article 15 (commencing with Section 31830), and who are otherwise eligible to elect Tier Three by virtue of their Tier Two status and years of retirement credited service must elect Tier Three coverage in writing within 90 days after that entry or reentry.

(e) The board may not grant a disability retirement allowance to a person who has become a Tier Three member except as provided in Section 31720.1. The amount of disability retirement allowances under Tier Three shall be as set forth in Section 31727.01.

(f) Notwithstanding any other provision of this chapter, service retirements under Tier Three shall be governed by the same provisions that govern Tier One retirements in Contra Costa County.

(g) Notwithstanding any other provision of this chapter, Tier Three retired members who have retired for service shall only be entitled to cost-of-living adjustments as provided by the board of supervisors for Tier One retired members pursuant to Article 16.5 (commencing with Section 31830).

(h) Notwithstanding any other provision of this chapter, Tier Three retired members who have been retired for disability shall only be entitled to cost-of-living adjustments as provided by the board of supervisors for Tier Two retired members pursuant to Article 16.5 (commencing with Section 31830).

(i) The board of supervisors may adopt regulations to implement the provisions of this section.

31755.1. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may, pursuant to a memorandum of understanding in accordance with the Meyers-Miliias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), adopt a resolution making this section applicable to the officers and employees of the county specified in the resolution and specifying the future operative date of its

application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable to its officers and employees by adopting a resolution specifying the future operative date of its application, which date may not be earlier than the operative date of the resolution described in paragraph (1).

(b) (1) Except as otherwise provided in this section, Tier Three, as described in Section 31755, shall apply to all officers and employees who become members or return to membership in the county or district, and with respect to service performed, on or after the date this section becomes applicable in the county or district.

(2) On the date this section becomes applicable in the county or district, those officers and employees specified in the resolution described in subdivision (a) and then-subject to Tier Two shall thereafter be covered by Tier Three, as described in Section 31755, for service performed on and after that date.

(c) This section may not apply to an employee for any service performed while he or she is a safety member under this chapter or is subject to Tier One, as described in Section 31755.

(d) The benefit formula set forth in Section 31752 shall apply to the Tier Two service with which a member is entitled to be credited at retirement.

(e) If the county adopts a resolution pursuant to subdivision (a), this section shall apply equally to any nonrepresented employees in similar job classifications as employees within applicable bargaining units and to the supervisors and managers of those employees.

31755.2. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may, pursuant to a memorandum of understanding in accordance with the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), adopt a resolution making this section applicable to the officers and employees of the county specified in the resolution and specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable to its officers and employees by adopting a resolution specifying the future operative date of its application, which date may not be earlier than the operative date of the resolution described in paragraph (1).

(b) Notwithstanding any other provision of law, the benefit formula set forth in Section 31676.16 shall apply to the Tier Three service with which a member, who retires on or after the date this section becomes applicable in the county or district, is entitled to be credited and for which the member has paid Tier Three member contributions.

(c) Notwithstanding any other provision of law, Section 31676.16 does not apply to any periods of service performed as Tier Two service under Section 31751, except to the extent that Tier Three service credit is purchased by or on behalf of the member for those periods.

(d) If the county adopts a resolution pursuant to subdivision (a), this section shall apply equally to any nonrepresented employees in

similar job classifications as employees within applicable bargaining units and to the supervisors and managers of those employees.

31755.3. Notwithstanding any other provision of law:

(a) (1) The Board of Supervisors of Contra Costa County may, pursuant to a memorandum of understanding in accordance with the Meyers-Miliias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1), adopt a resolution making this section applicable to the officers and employees of the county specified in the resolution and specifying the future operative date of its application.

(2) After the board of supervisors has adopted that resolution, the governing body of a district may make this section applicable to its officers and employees by adopting a resolution specifying the future operative date of its application, which date may not be earlier than the operative date of the resolution described in paragraph (1).

(b) The benefit formula set forth in Section 31676.16 shall apply to the Tier One service with which a member is entitled to be credited at retirement. As used in this section, "Tier One" shall have the meaning set forth in Section 31755.

(c) If the county adopts a resolution pursuant to subdivision (a), this section shall apply equally to any nonrepresented employees in similar job classifications as employees within applicable bargaining units and to the supervisors and managers of those employees.

Article 11 Optional Retirement Allowances 31760-31768

31760. Until the first payment of any retirement allowance is made, a member or retired member, in lieu of the retirement allowance for his life alone, may elect to have the actuarial equivalent of his retirement allowance as of the date of retirement applied to a lesser retirement allowance payable throughout life in accordance with one of the optional settlements specified in this article.

31760.1. Upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1, 60 percent of his or her retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if she or he dies before every natural or adopted child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his or her natural or adopted child or children under that age collectively, to continue until every child dies or attains that age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the member at least one year prior to the date of his or her retirement. The right of a child or children of a deceased member to receive an allowance under this section, in the absence of an eligible surviving spouse, shall not be dependent on whether the child or children were nominated by the deceased member as the beneficiary of any benefits payable upon or by reason of the member's death, and shall be superior to and shall supersede the rights and claims of any other beneficiary so nominated.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section, and the total retirement allowance income received by him or her during his or her lifetime did not equal or exceed his or her accumulated normal contributions, his or her designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

31760.11. Notwithstanding Section 31760.1, upon the death after retirement of any member covered under Section 31751, 60 percent of

the member's retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to the member's spouse if the spouse is designated as the beneficiary. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the member at least one year prior to the date of the member's retirement.

If there is an eligible spouse, in addition to the above, 20 percent of the member's unmodified retirement allowance shall be paid to each of the member's children. The maximum family benefit under this section shall be 100 percent of the member's retirement allowance.

If, on the death after retirement of any member covered under Section 31751, there is no spouse eligible for the 60 percent continuance but there is at least one eligible child, or if there was an eligible spouse and the spouse dies while there is at least one eligible child, the child, or children collectively, shall be entitled to the 60 percent continuance of the member's unmodified allowance.

As used in this section, "child" means a member's child who is dependent upon such member at the time of his or her retirement and while such child is unmarried and:

- (a) Under 18 years of age, or
- (b) Whether under or over 18 years of age, totally disabled and such disability occurred prior to such child attaining the age of 18 years, or
- (c) Eighteen years of age or over, but has not attained the age of 22 years, and is enrolled as a full-time student in an accredited school, as determined by the board.

If, at the death of any retired member, there is no surviving spouse or children eligible for the continuance of the allowance provided in this section, and the total retirement allowance income received by the member during the member's lifetime did not exceed the member's accumulated normal contributions and cost-of-living contributions, the member's designated beneficiary shall be paid an amount equal to the excess of such contributions at retirement date over the total amount of the retirement allowance income received by the member.

31760.12. Notwithstanding Section 31760.1, each survivor allowance paid pursuant to Section 31760.1 on account of a member who retires on or after the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in this article.

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

31760.13. (a) Notwithstanding Section 31760.1, each survivor allowance paid on or after the operative date of this section pursuant to Section 31760.1 on account of a member who retires before the operative date of this section shall be equal to 65 percent of

the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, as adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

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

31760.2. (a) Notwithstanding Section 31481 or 31760.1, upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued to his or her surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased member attains the age of 18 years, then the allowance that the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school, as determined by the board.

(d) If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section and the total retirement allowance income received by the retired member during his or her lifetime did not equal or exceed his or her accumulated normal contributions, the retired member's designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

(e) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31760.1.

(f) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(g) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

31760.3. The sole purpose of this section is to notify the current spouse of the selection of benefits or change of beneficiary made by a member. Nothing in this section is intended to conflict with community property law. An application for a refund of the member's accumulated contributions, an election of optional settlement, or a change in beneficiary designation shall contain the signature of the current spouse of the member, unless the member declares, in writing under penalty of perjury, any of the following:

(a) The member is not married.

(b) The current spouse has no identifiable community property interest in the benefit.

(c) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(d) The current spouse has been advised of the application and has refused to sign the written acknowledgment.

(e) The current spouse is incapable of executing the acknowledgment because of incapacitating mental or physical condition.

(f) The member and the current spouse have executed a marriage settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the Family Code which makes the community property law inapplicable to the marriage.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make this section applicable in the county.

31760.5. (a) Notwithstanding Section 31760 and in lieu of the retirement allowance and the continuing or survivor allowance, if any, otherwise payable to a retired member and his or her surviving spouse pursuant to this article, a member may elect in writing to have the actuarial equivalent of these benefits, as of the date of retirement, applied to a lesser amount payable throughout the retired member's life, and to an increased survivor allowance as approved by the board, upon the advice of the actuary, that, upon the death of the retired member, shall be continued throughout the life of and paid to his or her surviving spouse. To qualify for benefits under this section, the surviving spouse must be married to the member at least one year prior to the date of retirement. If there is no surviving spouse entitled to this allowance, or if the surviving spouse dies before every child of the deceased retired member, including every stepchild and adopted child, attains the age of 18 years, then the increased survivor allowance that the spouse would have received had he or she survived shall be paid to the deceased retired member's child or children under the age of 18 years. If the increased survivor allowance is to be paid to surviving children, it shall be divided among the children in equal shares. However, the right of any child to share in the allowance shall cease upon his or her death, marriage, or attaining the age of 18 years.

(b) Notwithstanding any other provisions of this section, the allowance otherwise payable to the children of the deceased retired member shall be paid through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in any accredited school as determined by the board.

(c) The election under this section may not, in the opinion of the

board and the actuary, place any additional burden upon the retirement system. If a member elects to be subject to this section, the retirement allowance that would otherwise be payable to the member shall be reduced by the additional cost to the system resulting from the increased survivor allowance. The actuarial cost of the survivor allowance payable under this section shall be calculated taking into account the life expectancy of the member's surviving spouse.

(d) This section is only applicable to Los Angeles County and is not operative unless and until the board of supervisors of the county elects, by resolution adopted by a majority vote, to make this section operative in the county. This section applies only to those members who retire after the operative date of this section.

31760.7. (a) A retired member, in order to provide for his or her domestic partner, shall be entitled to elect or change any optional retirement allowance pursuant to this article, if all of the following criteria are satisfied:

(1) The member retired on or before January 1, 2006.

(2) At retirement, the member elected an unmodified retirement allowance or one of the optional settlements specified in this article naming his or her domestic partner as beneficiary.

(3) At the time of election under this section, the retired member and domestic partner are registered as domestic partners with the Secretary of State, and provide a copy of their Certificate of Registered Domestic Partnership to the retirement system.

(4) The retired member and domestic partner sign an affidavit under penalty of perjury stating that at least one year prior to the member's service retirement effective date or at the disability retirement date the member and partner would have qualified to be registered as domestic partners pursuant to Section 297 of the Family Code.

(b) The retirement system has no obligation to locate or otherwise contact retired members who may qualify for allowances under the terms of this section.

(c) Notwithstanding any other provision of this chapter, if a retired member elects to change his or her retirement election pursuant to this section, the member's allowance shall be adjusted prospectively only. The adjusted retirement allowance shall be effective on the first day of the month following receipt of the member's signed election. The member shall not be eligible to recover payment retroactively for any period between his or her retirement effective date and the date of election under this section.

(d) This section does not apply to members who are required to provide a continuing benefit to a former spouse pursuant to court order.

(e) The right of a member to make an election pursuant to this section shall expire on January 1, 2007.

31761. Optional settlement 1 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and, if he or she dies before he or she receives in annuity payments the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her estate or

to the person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board.

31762. Optional settlement 2 consists of the right to elect in writing to have a retirement allowance paid to him or her until his or her death, and thereafter to the person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31763. Optional settlement 3 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to the person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31764. Optional settlement 4 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and thereafter to have other benefits as are approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the persons, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement. The designation shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

31764.5. (a) At retirement, a member who elects an optional settlement pursuant to Section 31762, 31763, or 31764 may elect to reduce his or her allowance to provide that if the named beneficiary predeceases the member, the member's allowance shall be adjusted to the amount he or she would have been entitled to receive at retirement if his or her benefit had not been modified by an optional settlement, adjusted by any cost-of-living increases that would have been added to the monthly allowance. The adjusted allowance shall be effective on the first day of the month following the month in which notification of the beneficiary's death is received by the board.

(b) This section may not become operative if, in the opinion of the retirement board and the actuary, the allowances payable under this section would place an additional financial burden on the retirement system.

(c) This section may not become operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31764.6. (a) Notwithstanding Sections 31481 and 31760, optional settlement 5 consists of a retired member's right to elect in writing to have his or her retirement allowance reduced and to designate his

or her spouse who is not otherwise eligible to receive a survivor allowance. The survivor allowance shall be determined on an actuarial basis by the reduction in the member's allowance and may not, in the opinion of the board and the actuary, place any additional financial burden on the retirement system.

(b) A member who elected to receive an optional settlement under Section 31762, 31763, or 31764, involving a life contingency of a beneficiary, may elect optional settlement 5 if the beneficiary predeceases the member or, if a former spouse was named, in the event of a dissolution or annulment of the marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member.

(c) A member who married at least 12 months prior to the date this section becomes operative may file an election with the board of retirement within 60 days after the operative date. The election shall become effective the first day of the month following receipt of the election by the board. A member who fails to elect within that 60-day period shall retain the right to make an election under this section subject to the waiting period provided in subdivision (d).

(d) Except as provided in subdivision (c), the election under this section shall become effective 12 months after the date it is filed with the board, provided that neither the member nor his or her spouse dies prior to the effective date of the election.

(e) An election under this section is irrevocable.

(f) This section may not become operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31764.7. (a) Notwithstanding any other provision of this chapter, if a retired member elects to have his or her retirement allowance reduced pursuant to Section 31764.6 and if, thereafter, the member's spouse predeceases the member, the member's allowance shall be adjusted to the amount he or she received at retirement, adjusted by any cost-of-living increases that were or would have been added to the monthly allowance. The adjusted allowance shall be effective on the first day of the month following the month in which notification of the spouse's or beneficiary's death is received by the board.

(b) This section may not become operative if, in the opinion of the retirement board and the actuary, the allowances payable under this section would place an additional financial burden on the retirement system.

(c) This section may not become operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

31765. Upon the death of a member who was eligible to retire, in circumstances in which a death benefit is payable under Article 12, if the deceased member has designated as beneficiary his spouse who survives him by not less than 30 days, such surviving spouse may elect, at any time before acceptance of any benefits from the retirement system, to receive, in lieu of the death benefit otherwise payable under Article 12, the same retirement allowance as that to which such spouse would have been entitled had such member retired on the day of his death and selected Optional Settlement 3. Such

surviving spouse may elect in writing, before the first payment of any allowance is made, to receive in a lump sum payment all or any part of the member's accumulated additional contributions. The sum so paid shall not be included in the calculation of the annuity of the surviving spouse.

If, at the death of such spouse, she or he is survived by one or more unmarried children of such member, under the age of 18, such retirement allowance shall continue to such child or children, collectively, until every child dies, marries, or attains age 18. If such spouse dies, either before or after the death of such member without either making such election or receiving any portion of the death benefit, and no part of the death benefit has been paid to any person, prior to the payment of any benefits, the legally appointed guardian of such children shall make the election herein provided for on behalf of such surviving children as in his judgment may appear to be in their interest and advantage and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to such children through the age of 21 if such children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

31765.1. Upon the death of any member of a retirement system established in a county subject to the provisions of Section 31676.1 or Section 31695.1, eligible for retirement pursuant to Article 7.5, 8, or 8.7 who leaves a spouse designated as beneficiary, such surviving spouse may, in lieu of the death benefit provided for in Article 12, elect to receive a retirement allowance equal to 60 percent of the amount to which the member would have been entitled had the member retired on the date of his death with a retirement allowance not modified in accordance with one of the optional settlements specified in Article 11. Such surviving spouse may elect in writing, before the first payment of any allowance is made, to receive in a lump sum payment all or any part of the member's accumulated additional contributions. The sum so paid shall not be included in the calculations of the annuity of the surviving spouse.

If, at the death of such spouse, she or he is survived by one or more unmarried children of such member, under the age of 18, such retirement allowance shall continue to such child or children, collectively, until every child dies, marries, or attains age 18. If such spouse dies, either before or after the death of such member without either making such election or receiving any portion of the death benefit, and no part of the death benefit has been paid to any person, prior to the payment of any benefits, the legally appointed guardian of such children shall make the election herein provided for on behalf of such surviving children as in his judgment may appear to be in their interest and advantage and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to such children through the age of 21 if such children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

31765.11. Notwithstanding Sections 31765 and 31765.1, upon the death of any member covered under Section 31751 who was either eligible for retirement or would have been entitled to disability retirement but died prior to such retirement and who leaves a spouse, such surviving spouse may, in lieu of the death benefit provided for in Article 12 (commencing with Section 31780), elect to receive a retirement allowance equal to 60 percent of the amount to which the member would have been entitled had the member retired on the date of death with a retirement allowance not modified in accordance with one of the optional settlements specified in this article.

If there is an eligible spouse, in addition to the above, 20 percent of the allowance to which the member would have been entitled shall be paid to each of the member's children. The maximum family benefit under this section shall be 100 percent of the amount to which the member would have been entitled had the member retired on the date of death with a retirement allowance not modified in accordance with one of the optional settlements specified in this article.

If there is no spouse eligible for the 60 percent allowance, but there is at least one eligible child, or if the spouse of the member dies either before or after the death of such member without either making such election or receiving any portion of the death benefit, and no part of the death benefit has been paid to any person, prior to the payment of any benefits, the legally appointed guardian of such child or children shall make the election herein provided for on behalf of such surviving child or children as the guardian's judgment may appear in their interest and advantage and the election so made shall be binding and conclusive upon all parties in interest.

If an election is made to receive the 60 percent allowance, the child, or children collectively, shall be entitled to 60 percent of the retirement allowance the member would have received.

As used in this section, "child" shall be as defined in Section 31760.11.

The provisions of this section also shall apply to the surviving spouse and children of any employee who dies as the result of injury or disease arising out of and in the course of employment prior to the first day of the calendar month when the employee normally would become a member.

The rights and privileges conferred by this section upon the surviving spouse and children of such deceased member or employee shall not be dependent upon whether they, or any of them, have been nominated by the deceased member or employee as the beneficiary of any benefits payable upon or by reason of death, but they shall be superior to, and shall supersede, the rights and claims of any other beneficiary so nominated.

31765.2. Notwithstanding Section 31765.1, each survivor allowance paid pursuant to Section 31765.1 on account of a member who dies on or after the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired on the date of death with a retirement allowance not modified in accordance with one of the optional settlements specified in this article.

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

31765.3. (a) Notwithstanding Section 31765.1, each survivor allowance paid on or after the operative date of this section pursuant to Section 31765.1 on account of a member who dies before the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired on the date of death with a retirement allowance not modified in accordance with one of the optional settlements specified in this article, as adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

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

31768. Notwithstanding any other provision of this chapter to the contrary, the board may, by a resolution adopted, pursuant to both this section and Section 31792, by a majority vote and with respect only to persons who first become members on or after the effective date of the resolution, elect to increase, by $33\frac{1}{3}$ percent, the amounts payable pursuant to any one or more of Sections 31760.1, 31760.2, and 31765.1.

This section shall apply only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

**Article 11.5 Deferred Retirement Option Program 31770-
31779.3**

31770. This article shall be known and may be cited as the "Deferred Retirement Option Program."

31770.1. (a) The Deferred Retirement Option Program is hereby created to provide eligible members who elect to participate in the program access to a lump sum, or in some cases, additional monthly payments for a specified period in addition to a monthly retirement allowance.

(b) The design and administration of the Deferred Retirement Option Program shall conform to the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

(c) If any provision of this article or application thereof to any person or circumstance is held invalid, that invalidity will not affect other provisions or applications of this article that can be given effect without the invalid provisions or application, and to this end the provisions of this article are severable.

31770.2. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article:

(a) "DROP" or "program" means the Deferred Retirement Option Program established by this article, as adopted by a county or district.

(b) "Election date" means the date the member elects to participate in the program.

(c) "Deferred retirement calculation date" means the date prior to the member's actual retirement date, as of which benefits under the program shall be calculated as provided in Section 31778.1.

(d) "Implementing ordinance" means the ordinance or resolution adopted by the county board of supervisors or governing board of the district, pursuant to Section 31770.3, providing for the implementation of the program in the county or district and specifying the applicable program options as provided in this article.

(e) "Participant" means any eligible safety member of the system described in Section 31469.4, 31470.2, or 31470.4 who has validly elected to participate in the program.

(f) "Program account" means the account established by the system for each participant of the program pursuant to Section 31772.

(g) "Program period" means the period of time commencing on the election date and ending on the member's retirement date, which period may not exceed 60 months of elapsed time.

(h) "Retirement date" means the date the member terminates employment and retires from the system.

31770.3. (a) This article, or selected provisions of this article, shall become effective in any county or district only when the county board of supervisors or governing board of the district adopts an ordinance or resolution providing for that implementation. The board

of supervisors or governing board may not adopt that ordinance or resolution, and this article, or selected portions of this article, may not become effective in the county or district unless and until the actuarial analysis described in Section 31770.4 has been completed and has determined that the program, as proposed to be adopted by the county or district, will be cost neutral and agreed to in a collective bargaining agreement.

(b) Based on the actuarial analysis, the requirement of cost neutrality, and the collective bargaining agreement, the county or district shall, in the implementing ordinance, elect one of the following for each bargaining unit other than a bargaining unit whose members are described in Section 31470.4:

(1) To be subject to the provisions of this article, including the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, but excluding the actuarial equivalent DROP provisions contained in Section 31777 and excluding the backward DROP provisions contained in Sections 31778 to 31778.2, inclusive.

(2) To be subject to the provisions of this article, including the actuarial equivalent DROP provisions contained in Section 31777, but excluding the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, and excluding the backward DROP provisions contained in Sections 31778 to 31778.2, inclusive.

(3) To be subject to the provisions of this article, including the backward DROP options contained in Sections 31778 to 31778.2, inclusive, but excluding the forward DROP provisions contained in Sections 31771 to 31776.5, inclusive, and excluding the actuarial equivalent DROP provisions contained in Section 31777.

(c) With respect to a bargaining unit whose members are described in Section 31470.4, the county or district may, in the implementing ordinance, be subject only to the provisions of this article as provided in paragraph (3) of subdivision (b).

(d) The program shall become operative with respect to all safety members of the system on the date specified in the implementing ordinance.

(e) The implementing ordinance shall specify a period of time, which shall be at least four years and not more than 10 years from the date of implementation, after which an initial review of the program shall be conducted pursuant to Section 31779.

31770.4. (a) The board shall, upon the request of, and before adoption of, the implementing ordinance by the county board of supervisors or governing board of the district, cause an actuarial analysis to be conducted to determine whether the program, as proposed to be adopted, will be cost neutral. A proposed program shall be deemed to be cost neutral if, based on the applicable actuarial assumptions, it will not have a significant negative financial impact on the members, employer, or the retirement system, as specified in subdivision (b).

(b) The actuarial analysis shall take into account the impact of the proposed program on specific measures, including, but not limited to, employer contributions, the system's actuarial accrued liability, and the present value of benefits. A proposed program will not be deemed to be cost neutral if there is any anticipated increase in any of these measures attributable to the implementation of the program or if there is a decrease in the present value of

benefits of more than 3 percent attributable to the implementation of the program.

(c) The actuarial analysis shall identify all cost elements expected to change due to the implementation of the program and shall include the impact of those changes. These may include, but are not limited to, cost elements such as benefit payments, expected retirement age, and the likelihood of termination or disability by those near retirement age. The analysis may not take into account items unrelated to the proposed programs, including the investment return on fund assets or the life expectancy of currently retired members.

(d) As used in this section:

(1) "Actuarial accrued liability" means the portion of the present value of benefits attributable to service before the valuation date.

(2) "Present value of benefits" means the value, as of the valuation date, of all benefits expected to be paid to current members of the system.

31770.5. (a) The implementing ordinance shall establish the eligibility requirements for participation in the program, subject to this section and the collective bargaining agreement. The ordinance shall specify the minimum age and the minimum and maximum, if any, years of service credit required to be eligible to participate in the program, which minimum and maximum, if any, may not be less than the minimum age and service credit requirements for service retirement.

(b) Members shall be eligible to elect to participate in the program at any time after the attainment of the minimum age and years of credited service in the system specified in the implementing ordinance. Members who satisfy the eligibility requirements on the implementation date of the program, as set forth in the implementing ordinance, shall be eligible to elect to participate in the program as of the operative date of the program.

(c) Prior service purchased pursuant to this chapter and service performed by the member under another public retirement system shall be included for purposes of determining eligibility for the program to the extent provided in Section 31836.

(d) Members who have left county or district service and who have elected deferred retirement pursuant to Article 9 (commencing with Section 31700) will not be eligible to participate in the forward DROP provisions unless they return to county service during the operative period of the program.

31770.6. (a) Upon adoption of the implementing ordinance, the retirement system shall establish procedures for notifying members of their rights under the program.

(b) Each member, before electing to participate in the program, shall be given written information regarding how benefits under the program would be calculated and a comparison of the member's anticipated benefits at retirement with and without participation in the program. All members will be advised to seek advice from professional tax and investment advisors before electing to participate in the program.

31770.7. The right of a participant to benefits under the program is not subject to execution or any other process, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this chapter.

31770.8. The rights of a participant or his or her spouse under the program shall be subject to any applicable provisions of law or court orders relating to dissolution of marriage, division of community property, and child or spousal support.

31771. The provisions of this section to Section 31776.5, inclusive, shall be referred to collectively as the "forward DROP provisions."

31771.1. (a) Any member who elects to participate in the forward DROP provisions of the program shall make the election on a form prescribed and retained by the board. On that form the member shall do all of the following:

(1) Designate a program period that will not exceed 60 months of elapsed time, agree to terminate covered employment under the system no later than the end of that designated period, and acknowledge that participation in the program is not a guarantee of continued employment for any period.

(2) Waive any claims with respect to age and other discrimination in employment laws relative to the program as are required by the employer or the system.

(3) Waive the right to disability retirement benefits based on a condition relating to an illness or injury that occurred prior to the program period. This waiver does not apply to any rights the member may have under Section 31720.5, 31720.6, or 31720.7, which rights shall remain in effect until the member receives a distribution of some or all of the balance in his or her program account.

(b) If the member is married, the member's spouse shall execute a statement, on a form prescribed by the board, acknowledging the spouse's understanding of, and agreement with, the member's election to participate in the program, together with an express statement of the spouse's understanding and agreement that benefits payable to the spouse upon the death of the member will be reduced as a result of that participation.

31771.2. (a) On and after the election date, the participant shall cease to accrue retirement benefits under this chapter, and instead shall begin to accrue benefits under the program pursuant to the terms of this article, which benefits shall be credited to the participant's program account pursuant to Section 31772.

(b) A member's election to participate in the program shall be irrevocable except in the following circumstances:

(1) If the member is married on the election date and if that spouse dies during the program period, the member may, within 90 days after the spouse's death, elect to revoke his or her election to participate in the program. In that case, the member's benefits

shall be calculated on retirement as if the member had never entered the program.

(2) If the member elects to retire for disability under the circumstances described in Section 31774, the member's participation in the program shall cease and the member may apply for conversion of the deferred retirement allowance to a disability allowance calculated at date of entry into the program, and the employee shall retain all proceeds in the program account.

(c) (1) A participant in the program shall have all of the rights, privileges, and benefits, and is subject to all terms and conditions of active employment including, but not limited to, eligibility for other benefit programs not related to retirement benefits, seniority, accrual and use of vacation and sick leave, and pay increases.

(2) A participant shall continue to make normal member contributions under this chapter during the program period.

(d) Except as otherwise provided in Section 31773, eligibility of a spouse for any benefits, including survivor's benefits shall be based on the participant's marital status and the duration of the marriage as of the retirement date.

31771.3. The implementing ordinance shall specify, based on the results of the actuarial analysis and the requirement that the program be cost neutral, as described in Section 31770.4, whether the employer shall be required to continue to make contributions to the system with respect to the compensation of participants in the program and whether that compensation shall be included in the determination of employer contribution rates.

31772. (a) A program account shall be established within the system for each participant. No system assets shall be separately segregated for any program account. A participant may not have a claim on any specific assets of the system.

(b) A participant's program account shall be credited with an amount equal to the service retirement allowance the member would have received if the member had retired for service on the election date and had selected an unmodified allowance, subject to the following:

(1) Sick leave and vacation time accrued by the member as of the election date may not be included in the calculation of service credit or final compensation for the retirement time where the member enters the program, except as otherwise provided in a collective bargaining agreement.

(2) The provisions of Article 15 (commencing with Section 31830) may not apply in the calculation of the participant's final compensation.

(c) Subject to the results of the actuarial analysis and the requirement that the program be cost neutral, the implementing ordinance may provide that some or all of the following amounts shall also be credited monthly to the participant's program account:

(1) Some or all of the normal member contributions under this chapter made by, or on behalf of, the participant during the program period.

(2) Some or all of the employer contributions to the system made on account of the participant during the program period.

(3) Some or all of the annual cost-of-living adjustments the member would have received if the member had retired for service on the election date and selected an unmodified allowance.

(4) Interest. If the implementing ordinance provides for the crediting of interest, it shall be credited semiannually at a rate that is equal to: (A) the interest rate, if any, applicable to employee contributions to the system, or (B) a fixed rate specified in the implementing ordinance, or (C) a rate determined semiannually by the retirement board.

31772.1. The board shall provide a statement to the participant that displays the value or balance of the participant's program account and summarizes any credits to the account or other transactions that occurred after the immediately preceding valuation date. The statement of account shall be provided at least once annually to each participant, and may be provided more often.

31773. (a) If a participant dies during the program period, he or she shall be deemed to have died while eligible for retirement and his or her benefits shall be calculated as if in active service, except as provided in subdivisions (b) and (c).

(b) Benefits under Article 12 (commencing with Section 31780) or, if applicable, Section 31765, 31765.1, or 31765.11 shall be calculated as if the participant had died on the election date. Notwithstanding the foregoing, eligibility of a spouse for any benefits shall be based on the participant's marital status and the duration of the marriage as of the actual date of death.

(c) The balance in the participant's program account shall be distributed pursuant to Section 31776.4.

31774. If a participant becomes eligible for disability retirement due to an injury or illness occurring during the program period or pursuant to Section 31720.5, 31720.6, or 31720.7, the participant shall elect to either:

(a) Retire for disability, in which case the participant may apply for conversion of the deferred retirement allowance to a disability allowance calculated at the election date and the employee shall retain all of the proceeds in the program account.

(b) Retire for service, in which case the participant shall waive any rights he or she may have to disability retirement benefits, except as provided in Section 31720.5, 31720.6, or 31720.7, and shall be entitled to a distribution of the balance in his or her program account and a monthly retirement allowance, as provided in Section 31776.1.

31775. Participation in the program shall be terminated, and the member will not have a right or claim to any continuing benefits under the program upon the first occurrence of any of the following events:

(a) Revocation of participation, as provided in subdivision (b) of Section 31771.2.

(b) Involuntary termination of employment. If a termination for

cause is reversed, a member's participation in the program shall be reinstated and the member shall be made whole for the duration of the original program period, as designated by the member upon entry into the program.

(c) Commencement of disability retirement benefits, as provided in subdivision (a) of Section 31774.

31776. Participation in the program shall be completed and the participant shall be entitled to benefits under the program upon the first occurrence of either of the following during the program period:

- (a) Retirement of the participant for service.
- (b) Death of the participant.

31776.1. Upon termination of employment and retirement for service under the system, a participant shall:

- (a) Receive a distribution, in the manner prescribed in Section 31776.3, of the balance in the participant's program account.
- (b) Begin receiving a monthly retirement allowance in an amount calculated pursuant to Section 31776.2.
- (c) Waive the right to any disability retirement benefits from the system, except for postretirement disability rights. This waiver does not include any rights the member may have pursuant to Sections 31720.5, 31720.6, and 31720.7.

31776.2. The participant's monthly allowance shall be an amount equal to the monthly allowance the participant would have received if he or she had retired for service on the election date, subject to the following:

- (a) Any unused sick leave or vacation leave that accrued as of the election date and was not used by the participant during the program period may be included in the calculation of the participant's allowance in accordance with a collective bargaining agreement, subject to other retirement rules for members not participating in the program.
- (b) The participant's allowance may be adjusted in accordance with the implementing ordinance for some or all of the cost-of-living adjustments that the participant would have received during the program period as if the participant had retired on the election date.
- (c) The participant's allowance shall be adjusted based on any election by the participant of any optional retirement allowance pursuant to Article 11 (commencing with Section 31760). The adjustment shall be based on the ages of the participant and, if applicable, the participant's spouse or beneficiary as of the retirement date.
- (d) The provisions of Article 15 (commencing with Section 31830) shall apply for purposes of calculating the participant's allowance. The participant shall be deemed to have retired on the retirement date for purposes of determining whether the member retired concurrently under both systems as required under this article.

31776.3. (a) Unless the implementing ordinance otherwise provides, the balance in the participant's program account shall be distributed to the participant in a single lump-sum payment at the time of retirement. If requested by the participant, the payment may be immediately deposited into a qualified tax-deferred account established by the participant.

(b) The implementing ordinance may provide one or more of the following optional forms of distribution for a participant's account:

(1) Substantially level installment payments over 240 months starting with the date that the member leaves DROP. The balance in the participant's account during the installment payout period shall be credited with interest at the same rate, if any, as is being credited to program accounts for currently active members. A cost-of-living adjustment may not be made to the monthly amount being paid pursuant to this paragraph.

(2) An annuity in a form established by the board and subject to the applicable provisions of the Internal Revenue Code that shall be the actuarial equivalent of the balance in the participant's program account on the retirement date. The "actuarial equivalent" under this paragraph shall be determined on the same basis as is used for determining optional settlements at retirement for a member's monthly retirement allowance.

(c) Notwithstanding any other provision of this article, a participant, nonparticipant spouse, or beneficiary may not be permitted to elect a distribution under this article that does not satisfy the requirements of Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder.

(d) The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(1) In the case of a lump-sum distribution to the participant, the lump-sum payment shall be made, at the participant's option, not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70½ years (or age determined by the Internal Revenue Service) or the calendar year in which the participant terminates all employment for the employer.

(2) In the case of a distribution to the participant in the form of installment payments or an annuity, payment shall begin, at the participant's option, not later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70 and one-half years (or age determined by the Internal Revenue Service) or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(3) In the case of a benefit payable on account of the participant's death, distribution shall be paid at the option of the beneficiary, no later than December 31 of the calendar year in which the first anniversary of the participant's date of death occurs unless the beneficiary is the participant's spouse in which case distributions shall commence on or before the later of either of the following:

(A) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(B) December 31 of the calendar year in which the participant would have attained the age of 70 and one-half years (or age determined by the Internal Revenue Service).

31776.4. (a) A participant may designate a person or persons as beneficiaries of the balance in the participant's program account at any time during the program period. Any beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and filed with the board.

(b) The participant's beneficiary designation may not be given effect and shall be overridden to the extent that designation would impair the rights of any surviving spouse or surviving minors under applicable federal or state law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the participant's program account upon the death of the participant.

(d) The nomination of a beneficiary or beneficiaries under this section may be revoked at the pleasure of the person who made the nomination and a different beneficiary or beneficiaries may be nominated by a written designation duly executed and filed with the board.

(e) If the participant dies without a valid beneficiary designation on file, or if no designated beneficiary survives the participant, any balance remaining in the participant's account shall be payable to the participant's estate.

31776.5. The final compensation calculated under Section 31776.2 shall be the member's final compensation for purposes of calculating any reciprocal benefits due the member from another retirement system pursuant to Article 15 (commencing with Section 31830).

31777. (a) The provisions of this section shall be referred to as the "actuarial equivalent DROP provisions."

(b) A member who retires for service on or after the operative date of the program may elect, on a form prescribed by the board, to receive a lump-sum payment and an actuarially reduced monthly allowance pursuant to this section in lieu of the monthly allowance that would otherwise be payable to the member pursuant to this chapter.

(c) A member who has elected to participate in the forward DROP provisions of the program, pursuant to Sections 31771 to 31776.5, inclusive, or the backward DROP provisions of the program, pursuant to Sections 31778 to 31778.2, inclusive, is not eligible to make the election provided under this section.

(d) (1) A member who makes the election described in this section shall receive a one-time lump-sum payment at the time of retirement in an amount chosen by the member that may not exceed the maximum amount specified in the implementing ordinance, as provided in subdivision (e).

(2) The amount of the lump-sum payment shall be calculated in accordance with the implementing ordinance.

(e) The implementing ordinance shall prescribe one of the following amounts as the maximum amount of the lump-sum payment under this section:

(1) The aggregate amount of the member's contributions to the

system, plus interest if applicable.

(2) The actuarial present value of 20 percent of the monthly allowance otherwise payable to the member under this chapter.

(3) An amount that would cause the member's monthly allowance under this chapter to be actuarially reduced to an amount equal to 50 percent of the member's final compensation.

(f) Notwithstanding any other provision of this chapter, a member who makes the election described in this section shall receive a monthly allowance pursuant to this chapter that shall be actuarially reduced to reflect the lump-sum amount paid under subdivision (d).

31778. The provisions of this section through those of Section 31778.2, inclusive, shall be referred to collectively as the "backward DROP provisions." A member who retires on or after the effective date of the program may elect upon application for service or disability retirement, on a form prescribed by the board, to receive:

(a) A backward DROP payment calculated under Section 31778.1.

(b) A monthly retirement allowance calculated as if the member had retired on the deferred retirement calculation date, except that the retirement formula applicable to the member's service as of the election date shall be used to calculate the amount of the member's monthly retirement allowance.

31778.1. A member who makes the election described in Section 31778 shall receive a one-time lump-sum payment upon retirement in an amount as calculated below.

(a) A participant's program account shall be credited with an amount equal to the retirement allowance the member would have received if the member had retired on the deferred retirement calculation date and had selected an unmodified allowance.

(b) The cost-of-living adjustments that would have been applicable during that period shall be included, applying the deferred retirement calculation date as the base year for the adjustment.

(c) All of the normal contributions that the member made under this chapter, plus interest applicable during the period from the deferred retirement calculation date to the election date.

(d) Some or all of the employer contributions made on account of the participant under this chapter, as agreed to in a collective bargaining agreement, plus interest applicable for the period from the deferred retirement calculation date to the election date.

(e) The member's program payment shall be the amount calculated under subdivision (a) multiplied by the number of months in the deferred retirement period, plus the cost-of-living adjustment calculated under subdivision (b), the member contributions calculated under subdivision (c), and the employer contributions calculated under subdivision (d). The amount shall also include interest at a rate agreed upon in the collective bargaining agreement and adopted by the board of retirement, applicable to the amounts derived from subdivisions (a) and (b), for the period from the deferred retirement calculation date to the election date. The program payment shall also be credited with interest at a rate established by the board for the period from the election date until the payment is made.

31778.2. (a) If a participant dies during the period from the deferred calculation date to the election date, he or she shall be deemed to have died while eligible for the deferred retirement option and the participant's eligible spouse or other beneficiary shall be qualified to elect the deferred retirement option under Section 31778 as if the participant were still living, except as provided in subdivisions (b) and (c).

(b) Benefits under Article 12 (commencing with Section 31780) or, if applicable, Section 31765, 31765.1 or 31765.11 shall be calculated as if the participant had died on the deferred retirement calculation date. Notwithstanding the foregoing, eligibility of a spouse for any benefits shall be based on the participant's marital status and the duration of the marriage as of the actual date of death.

(c) The balance in the participant's program account shall be distributed pursuant to Section 31778.3.

31778.3. (a) A participant may designate a person or persons as beneficiaries of the participant's program account at any time during the period from the deferred retirement calculation date to the election date. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and filed with the board.

(b) The participant's beneficiary designation may not be given effect, and shall be overridden, to the extent that designation would impair the rights of any surviving spouse or surviving minors under applicable federal or state law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the participant's program account upon the death of the participant.

(d) The nomination of a beneficiary or beneficiaries under this section may be revoked at the pleasure of the person who made the nomination, and a different beneficiary or beneficiaries may be nominated by a written designation duly executed and filed with the board.

(e) If the participant dies without a valid beneficiary designation on file, or if no designated beneficiary survives the participant, the participant's account shall be payable to the participant's estate.

31778.4. Upon termination of employment and retirement from the system, a member who has elected to participate in the program shall receive the member's program payment, as calculated pursuant to Section 31778.1 and in accordance with the distribution provisions of Sections 31776.3, 31776.4, and 31776.5.

31779. (a) After the program has been in effect for a period of at least four years and not more than 10 years, as specified in the implementing ordinance, or up to one year prior to the end of that specified period, the board shall cause an actuarial analysis of the cost impact of the program to be prepared and presented to the board of supervisors or governing body of the district for its review and consideration.

(b) If the actuarial analysis discloses that the program has not been cost neutral, the board of supervisors or governing board shall, by ordinance or resolution pursuant to a collective bargaining agreement with the bargaining unit, either:

(1) Discontinue the program, subject to Section 31779.1.

(2) Modify the program in a manner consistent with the actuarial analysis and the provisions of this article so that the program will be cost neutral.

31779.1. The rights of a participant who has retired under the program, whose deferred retirement calculation date, or whose program period is in effect at the time the program is discontinued may not be affected by the discontinuance of the program and that participant shall remain subject to the provisions of the program as it existed on the participant's election date.

31779.2. If the program is modified pursuant to paragraph (2) of subdivision (b) of Section 31779, participants who entered, or who were eligible for, the program prior to the effective date of the modification shall be entitled to elect whether to become subject to the modified provisions of the program or to remain subject to the program as it existed on the participant's deferred retirement calculation date or election date, whichever occurred first.

31779.3. As long as the program remains in effect, either as originally adopted or as modified pursuant to paragraph (2) of subdivision (b) of Section 31779, the board of retirement shall cause an actuarial analysis of the cost impact of the program to be prepared as provided in Section 31779 at the end of each successive period specified in the implementing ordinance or subsequently adopted by ordinance or resolution, and the board of supervisors or governing body may take the actions described in Section 31779 as appropriate based on the outcome of that analysis.

Article 12 Death Benefit 31780-31792

31780. Upon the death before retirement of a member while in service or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of service, or within one month after discontinuance of service unless the member's accumulated contributions have been paid to the member pursuant to Section 31628, the retirement system is liable for a death benefit which shall be paid:

(a) As provided in Section 31765 or 31765.1 or 31765.11 or 31781.1 or 31787, if the surviving spouse or guardian of one or more of the surviving children of the member so elects, or

(b) If no election is made pursuant to Section 31765, or 31765.1, or 31765.11, or 31781.1, or 31787 and no person is entitled to a survivor's allowance pursuant to Article 15.5 (commencing with Section 31841) or Article 16 (commencing with Section 31861) to such person as he nominates by written designation duly executed and filed with the board, before the death of the member, or

(c) If no such election is made, and a parent as defined in Article 15.5 but no other person is entitled to a survivor's allowance pursuant to Article 15.5 or 16 and a surviving spouse or child is designated as beneficiary, to such surviving spouse or child, or

(d) If no such election is made, no person is entitled to a survivor's allowance pursuant to Article 15.5 or 16, and a member has not nominated a beneficiary, to his estate.

31780.1. A child eligible to receive a survivor benefit under Section 31760.1, 31781.1, 31786, or 31787 shall be considered unmarried if the child is not married as of the date the member dies, whether or not the child was previously married. If the child thereafter marries, eligibility for the survivor benefit shall terminate, and the benefit shall not be reinstated if the child subsequently returns to unmarried status.

31780.2. (a) Any benefits accorded to a spouse pursuant to this article and Article 11 (commencing with Section 31760), Article 15.5 (commencing with Section 31841), Article 15.6 (commencing with Section 31855), and Article 16 (commencing with Section 31861), or any of them, may be accorded to a domestic partner, as defined in Section 297 of the Family Code, who is registered with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code. The county may also require the member and the member's domestic partner to have a current Affidavit of Domestic Partnership, in the form adopted by the county board of supervisors, on file with the county for at least one year prior to the member's retirement or death prior to retirement.

(b) If a member described in subdivision (a) has a surviving dependent child, the surviving dependent child shall receive the death and survivor's allowance until 18 years of age or until married, whichever occurs earlier, or until 22 years of age if enrolled as a full-time student in an accredited educational institution. When the member's surviving dependent child reaches 18

years of age or is no longer a dependent, whichever occurs earlier, or reaches 22 years of age if enrolled as a full-time student in an accredited educational institution, then the benefits accorded to a spouse, as specified in subdivision (a), may be accorded to a domestic partner pursuant to this section. However, if a surviving dependent child elects to receive a lump-sum payment, the lump-sum payment shall be shared among any surviving dependent children and the domestic partner, pursuant to this section, in a proportional manner.

(c) This section is not operative unless and until the county board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county. In a county of the 10th class, as defined in Sections 28020 and 28031, the county board of supervisors may implement the benefits described in this section as determined through the collective bargaining process and based on actuarial cost estimates.

31781. The death benefit shall consist of:

(a) The member's accumulated contributions.

(b) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable by the deceased during the 12 months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of such annual compensation.

31781.01. Notwithstanding Section 31781, the death benefit of a member covered under Section 31751 shall consist of:

(a) The member's accumulated contributions.

(b) A lump sum of two thousand dollars (\$2,000) offset by any lump-sum death payment made under the federal Social Security Act.

31781.1. (a) If a member of a retirement system established in a county subject to the provisions of Section 31676.1 would have been entitled to retirement in the event of a non-service-connected disability, but dies as the result of an injury or illness prior to retirement, the surviving spouse of the member shall have the right to elect, by written notice filed with the board, to receive and be paid in lieu of the death benefit provided in Sections 31780 and 31781, an "optional death allowance."

(b) The allowance shall consist of a monthly payment equal to 60 percent of the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired by reason of non-service-connected disability as of the date of his or her death.

(c) If the surviving spouse elects to receive the "optional death allowance" the payments due for this allowance shall be retroactive to the date of the deceased member's death, and shall continue throughout the life of the spouse.

(d) If the surviving spouse elects to receive the "optional death allowance," and thereafter dies leaving an unmarried surviving child or unmarried children of the deceased member under the age of 18 years, the "optional death allowance" shall thereafter be paid to those surviving children collectively until each child dies, marries, or reaches the age of 18 years. The right of any child to the

allowance shall cease upon the child's death or marriage, or upon reaching the age of 18 years, and the entire amount of the allowance shall thereafter be paid collectively to each of the other qualified children.

(e) If the deceased member leaves no surviving spouse but leaves an unmarried child or children under the age of 18 years, the legally appointed guardian of the child or children shall make the election provided in this section on behalf of the surviving child or children that, in his or her judgment, is in the best interests of the surviving child or children. The election made shall be binding and conclusive upon all parties in interest.

(f) The rights and privileges conferred by this section upon the surviving spouse and each child of the deceased member are not dependent upon whether any of these persons have been nominated by the deceased member as the beneficiary of any death benefits and shall supersede the rights and claims of any other beneficiary so nominated.

(g) Notwithstanding any other provisions of this section, the benefits otherwise payable to each child of the member shall be paid to each child through the age of 21 if the child remains unmarried and is regularly enrolled as a full-time student in an accredited school as determined by the board.

(h) For purposes of this section, "child" means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of his or her death.

31781.11. The board of supervisors of a county of the first class as described by Sections 28020 and 28022 may, by resolution adopted by a majority vote, increase the amounts of the death benefits payable pursuant to Sections 31760.1, 31765.1, 31781.1, and 31785, with respect to a death occurring on or after the date this section becomes operative in a county, up to the amount of the monthly allowance to which the deceased member was or would have been entitled as of the date of his or her death.

31781.12. Notwithstanding Section 31781.1, each allowance paid pursuant to Section 31781.1 on account of a member who dies on or after the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled, without modification in accordance with one of the optional settlements specified in this article, if he or she had retired, or been retired, by reason of a nonservice-connected disability as of the date of death.

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

31781.13. (a) Notwithstanding Section 31781.1, each allowance paid on or after the operative date of this section pursuant to Section 31781.1 on account of a member who dies before the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled,

without modification in accordance with one of the optional settlements specified in this article, if he or she had retired, or been retired, by reason of a nonservice connected disability as of the date of death, adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

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

31781.2. In lieu of accepting in cash the death benefit payable under Section 31781 or 31781.01, the surviving spouse of a member who dies prior to reaching the minimum retirement age and who at the date of his or her death has 10 or more years of service to his or her credit, shall have the option to leave the amount of the death benefit on deposit in the retirement system until the earliest date when the deceased member could have retired had he or she lived, and at that time receive the retirement allowance provided for in Section 31765, 31765.1, or 31765.11, whichever is applicable.

If, at the death of the spouse, he or she is survived by one or more unmarried children of the member, under the age of 18 years, the retirement allowance shall continue to the child or children, collectively, until every child dies, marries, or attains the age of 18 years. If the spouse dies, either before or after the death of the member, without either making the election or receiving any portion of the death benefit, and no part of the death benefit had been paid to any person, prior to the payment of any benefits, the legally appointed guardian of the children shall make the election herein provided for on behalf of the surviving children as, in his or her judgment, may appear to be in their interest and advantage, and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

31781.3. The surviving spouse of a member who dies in service after five years of service or as a result of service-connected injury or disease may elect, in lieu of the death benefit in Section 31781 or the life annuity provided in Section 31781.1 or 31787, the following combined benefit:

(a) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable by the deceased during the 12 months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of such annual compensation, plus

(b) A monthly allowance as provided in Section 31781.1 or 31787 reduced by a monthly amount which is the actuarial equivalent of the amount in subdivision (a) as applied to the life of the surviving spouse.

31781.31. Notwithstanding Sections 31781.1 and 31781.3, the surviving spouse of a member subject to Section 31751 who dies in service after 10 years of service, or as a result of service-connected injury or disease, may elect, in lieu of the life annuity provided in Section 31765.11 or the death benefit provided in Section 31781.01, the following combined benefit:

(a) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable by the deceased during the 12 months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of such annual compensation, plus

(b) A monthly allowance as provided in Section 31765.11 reduced by a monthly amount which is the actuarial equivalent of the amount in subdivision (a) as applied to the life of the surviving spouse.

31782. The nomination of a beneficiary under this system, other than nominations under optional settlements 2, 3 and 4, may be revoked at the pleasure of the person who made it and a different beneficiary nominated by written designation duly executed and filed with the board.

31783. If the nominated beneficiary cannot be found by the board, or if the nominated beneficiary is the estate of the deceased person, the board in its discretion may pay to the undertaker who conducted the funeral all or a portion of the amount payable as a death benefit, but not more than the funeral expenses of the deceased person as evidenced by the sworn itemized statement of the undertaker and by such other documents as the board may require. Payment so made is a full discharge of the board and system for the amount so paid.

31783.5. (a) Whenever a person or estate entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) The board shall attempt to locate the claimant through such means as the board in its sound discretion deems reasonable including, but not limited to a registered or certified letter, return receipt requested, mailed to the last known address of the claimant.

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivision (a) shall be held for the claimant. If the amounts are not claimed within five years after the last attempted contact with the claimant, the amounts shall be deposited in and become a part of the pension reserve fund. The board may at any time after transfer of unclaimed amounts upon receipt of information satisfactory to it, authorize the return of amounts so held in reserve to the credit of the claimant. Those amounts shall be paid only to claimants who have not yet attained the age for

mandatory distribution under the Internal Revenue Code.

31784. The person to whom the whole or any part of a death benefit is payable may, at any time before payment thereof, elect in writing to have such death benefit or part thereof paid over a period not to exceed 10 years in monthly installments, plus interest on the unpaid balance thereof, at a rate to be determined by the board. If such person dies before all such installments are paid, the board shall pay the balance in one lump sum to his estate or person entitled to receive his property.

31785. Upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1 or 31695.1, 60 percent of his or her retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if she or he dies before every child of the deceased safety member attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his or her child or children under that age, collectively, to continue until every child dies or attains that age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the safety member at least one year prior to the date of his or her retirement.

Any qualified surviving spouse or children of a member of a pension system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200), who shall have been retired on or before December 31, 1951, shall be paid a retirement allowance pursuant to the provisions of this section. In cases where the death of a member occurred prior to January 1, 1952, the payment of the retirement allowance to the qualified surviving spouse or children shall be made effective on January 1, 1952.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

31785.1. (a) Notwithstanding Section 31481 or 31785, upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued to his or her surviving spouse for life.

If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased safety member attains the age of 18 years, then the allowance that the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless he or she was married to the safety member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(d) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31785.

(e) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(f) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

31785.4. Notwithstanding Section 31785, each survivor allowance paid pursuant to Section 31785 on account of a safety member who retires on or after the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760).

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

31785.5. (a) Notwithstanding Section 31785, each survivor allowance paid on or after the operative date of this section pursuant to Section 31785 on account of a safety member who retires before the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), as adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

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

31786. Upon the death of any member after retirement for service-connected disability, his or her retirement allowance as it was at his or her death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if she or he dies before every child of such deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his or her child or children under said age, collectively, to continue until every such child dies or attains said age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the member prior to the date of his or her retirement.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

31786.1. (a) Notwithstanding Section 31481 or 31786, upon the death of any member after retirement for service-connected disability, his or her retirement allowance as it was at his or her death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued to his or her surviving spouse for life. If there is no surviving spouse entitled to an allowance under this section or if he or she dies before every child of the deceased member attains the age of 18 years, then the allowance that the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until each child dies or attains that age. However, no child may receive any allowance after marrying or attaining the age of 18 years.

(b) No allowance may be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death.

(c) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

(d) No allowance may be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31786.

(e) The superseding rights pursuant to this section do not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

(f) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may designate a date, which may be prior or subsequent to the date of the

resolution, as of which the resolution and this section shall be operative in the county.

31787. (a) If a member would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of injury or disease arising out of and in the course of the member's employment, the surviving spouse of the member shall have the right to elect, by written notice filed with the board, to receive and be paid in lieu of the death benefit provided for in Sections 31780 and 31781, an optional death allowance.

(b) The optional death allowance shall consist of a monthly payment equal to the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired by reason of a service-connected disability as of the date of his or her death.

(c) If the surviving spouse elects to receive the optional death allowance, the payments due for this allowance shall be retroactive to the date of the deceased member's death, and shall continue throughout the life of the spouse.

(d) If the surviving spouse elects to receive the optional death allowance, and thereafter dies leaving an unmarried surviving child or unmarried children of the deceased member under the age of 18 years, the optional death allowance shall thereafter be paid to those surviving children collectively until each child dies, marries, or reaches the age of 18 years. The right of any child to the allowance shall cease upon the child's death or marriage, or upon reaching the age of 18 years, and the entire amount of the allowance shall thereafter be paid collectively to each of the other qualified children.

(e) If the deceased member leaves no surviving spouse but leaves an unmarried child or children under the age of 18 years, the legally appointed guardian of the child or children shall make the election provided in this section on behalf of the surviving child or children that, in his or her judgment, is in the best interests of the surviving child or children. The election made shall be binding and conclusive upon all parties in interest.

(f) The rights and privileges conferred by this section upon the surviving spouse and each child of the deceased member are not dependent upon whether any of those persons have been nominated by the deceased member as the beneficiary of any death benefits and shall supersede the rights and claims of any other beneficiary so nominated.

(g) Notwithstanding any other provision of this section, the benefits otherwise payable to each child of the member shall be paid to each child through the age of 21 years if the child remains unmarried and is regularly enrolled as a full-time student in an accredited school as determined by the board.

(h) For purposes of this section, "child" means a natural or adopted child of the deceased member, or a stepchild living or domiciled with the deceased member at the time of his or her death.

31787.5. (a) A surviving spouse of a member who is killed in the performance of duty or who dies as the result of an accident or an

injury caused by external violence or physical force, incurred in the performance of the member's duty, now or hereafter entitled to receive a death allowance under Section 31787, shall be paid an additional amount for each of the member's children during the lifetime of the child, or until the child marries or reaches the age of 18 years, as follows, subject to the limitation in subdivision (b):

(1) For one child, twenty-five percent (25%) of the allowance provided in Section 31787.

(2) For two children, forty percent (40%) of the allowance provided in Section 31787.

(3) For three or more children, fifty percent (50%) of the allowance provided in Section 31787.

(b) If a benefit payable under this section, when added to a benefit payable under Section 31787, exceeds the maximum benefit payable by a tax-qualified pension plan under the Internal Revenue Code (26 U.S.C.A. Sec. 401 et. seq.), the benefit payable under this section shall be reduced to the amount required to meet that benefit limit.

(c) If the surviving spouse does not have legal custody of the member's children, the allowance provided by this section shall be payable to the person to whom custody of the children has been awarded by a court of competent jurisdiction for each child during the lifetime of the child, or until the child marries or reaches the age of 18 years.

(d) The allowance provided by this section shall be payable to the surviving spouses of members whose duties consist of active law enforcement or active fire suppression or any other class or group of members as the retirement board shall fix. The allowance provided by this section is not payable to the surviving spouses of members described in Section 31469.2.

(e) Any child whose eligibility for an allowance pursuant to this section commenced on or after October 1, 1965, shall lose that eligibility effective on the date of his or her adoption.

(f) This section shall become operative in any county, which has adopted the provisions of this chapter but which has not previously adopted the provisions of this section on October 1, 1965. Each surviving spouse of a member or other person having legal custody of a member's child or children who is paid an additional amount for each of the member's children because of the amendments to this section enacted at the 1965 or 1967 Regular Session shall receive those payments as they accrue from and after October 1 of the year during which this section was amended to provide for the payment to him or her of that allowance, but the surviving spouse or other person shall not be given a claim for any increase in those benefits for a time prior to that date.

(g) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

31787.6. A surviving spouse of a safety member who is killed in the performance of duty or who dies as the result of an accident or injury caused by external violence or physical force, incurred in the performance of his or her duty, shall be paid the following amount

in addition to all other benefits provided by this chapter:

A one-time lump-sum benefit equal to an amount, provided from contributions by the county or district, equal to the annual compensation earnable by the deceased at his or her monthly rate of compensation at the time of his or her death.

This section is not applicable to members described in Section 31469.2.

31789. Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his estate or to such beneficiary as he shall nominate by written designation duly executed and filed with the board, the sum of seven hundred fifty dollars (\$750) to be provided from contributions of the county or district.

This section applies to every member who dies after this section becomes operative whether he has retired before or after the operative date or effective date of this section.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31789.01. Notwithstanding Sections 31786, 31787, and 31787.5, upon the death, after retirement and while receiving a retirement allowance from this system, of any person who was covered under Section 31751, there shall be paid to the member's estate, or to such beneficiary as the member shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars (\$2,000) to be provided from contributions of the county or district, offset by any lump-sum death payment made under the federal Social Security Act.

31789.1. Upon the death of any member after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his estate or to such beneficiary as he shall nominate by written designation duly executed and filed with the board, the sum of seven hundred fifty dollars (\$750).

This section applies to every member who dies after this section becomes operative whether he has retired before or after the operative date or effective date of this section.

Only one death benefit payment shall be paid under this section or under Section 31789, and shall be paid by the system subject to Section 31789 and this section where the member rendered his last active service.

This section shall not become operative in any county until such time as the board of retirement determines that its benefits may be financed from surplus earnings of the retirement fund. Upon this determination by the retirement board, the provisions of this section shall become operative.

Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31510) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31510.8.

31789.12. Notwithstanding Section 31789.1, the board may increase the sum payable pursuant to Section 31789.1 to one thousand dollars (\$1,000).

Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

31789.13. Upon the death of any person while receiving a retirement allowance from the system, the board of retirement may supplement the sum payable pursuant to Section 31789 by an amount of two hundred fifty dollars (\$250) from the surplus earnings established pursuant to Section 31592.2.

This section applies to every retiree who dies after this section becomes operative whether retired before or after the operative date of this section.

This section shall not become operative in any county until such time as the board of retirement determines that this supplemental benefit can be financed from the surplus earnings established pursuant to Section 31592.2 which exceed 1 percent of the total assets of the retirement system.

The total of the death benefits paid pursuant to Section 31789 and this section shall not exceed one thousand dollars (\$1,000). The death benefits payable pursuant to Section 31789 and this section shall be paid only by the system which is subject to Section 31789 and this section and in which the member rendered his or her last service.

31789.2. Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his estate, or to such beneficiary as he shall nominate by written designation duly executed and filed with the board, the sum of seven hundred fifty dollars (\$750).

This section applies to every member who dies after this section becomes operative whether he has retired before or after the operative date or effective date of this section.

The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1 and may be paid in part, from contributions of the county or district in accordance with Section 31789, and in part, from surplus earnings of the retirement system in accordance with Section 31789.1.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by a majority vote, make the provisions of this section applicable in such county and until such time as the board of retirement, by resolution adopted by a majority vote, determines that its portion of the benefits may be financed from surplus earnings of the retirement fund.

Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31510) of this chapter, only that portion of those benefits which is paid from

surplus earnings described in Section 31592.2 shall be paid, instead, from the Supplemental Retiree Benefits Reserve established pursuant to Section 31510.8.

31789.3. (a) Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his or her estate or to the beneficiary as he or she shall nominate by written designation duly executed and filed with the board, an amount determined by the board of supervisors to be provided from contributions of the county or district. The board of supervisors shall, by resolution adopted by majority vote, fix and determine an amount that shall not exceed five thousand dollars (\$5,000).

(b) This section applies to every member who dies after this section becomes operative whether he or she has retired before or after the operative date or effective date of this section.

(c) The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1.

(d) This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in the county.

31789.5. (a) Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his or her estate, or to the beneficiary as he or she shall nominate by written designation duly executed and filed with the board, an amount determined by the board of supervisors. The board of supervisors shall, by resolution adopted by majority vote, fix and determine an amount that may not exceed five thousand dollars (\$5,000).

(b) This section applies to every member who dies after this section becomes operative whether he or she has retired before or after the operative date or effective date of this section.

(c) The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1 and may be paid in part, from contributions of the county or district in accordance with Section 31789, and in part, from surplus earnings of the retirement system in accordance with Section 31789.1.

(d) The death benefit provided by this section may, at the election of the board of retirement, be provided through a group life insurance policy if the cost of that policy to the system is the same or less than the cost to the system, county, or district of other methods of providing the benefit.

(e) This section may not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section applicable in the county and the board of retirement, by resolution adopted by a majority vote, determines that its portion of the cost of the benefits may be financed from surplus earnings of the retirement fund.

(f) Upon adoption, by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610), only that portion of those benefits that is paid from surplus earnings described in Section 31592.2 shall be paid, instead, from the

Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

31790. Upon the death of any person before retirement which person shall have to his credit at least 10 years of service with the county or district, there shall be paid to his estate or to such beneficiary as he shall nominate by written designation duly executed and filed with the board, the sum of seven hundred fifty dollars (\$750) to be provided from the contributions of the county or district.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions hereof applicable to the county.

31791. Notwithstanding Section 31760.1, 31765.1, 31781.1, 31781.2, 31785, 31786, 31787, or 31787.5, the board of supervisors of a county of the first class as described by Sections 28020 and 28022 may, by resolution adopted by a majority vote and with respect to the death benefit payable pursuant to any, all, or any combination of, those sections, take any or all of the following actions:

(a) Increase the maximum age for eligible children who remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board, to the age of 23 years.

(b) Provide for payment of the death benefit to any surviving children for such period as those children remain legally incompetent to act as adults regardless of age.

31792. Notwithstanding any other provision of this chapter to the contrary, the board may, by a resolution adopted, pursuant to both this section and Section 31768, by a majority vote and with respect only to persons who first become members on or after the effective date of the resolution, act as follows:

(a) Elect to increase, by $3\frac{1}{3}$ percent, the amounts payable pursuant to any one or more of Sections 31781.1, 31785, and 31785.1.

(b) Elect to decrease, by 20 percent, the amounts payable pursuant to any one or more of Sections 31786, 31786.1, and 31787.

This section shall apply only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

**Article 13 Integration With Old Age and Survivors Insurance
31800-31817**

31800. The provisions of this article shall be applicable to any member who is subject to the federal old age and survivors insurance provisions of the Social Security Act, when the governing board of the county or district in which the member is employed adopts by majority vote a resolution providing that this article shall be applicable to all members in such county or district who are subject to the federal system. The provisions of this article shall become fully effective and operative on the date specified in such resolution; provided, however, such resolution shall have received prior approval by majority affirmative vote of eligible members employed by the county or district in a referendum conducted in accordance with the provisions of Article 2, Chapter 2, Part 4, Division 5, of Title 2 of this code. Nothing in this article shall be construed as negating or in any way affecting the validity of a referendum vote conducted prior to the enactment of this article, whereby a majority of members employed by a county or district voted in favor of federal old age and survivors insurance coverage on a purely additive or supplemental basis.

31800.1. Notwithstanding any other provision of law, the board of supervisors in a county of the 10th class as described by Section 28031 may adopt, by majority vote, a resolution providing that:

(a) Any general member employed by the county or any district included within the membership of the county retirement association shall have the option, at any time prior to retirement, of having his retirement allowance for service rendered after the date of his exercising this option calculated to equal the following:

(1) The fraction of one-ninetieth of the first one thousand fifty dollars (\$1,050) monthly of the member's final compensation set forth in the table appearing in Section 31676.1 in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-sixtieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.1 in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

The retirement allowance payable for service rendered prior to the date of the member's election shall be computed in accordance with the provisions of Section 31676.1. The retirement allowance payable for service performed after the effective date of the member's election shall equal the total of paragraphs (1) and (2) of this subdivision.

Any member who elects to have his retirement allowance so calculated shall have the definition of "final compensation" in Section 31462 or Section 31462.2, whichever is applicable, applied at the date of retirement regardless of previous service under the provisions of Section 31462.1.

(b) Any safety member employed by the county or any district included within the membership of the county retirement association

shall have the option, at any time prior to retirement, of having his retirement allowance for service rendered after the date of his exercising this option calculated to equal the following:

(1) The fraction of one seventy-fifth of the first one thousand fifty dollars (\$1,050) monthly of the member's final compensation set forth in the table appearing in Section 31664 in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31664 in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

The retirement allowance payable for service rendered prior to the date of the safety member's election shall be computed in accordance with the provisions of Section 31664. The retirement allowance payable for service performed after the effective date of the safety member's election shall equal the total of paragraphs (1) and (2) of this subdivision.

Any safety member who elects to have his retirement allowance so calculated shall have the definition of "final compensation" in Section 31462 or Section 31462.2, whichever is applicable, applied at the date of retirement regardless of previous service under the provisions of Section 31462.1.

(c) Before permitting a member to exercise the option authorized by this section, the board of supervisors shall provide that member with a written explanation of the effect on the member's retirement benefits and contributions of exercising that option. No member may rescind his action after exercising the option authorized in this section.

(d) Any member who elects deferred retirement after becoming subject to the provisions of this section shall receive a retirement allowance determined in accordance with subdivision (a) or subdivision (b) of this section.

(e) Any member who exercises the option authorized in this section shall continue to contribute as provided for in Article 6 (commencing with Section 31620) or Article 6.8 (commencing with Section 31639), of this chapter, whichever is applicable, a lesser amount as determined by an actuary.

(f) Any member who exercises the option authorized in this section and who is also eligible and elects or has elected to receive credit in the retirement system for public service as provided in Section 31641.1 shall have the retirement allowance for such public service calculated as if he had not exercised the option authorized in this section.

(g) Any member who exercises the option authorized in this section and who is also eligible and elects to receive the benefits of Section 31641.5, 31652, or 31831.1 shall have the retirement allowance for that service calculated in accordance with subdivisions (a) or (b) of this section.

For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

Any additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is adopted shall not be less than the sum of (1) the actuarial normal cost, plus (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the public agency's contract.

31800.5. Whenever pursuant to the provisions of this article federal old age and survivors insurance provisions of the Social Security Act have been integrated as to members employed by a county or district, the relationship may be converted to a supplementation system under which the social security benefits shall be in addition to unintegrated retirement benefits. The conversion shall take place when the governing body of the county or district adopts by majority vote, a resolution providing that the conversion shall take place; provided, however, the resolution shall have received prior approval by majority affirmative vote of eligible members employed by the county or district in a referendum conducted in accordance with the provisions of Article 2 (commencing with Section 22300), Chapter 2, Part 4, Division 5 of Title 2 of this code. The conversion shall take place and become fully effective and operative on the date specified in the resolution.

In the event that the employees of the county or district are divided into more than one coverage group for purposes of the Social Security Act, the conversion may be with respect to all coverage groups or one or more coverage groups as the governing board may determine in the resolution.

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

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

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

Nothing in this article shall authorize the extension of the federal system to service in any policeman's or fireman's position covered by a separate retirement system unless all of the policemen or firemen are included as a unit without any division of their separate retirement system.

When federal benefits are to be extended to any fireman's or policeman's position pursuant to this part they shall vote separately from other members of such system in all cases without regard to their classification as miscellaneous members or otherwise, and notwithstanding Section 22009.1, such system shall constitute a separate retirement system with respect to the positions of policemen or firemen, or both, covered by the system.

31802. "Federal agency" means the Secretary of Health, Education and Welfare, or the predecessor or successor in functions to such officer.

31803. "Federal system" means the old age and survivors insurance provisions of the Social Security Act.

31804. Whenever reference is made to any federal law or regulation or part thereof, the reference applies to all amendments and additions now or hereafter made to such law.

31805.1. Effective with the approval of this section the service retirement allowances of those heretofore retired shall be recalculated as though Section 31805 had not been enacted.

31806. The provisions of this chapter requiring retirement at age 65 or 70, whichever applies, shall not be applicable to any person who is a member on the effective date of this article when the application of such provision would preclude the member from qualifying for federal benefits, but such member shall be retired forthwith, as provided in Section 31671 or Section 31671.01, upon qualifying for such federal benefits.

31807. The retirement allowance payable under Section 31808, Section 31808.1 or Section 31809 of this code, whichever is applicable, to a person who was a member on the effective date of this article in any county pursuant to this article if not fully insured for old age payments under the federal system at time of retirement shall be not less than that amount for which he would have been eligible if this article were not applicable to the member.

The retirement allowance payable under Section 31808, Section 31808.1 or Section 31809 of this code, whichever is applicable, to a person who was a member on the effective date of this article in any county pursuant to this article if fully insured for old age payments under the federal system at time of retirement shall not be less than an amount which, when added to the primary insurance amount payable to him under the federal system at time of retirement will equal the allowance which would otherwise be payable to the member under the provisions of this chapter if this article were not applicable to the member. If the member retires for service prior to retirement age under the federal system and the amount available to him under the provisions of Section 31810 is less than the allowance

which would otherwise be payable to the member under the provisions of this chapter if this article were not applicable to the member then the allowance shall be increased to an amount not less than that which would otherwise be payable.

31808. (a) In any county or district subject to the provisions of Section 31676.1, 31676.11, 31676.13, or 31676.14, the retirement allowance payable for retirement service rendered prior to the effective date of the resolution mentioned in Section 31800 shall be computed in accordance with the provisions of Section 31676.1, 31676.11, 31676.13, or 31676.14, whichever is applicable. Except as provided in subdivision (b), the retirement allowance with respect to service performed after May 31, 1957, shall equal the total of the following:

(1) The fraction of one-ninetieth of the first three hundred fifty dollars (\$350) monthly of the member's final compensation set forth in the table appearing in Section 31676.1, 31676.11, 31676.13, or 31676.14, whichever is applicable, in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-sixtieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.1, 31676.11, 31676.13, or 31676.14, whichever is applicable, in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

(b) With respect to persons who become members of a county retirement system after the effective date of the amendments to this section enacted at the 1979-80 Regular Session, the retirement allowance shall equal the following:

(1) The fraction of one-ninetieth of the first one thousand fifty dollars (\$1,050) monthly of the member's final compensation set forth in the table appearing in Section 31676.1, 31676.11, 31676.13, or 31676.14, whichever is applicable, in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-sixtieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.1, 31676.11, 31676.13, or 31676.14, whichever is applicable, in the column applicable to the member's age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

This subdivision may be made applicable in any county of over six million population on the first day of the month after the board of supervisors of such county adopts by majority vote a resolution providing that this subdivision shall become applicable in such county.

31808.1. In any county or district subject to the provisions of Section 31676. 1, and to which the provisions of Section 31470.6 are applicable, the retirement allowance for any member whose principal duties consist of active law enforcement as defined in Section

31470.6, and Section 31469.3 and those made eligible to safety membership by Section 31469.4 of the Government Code for service rendered prior to the effective date of the resolution provided in Section 31800 shall be computed in accordance with the provisions of Section 31664. The retirement allowance of any such member with respect to service performed after the effective date of the resolution shall equal the total of the following:

(a) The fraction of one seventy-fifth of the first three hundred fifty dollars (\$350) monthly of the member's final compensation set forth in the table appearing in Section 31664 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(b) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31664 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

31808.2. Notwithstanding the provisions of Section 31808 and 31808.1, the retirement allowance with respect to service performed after the effective date of this article for allowances subject to Section 31808 and after the effective date of the resolution described in Section 31808.1 shall be computed on the basis of Section 31676.1 for the service, not subject to benefits under the federal system, between the effective date of this article or resolution, as such dates are set forth in Sections 31808 and 31808.1 and the date of return to active membership of members who separated from employment in any county subsequent to the aforesaid dates and who returned to the service of the same county.

31808.5. In any county which has safety members as defined in Sections 31470.2 and 31470.4 subject, prior to January 1, 1962, to the provisions of this article, the board of supervisors may adopt the provisions of this section.

The retirement allowance for any safety member subject to this article for service rendered prior to the date of adoption of this article by a county board of supervisors shall be computed in accordance with the provisions of Section 31664. The retirement allowance of any such member, subject to this article, with respect to service performed after the effective date of adoption by the county of this article shall equal the total of the following:

(a) The fraction of one seventy-fifth of the first three hundred fifty dollars (\$350) monthly of the member's final compensation set forth in the table provided for in Section 31664 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(b) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31664 in the column applicable to his age at retirement taken to the preceding quarter year multiplied by the number of years of creditable service.

The retirement allowance for any safety member who is not subject

to this article shall be computed in accordance with the provisions of Section 31664.

Any member who becomes a safety member after the adoption date of this section shall be subject to the provisions of this article.

This section shall not apply to any safety member who is a member on date of adoption of this section unless within 60 days thereafter he files with the board a signed written statement expressing his desire to have the section apply to him.

Any member subject to the provisions of this section may elect deferred retirement pursuant to Article 9 (commencing with Section 31700) of this chapter.

31808.6. Notwithstanding any other provisions of law, in any county or district first subject to the provisions of Section 31676.1 or 31695.1 on or after July 1, 1969, having members performing the duties of safety members as defined in Sections 31470.2 and 31470.4, if the board of supervisors adopts this section and as to such members adopts or has already adopted the provisions of this article, then the retirement allowance of such safety members shall be computed according to either the provisions of subdivision (a) or subdivision (b) of this section as selected by the board of supervisors.

(a) The retirement allowance for service rendered prior to the effective date of the resolution provided in Section 31800 shall be computed in accordance with the provisions of Section 31664.01. The retirement allowance of any such safety member with respect to service performed after the effective date of the resolution shall equal the total of the following:

(1) The fraction of one seventy-fifth of the first three hundred fifty dollars (\$350) monthly of the member's final compensation set forth in the table appearing in Section 31664.01 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31664.01 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service; or

(b) The retirement allowance shall be computed according to the provisions of Section 31664.01 and federal old age and survivors' insurance coverage shall be on an additive or supplemental basis.

Notwithstanding any other provision of law, in counties which have adopted the provisions of this section and have voted to apply the provisions of this chapter relating to safety members as provided by Section 31695.1, the retirement benefits as well as the contributions of eligible members subject to this article who do not elect pursuant to Section 31695.2 to come under the safety member provisions of this chapter, shall be the same as the retirement benefits and contributions of members other than safety members in the county.

The retirement allowance for any safety member who is not subject to this article shall be computed in accordance with the provisions of Section 31664.01.

Any member who becomes a safety member after the effective date of

the selection of the method of computing the retirement allowance by the board of supervisors shall be subject to such selection and to the provisions of this article.

Any member subject to the above selection made by the board of supervisors may elect deferred retirement pursuant to Article 9 (commencing with Section 31700) of this chapter.

31808.7. In any county or district, subject to Section 31676.12, which adopts or has already adopted the provisions of this article, the retirement allowance of members subject to Section 31676.12 shall be computed according to either the provisions of subdivision (a) or subdivision (b) of this section as selected by the board of supervisors.

(a) The retirement allowance for service rendered prior to the effective date of this article as specified in the resolution mentioned in Section 31800 shall be computed in accordance with the provisions of Section 31676.12. The retirement allowance of any member with respect to service performed after the effective date of this article as specified in the resolution mentioned in Section 31800 shall equal the total of the following:

(1) The fraction of one seventy-fifth of the first three hundred fifty dollars (\$350) monthly of the member's final compensation set forth in the table appearing in Section 31676.12 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.12 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service, or

(b) The retirement allowance shall be computed according to the provisions of Section 31676.12 and federal old age and survivors' insurance coverage shall be on an additive or supplemental basis.

31808.8. The board of supervisors of a county of the third class may, by majority vote, adopt a resolution providing either or both of the following:

(a) That subdivision (b) of Section 31808 is applicable to persons who become members of the county retirement system after the effective date designated in the resolution and that persons who were subject to subdivision (a) of Section 31808 prior to that date may elect to have their retirement allowance for services rendered after that date computed in accordance with subdivision (b) of Section 31808.

(b) That an employee who is subject to subdivision (a) of Section 31808.7 may elect to have his retirement allowance computed, with respect to service rendered after the effective date designated in the resolution, in accordance with the following:

(1) The fraction of one seventy-fifth of the first one thousand fifty dollars (\$1,050) monthly of the member's final compensation set forth in the table appearing in Section 31676.12 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service

as provided therein.

(2) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.12 in the column applicable to his age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

31808.9. In any county or district, subject to Section 31676.17, 31676.18, or 31676.19, that adopts or has already adopted the provisions of this article, the retirement allowance of members subject to Section 31676.17, 31676.18, or 31676.19 shall be computed according to either the provisions of subdivision (a) or subdivision (b) of this section as selected by the board of supervisors.

(a) The retirement allowance for service rendered prior to the effective date of this article as specified in the resolution mentioned in Section 31800 shall be computed in accordance with the provisions of Section 31676.17, 31676.18, or 31676.19, as applicable.

The retirement allowance of any member with respect to service performed after the effective date of this article as specified in the resolution mentioned in Section 31800 shall equal the total of the following:

(1) The fraction of one seventy-fifth of the first three hundred fifty dollars (\$350) monthly of the member's final compensation set forth in the table appearing in Section 31676.17, 31676.18, or 31676.19, as applicable, in the column applicable to his or her age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.17, 31676.18, or 31676.19, as applicable, in the column applicable to his or her age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

(b) The retirement allowance shall be computed according to the provisions of Section 31676.17, 31676.18, or 31676.19, as applicable, and federal old age and survivors' insurance coverage shall be on an additive or supplemental basis.

31810. A member who retires for service prior to the age of becoming eligible for retirement payments under the federal system and who at the time of retiring is fully insured under the federal system, may, with the approval of the Retirement Board, elect to have his retirement allowance increased prior to such eligible age and reduced after such age by amounts which have equivalent actuarial values. This modification is for the purpose of co-ordinating a member's retirement allowance with benefits receivable from the federal system.

31811. If a member who has elected the option provided in Section 31810 dies leaving a beneficiary entitled to an allowance based upon the allowance of the member, the beneficiary's allowance shall be based upon the allowance the member would have received had he not

elected the option.

31812. (a) Each member shall continue to contribute as provided for in Article 6 (commencing with Section 31620) or (in case of those members defined in Sections 31470.2, 31470.4 and 31470.6) Article 6.8 (commencing with Section 31639) of this chapter less an amount equal to one-third of that portion of such contribution which is payable with respect to the first three hundred fifty dollars (\$350) monthly wage, or in counties where the board of supervisors pursuant to subdivision (b) of Section 31808.6 elects to compute the retirement allowance of safety members according to the provisions of Section 31664, each safety member shall make contributions as provided for in Article 6.8 of this chapter with respect to all of his monthly wage.

(b) With respect to persons who become members of a county retirement system after the effective date of the amendments to this section enacted at the 1979-80 Regular Session, each member shall contribute as provided for in Article 6 (commencing with Section 31620) or (in case of those members defined in Sections 31470.2, 31470.4 and 31470.6) Article 6.8 (commencing with Section 31639) of this chapter less an amount equal to one-third of that portion of such contribution which is payable with respect to the first one thousand fifty dollars (\$1,050) monthly wage, or in counties where the board of supervisors pursuant to subdivision (b) of Section 31808.6 elects to compute the retirement allowance of safety members according to the provisions of Section 31664, each safety member shall make contributions as provided for in Article 6.8 of this chapter with respect to all of his monthly wage.

This subdivision may be made applicable in any county of over six million population on the first day of the month after the board of supervisors of such county adopts by majority vote a resolution providing that this subdivision shall become applicable in such county.

31812.1. Each member subject to Section 31676.12 and subdivision (a) of Section 31808.7 shall continue to contribute as provided for in Article 6 (commencing with Section 31620) less an amount equal to one-third of that portion of such contribution which is payable with respect to the first three hundred fifty dollars (\$350) monthly wage, or in counties where the board of supervisors pursuant to subdivision (b) of Section 31808.7 elects to have the retirement allowance of members computed according to the provisions of Section 31676.12, each member shall make contributions as provided for in Section 31621.2 with respect to all his monthly wage.

31813. If this article is effective simultaneously with the effective date of coverage of members under the federal system, the employee and employer federal contributions required with respect to salaries and wages paid for services rendered after the effective date of coverage of such member under the federal system and prior to the time that federal contributions are first deducted from the salaries and wages of such members shall be paid (1) the employee contribution by the county from the member's accumulated contributions to the extent that such retroactive costs do not exceed one-third of that portion of the member's contributions under this

chapter which is payable with respect to the first three hundred fifty dollars (\$350) monthly wage for such retroactive period (2) the employer contributions from contributions made by the county or district during such retroactive period.

If the member's federal contributions payable for such period is greater than the accumulated contributions resulting from one-third of that portion of the member's contributions under this chapter during such period, which is payable with respect to the first three hundred fifty dollars (\$350) monthly wage, the difference shall be paid by the member to the county or district in such manner as may be determined by the Retirement Board.

If the federal contributions payable by the member for such period is less than the accumulated contributions resulting from one-third of that portion of the member's contributions which are payable with respect to the first three hundred fifty dollars (\$350) monthly wage, pursuant to the provisions of this chapter for such period, the county or district shall refund the amount of such excess to the member.

All refunds made under this section prior to the effective date of the amendments to this section enacted at the 1959 Regular Session of the Legislature are hereby validated and confirmed.

31814. If this article is effective subsequent to the effective date of the coverage of members under the federal system the employees' federal contributions required of members with respect to salary and wages paid for service rendered after the effective date of coverage of such member under the federal system and prior to the time that federal contributions are first deducted from the salary or wage of such members, shall be paid to the county or district by the member in such manner as may be determined by the Retirement Board.

31815. Any member who elects deferred retirement after becoming subject to the provision of this article shall receive a retirement allowance determined in accordance with Section 31808, 31808.1, 31808.6, or 31809, whichever is applicable.

31816. In the event that any member who is required to or who had the right to elect to redeposit accumulated contributions previously withdrawn, elects so to do, the amount of such redeposit shall be the amount of his previously withdrawn contributions adjusted in accordance with the provisions of Section 31813.

31816.1. If, after the adoption of this article by a county, a member is permitted by other sections of this act to obtain credit for service by making contributions into this system for previous service, that part of such contributions applicable to the period of time after the adoption of this article by the county shall be modified in accordance with Section 31812.

31817. This article shall not be applicable to any member subject to Section 31751 except with respect to the member's service prior to

the date such section was made applicable to the member.

Article 14 Subrogation . . . 31820-31823

31820. If benefits are payable under this chapter because of an injury to, or the death of, a member of the retirement association, and such injury or death is the proximate consequence of the act of any person other than his employer, the board on behalf of the retirement association may recover from such person an amount which is the lesser of the following:

- (1) An amount which is equal to one-half of the actuarial equivalent of the benefits for which the association is liable because of such injury or death; or
- (2) An amount which is equal to one-half of the remaining balance of the amount recovered after allowance of that amount which the employer or its insurance carrier have paid or become obligated to pay. The right shall be determined under the subrogation provisions of any workmen's compensation law.

31821. The retirement association may join with the employer or its compensation insurance carrier in any proceeding under this article.

31822. Any amount recovered by any of the parties shall be applied, first, to the amounts which the employer or its insurance carrier have paid or become obligated to pay, and second, to the amounts to which the retirement association is entitled under the provisions of Section 31820 hereof.

31823. Actions brought by the board under this article shall be commenced within three years after the liability of the retirement system to pay benefits is fixed. Liability of the retirement system is fixed at the time the board approves the payment of benefits under this chapter.

Article 15 Reciprocal Benefits 31830-31840.8

31830. The provisions of this article are intended to encourage career public service by granting reciprocal retirement benefits to members who are entitled to retirement rights or benefits from two or more retirement systems established under this chapter or from a retirement system established under this chapter and the Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and to delineate the financial obligations of each system and related political entity so that no system or political entity shall be liable for more than its just financial obligation.

31831. Any member, whether over or under the minimum age of service retirement, who leaves county service and within 90 days or six months if Section 31840.4 applies thereafter becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, regardless of the amount of county service, may elect deferred retirement pursuant to Article 9 of this chapter, except that he or she may not, after that election, rescind the election or withdraw any of his or her accumulated contributions while a member of such other system.

31831.1. Any member who left county or district service on or before December 31, 1971, and became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System, who did not elect to, or was not eligible to, leave his contributions on deposit pursuant to Article 9 (commencing with Section 31700) may now elect to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) by redepositing in the retirement fund of the county or district he left the amount of accumulated contributions and interest he withdrew from such retirement fund plus regular interest thereon from date of separation.

Any such member whose accumulated contributions are on deposit as provided in this section and any other member who left county or district service on or before December 31, 1971, who became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System and who elected to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) shall be eligible for the benefits provided in this article, and for purposes of such benefits shall be deemed to have entered membership in such other system within 90 days of his separation from county or employment. The deferred retirement allowance for such member shall be determined in accordance with the provisions of this chapter applicable to members

retiring directly from county employment on the date of his retirement. Any member who qualifies for a reduced age at entry pursuant to this section shall be entitled to use such age only from and after the date he completes the redeposit as provided in this section or, if he elected to leave his accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700), from and after the date he notifies the board in writing that he desires the benefits of this section. This section shall not apply to members who are retired or who are not in service of an employer making him a member of a retirement system established under this chapter or of the Public Employees' Retirement System.

Unless this chapter expressly provides to the contrary the retirement allowance received by a member pursuant to this section shall be calculated based upon the laws pertaining to the retirement system of such district or county as of the date of retirement and not the laws pertaining to such system as of the date the member first left county or district service.

This section shall not be applicable to any member entering service after December 31, 1977.

31831.2. Any member who left county or district service on or before December 31, 1974, and became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System, who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700) may now elect to leave his or her accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) by redepositing in the retirement fund of the county or district he or she left the amount of accumulated contributions and interest he or she withdrew from the retirement fund plus regular interest thereon from date of separation.

Any such member whose accumulated contributions are on deposit as provided in this section and any other member who left county or district service on or before December 31, 1974, who became a member of a retirement system established under this chapter in another county or of the Public Employees' Retirement System and who elected to leave his or her accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700) shall be eligible for the benefits provided in this article, and for purposes of these benefits shall be deemed to have entered membership in the other system within 90 days, or six months if Section 31840.4 applies, of his or her separation from county or district employment. The deferred retirement allowance for the member shall be determined in accordance with the provisions of this chapter applicable to a member retiring directly from county employment on the date of his or her retirement. Any member who qualifies for a reduced age at entry pursuant to this section shall be entitled to use that age only from and after the date he or she completes the redeposit as provided in this section or, if he or she elected to leave his or her accumulated contributions on deposit pursuant to Article 9 (commencing with Section 31700), from and after the date he or she notifies the board in writing that he or she desires the benefits of this section. This section shall not apply to members who are retired or who are not in service of an employer making him or her a member of a retirement

system established under this chapter or of the Public Employees' Retirement System.

Unless this chapter expressly provides to the contrary, the retirement allowance received by a member pursuant to this section shall be calculated based upon the laws pertaining to the retirement system of the district or county as of the date of retirement and not the laws pertaining to the system as of the date the member first left county or district service.

This section shall not be applicable to any member entering service after December 31, 1979.

This section shall apply only in a county of the first class, as established by Sections 28020 and 28022, but shall not be operative in a county until adopted by resolution of the board of supervisors.

31831.3. (a) Notwithstanding Sections 31831.1 and 31831.2, any former member who left county or district service and became a member of a retirement system established under this chapter in another county or district, or a reciprocal retirement system, or a retirement system established under the Public Employees' Retirement Law, and who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700), may elect to redeposit those contributions if he or she is an active member of a county retirement system, the Public Employees' Retirement System, or another reciprocal retirement system at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the county or district he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the fund. The deferred retirement allowance of the member shall be determined in accordance with the provisions of this chapter applicable to a member retiring directly from county employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions payable the first day of the month following the date the association receives notice of the redeposit, only to the extent provided in Section 31833.

(d) This section does not apply to the following:

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a retirement system established under this chapter in another county or district, a retirement system established under the Public Employees' Retirement Law, or another reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or

firefighting and prevention service, even though the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in this system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a "former member" is a member who left county or district service and who did not elect to, or was not eligible to, leave his or her contributions on deposit pursuant to Article 9 (commencing with Section 31700).

(g) Each retirement system shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, pursuant to this section in those cases in which the system no longer maintains complete records with respect to the former member.

31832. The board shall, on request of the Board of Administration of the Public Employees' Retirement System, the board of retirement of a retirement system established in another county under this chapter, the Board of Retirement of the State Teachers' Retirement System, or the board of retirement of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, supply information and data necessary for the administration of such other system as it is affected by membership in and service credited under this system.

31833. For the purpose of this article and Articles 6 and 6.8 of this chapter, age at time of entrance into the retirement system for a person who enters within 90 days, or six months if Section 31840.4 applies, of last rendering service as a member of the Public Employees' Retirement System, another retirement system established under this chapter, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and who retains his membership in such other system or systems, shall be his age at entry into the first such other system.

31833.1. For the purpose of this article and Article 6 (commencing with Section 31620) and Article 6.8 (commencing with Section 31639) of this chapter, a member's age at the time of entrance into the retirement system for a person who, after entering, redeposits the

contributions he or she withdrew from the Public Employees' Retirement System, and who otherwise meets all requirements for reciprocity under this article by reason of his or her membership in the Public Employees' Retirement System, shall be his or her age at entry into the Public Employees' Retirement System, commencing with the pay period immediately following receipt of confirmation from the Public Employees' Retirement System that all withdrawn contributions have been redeposited.

31834. Notwithstanding Section 31558 and regardless of age at entry into the system in counties subject to the provisions of Section 31676.1 and in counties electing pursuant to Section 31695.1, a person shall become a safety member on the first day of the calendar month following his entrance into service in a position the principal duties of which are defined in Sections 31470.2, 31470.4 or 31470.6, if such first day of the calendar month is within 90 days, or six months if Section 31840.4 applies of last rendering active police or fire suppression or lifeguard work as a member of the Public Employees' Retirement System or a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, and the person retains his membership in such other system.

31835. The average compensation during any period of service as a member of the Public Employees' Retirement System, a member of the Judges' Retirement System or Judges' Retirement System II, a member of a retirement system established under this chapter in another county, a member of the State Teachers' Retirement System, or a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be considered compensation earnable by a member for purposes of computing final compensation for that member provided:

(1) The period intervening between active memberships in the respective systems does not exceed 90 days, or 6 months if Section 31840.4 applies. That period shall not include any time during which the member was prohibited by law from becoming a member of the system of another county.

Notwithstanding anything in this chapter to the contrary, the 90-day or 6-month restriction referred to in this section or any other provision of this chapter effecting deferred retirement shall not be applicable to any members who left county or district service prior to October 1, 1949, and subsequently redeposited.

(2) He or she retires concurrently under both systems and is credited with the period of service under that other system at the time of retirement.

The provisions of this section shall be applicable to all members and beneficiaries of the system.

31835.01. Section 31835 shall be retroactively applied so as to extend the benefits thereof to every active and retired member and

beneficiary who left county or district service prior to October 1, 1949, and subsequently redeposited his contributions in the system in respect to all payments for time after the effective date of his retirement and prior to the effective date of this section as well as to payments for time after the effective date of this section.

31835.02. Notwithstanding any other provision of this part, Section 31835 shall also apply to any member who was a member of a retirement system established under this chapter and who subsequently becomes a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, providing the period intervening between the periods for which active service was credited does not exceed 90 days, or six months if Section 31840.2 applies, and the member retires concurrently under both systems and is credited with the periods of service at the time of retirement.

This section shall only be operative in any county of the fourth class as described in Sections 28020 and 28025 if it is adopted by a majority vote of the board of supervisors.

31835.1. Notwithstanding the provisions of Sections 31835 and 31836, a member of a retirement system established under this chapter who is eligible to retire at age 50 pursuant to Section 31672, or who is required to retire because of age while a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, but who cannot retire concurrently from the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be entitled to have his final compensation and service determined under Sections 31835 and 31836 as if he had retired concurrently under such other system.

31836. "Service," solely for purposes of qualification for payment of benefits and retirement allowances, shall also include service as an employee of the state or a contracting agency under the Public Employees' Retirement System or of another county having a retirement system established under this chapter, or as a member of the State Teachers' Retirement System, or as a member of a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, if the compensation for such service constitutes compensation earnable by a member under Section 31835 of this part.

No credit shall be granted in this retirement system for service

for which the member has received credit in another retirement system or for which he is presently receiving a retirement allowance from another retirement system.

31836.1. "Service," for the purpose of qualifying members for the discontinuance of contributions pursuant to Section 31625.2, shall also include service as an employee of the state, a contracting agency under the Public Employees' Retirement System, another county having a retirement system established under this chapter, or any other public agency if the compensation for the service constitutes compensation earnable by a member under Section 31835.

This section shall become operative on January 1, 1988.

31837. Any member who elects, pursuant to Section 31700 and 31832, to leave his accumulated contributions on deposit may be retired for disability, regardless of age or length of service, and receive a disability retirement allowance under this article based on the service credited to him at the time of retirement during any period thereafter in which he receives a disability retirement allowance under the Public Employees' Retirement System or a retirement system established under this chapter in another county, subject to the following conditions:

(1) That such allowance shall not be paid if the period intervening between the last service credited under this system and his becoming a member in such other system exceeds 90 days.

(2) That if the member is retiring for non-service-connected disability, and, if a safety member has not attained age 55, or if a nonsafety member has not attained age 65, his retirement allowance shall be as calculated pursuant to Section 31838.

(3) That such allowance shall be an annuity which is the actuarial equivalent of the member's accumulated contributions when retirement under the other system is for disability arising out of and in the course of employment subject to such other system.

31837.1. Notwithstanding Sections 31837 and 31838, any member covered under Section 31751 who elects, pursuant to Sections 31700 and 31832, to leave accumulated contributions on deposit may be retired for disability and receive a disability retirement allowance under this section during any period hereafter in which the member receives a disability retirement allowance under the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, subject to all of the following conditions:

(a) That such allowance shall not be paid if the period intervening between the last service credited under this system and becoming a member in such other system exceeds six months.

(b) That, if the member is retiring for non-service-connected disability, the disability requirements shall be that of the other system and the member's retirement allowance shall be based on the other system's disability benefit formula. The disability benefit

received in the county shall be calculated as if all the member's service was in the other system but then prorated using the ratio of service in this county to the total service in both systems.

(c) That, if the member is retiring for disability arising out of and in the course of employment subject to such other system, the allowance to the member shall be an annuity which is the actuarial equivalent of the member's accumulated contributions at the time of retirement.

31838. Every safety member under age 55 years and every other member under age 65 years who is retired for non-service-connected disability and who is retired simultaneously under a disability retirement allowance from the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a retirement allowance equal to the greater of the following amounts:

(1) The sum to which he would be entitled as service retirement;
or

(2) A sum which shall consist of:

(a) An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) If, in the opinion of the board, his disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his part, a disability retirement pension purchased by contributions of the county or district, all computed as provided in Sections 31727 or 31727.2.

31838.5. No provision of this chapter shall be construed to authorize any member, credited with service in more than one entity and who is eligible for a disability allowance, whether service connected or nonservice connected to receive an amount from one county that, when combined with any amount from other counties or the Public Employees' Retirement System, results in a disability allowance greater than the amount the member would have received had all the member's service been with only one entity.

In cases of service-connected disability allowances only, the limitation on disability allowances provided for in this section shall apply to service-connected disability allowances payable to those who, after being employed with another county or an entity within the Public Employees' Retirement System, become employed by a second public entity on or after January 1, 1984.

Each entity shall calculate its respective obligations based upon the member's service with that entity and each shall adjust its payment on a pro rata basis.

31839. Upon the death before retirement of a member, while in service as a member of the Public Employees' Retirement System or a retirement system established pursuant to this chapter in another county, who has made an election pursuant to Section 31700 and 31832, the death benefit provided in Section 31781 payable by the system from which he elected deferred retirement shall consist of:

(a) When death is not the result of a disease or injury arising out of and in the course of employment, the amount of such death

benefit shall not exceed an amount which when added to the death benefit payable for the member under such other system will equal the total of the accumulated contributions to both systems plus 50 percent of the annual compensation earnable by the deceased during the 12 months immediately preceding his death.

(b) When death is the result of disease or injury arising out of and in the course of his employment as a member of such other system, such death benefit shall consist solely of the member's accumulated contributions.

31840. The death benefit provisions of paragraph (a) of Section 31839 shall be subject to the provisions of Sections 31765, 31765.1, 31781.1 and 31781.2 in those counties where these sections are applicable. In all calculations under these sections only the retirement allowances which would be payable by the system from which the member elected deferred retirement shall be considered. The provisions of Section 31784 shall apply to the death benefits provided by paragraphs (a) and (b) of Section 31839.

31840.01. Notwithstanding Section 31840, upon the death before retirement of a member covered under Section 31751, while in service as a member of a retirement system established pursuant to this chapter in another county, who has made an election pursuant to Section 31700 and 31831, the death benefit provisions of paragraph (a) of Section 31839 shall be subject to the provisions of Sections 31765, 31765.1, 31781.1, and 31781.2 in such other system where these sections are applicable. In all calculations under these sections, the death benefit received from this county shall be calculated as if all of the member's service was in the other system but then prorated using the ratio of service in this county to the total service in both systems. The provisions of Section 31784 shall apply to the death benefits provided by subdivisions (a) and (b) of Section 31839.

31840.1. The provisions of this article extending rights to a member of a county retirement system established under this chapter or subjecting him to any limitation, by reason of his membership in the Public Employees' Retirement System, shall apply in like manner and under like conditions to said member by reason of his membership in any retirement system maintained by the Regents of the University of California, provided said member enters any retirement system maintained by said regents pursuant to an agreement made on or after January 1, 1965, between said regents and a county making provision for the operation by said regents of all or any part of the hospital facilities of that county or the transfer of title to such a hospital to the regents and for reciprocal university retirement system rights and limitations substantially comparable to those prescribed by this article.

31840.2. The provisions of this article extending rights to a member of a county retirement system established under this chapter or subjecting him or her to any limitation by reason of his or her

membership in the Public Employees' Retirement System shall apply in like manner and under like conditions to a member by reason of his or her membership in any retirement system established under Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 with respect to which an ordinance complying with Section 45310.5 has been filed with and accepted by the board or by reason of his or her membership in a retirement system established by or pursuant to the charter of a city or city and county or by any other public agency of this state which system, in the opinion of the board, provides a similar modification of rights and benefits because of membership in a system established under this chapter and with respect to which the governing body of such city, city and county or public agency and the board have entered into agreement pursuant to Section 20351. This section shall apply only to a member whose termination and subsequent reentry into employment resulting in a change in membership from a system established under this chapter to such other system or from such other system to a system established under this chapter occurred after such acceptance or determination by the board; provided, however, that provisions relating to computation of final compensation shall apply to any other member if such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by the board.

As used in this section, "board" means the Board of Administration of the Public Employees' Retirement System.

31840.3. The provisions of this chapter extending rights to a member of a county retirement system established under this chapter by reason of his membership in the Public Employees' Retirement System shall also apply to members who terminated state employment on or after June 30, 1971, but because of county budget problems were not employed in the permanent positions to which they would otherwise have been assigned and did not become permanent county employees until on or before January 4, 1972.

This section shall not be operative in any county until it is adopted by a majority vote of the board of supervisors.

31840.4. Wherever in this chapter the rights of a member, because of membership in another retirement system, are conditioned upon reemployment within 90 days of termination of employment covered by a system under this chapter or another retirement system, with respect to such reemployment which occurs on and after January 1, 1976, such period shall be six months rather than 90 days.

This section shall also be applicable to members who were permanent employees of the state who were laid off because of a reduction in work force and whose break in service between retirement systems occurred prior to January 1, 1976, but not before April 1, 1970.

31840.5. The provisions of this chapter extending rights to a member of a county retirement system established under this chapter or subjecting him to any limitation, by reason of his membership in the Public Employees' Retirement System shall also apply to members who terminated state employment and became employees of a district

within six months of such termination and who were employees of such district at the time that the district became subject to the county retirement system. Any change in a member's contribution rate shall become effective on January 1, 1977, and a member whose rate is reduced shall not be entitled to any payment with respect to his rate of contribution prior to that date.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this section applicable in such county.

31840.6. Whenever in this chapter the rights of a member, because of membership in another retirement system, are conditioned upon reemployment within six months of termination of membership in a system under this chapter or another retirement system, such period shall be one year rather than six months if the member was an elective officer and becomes a member of a system established under this chapter upon commencement of service in another elective office on and after January 1, 1977.

This section shall not be applicable in any county until adopted by the board of supervisors nor until the other employer in a reciprocal system elects a similar provision.

31840.7. Wherever in this chapter the rights of a member, because of membership in another retirement system, are conditioned upon reemployment within a specified period after termination of employment covered by a system under this chapter or another retirement system, the period shall be one year in the case of any member who was reemployed on or after January 1, 1989, and whose termination of employment was due to layoff because of, a lack of work, a lack of funds, or a reduction in workforce.

This section shall not be operative in any county until the time that the board of supervisors, by resolution adopted by a majority vote, makes the provision applicable in that county.

31840.8. The provisions of this chapter extending rights to a member of a county retirement system established under this chapter by reason of his or her membership in the Public Employees' Retirement System shall also apply to members of the State Teachers' Retirement System Defined Benefit Plan, the Judges' Retirement System, and the Judges' Retirement System II.

Article 15.5 Survivors' Allowances 31841-31852

31841. This article shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this article applicable in such county.

31841.1. This article shall not be applicable to any member who because of his county service is subject to the federal old age and survivors insurance provisions of the Federal Social Security Act.

31842. As used in this article "eligible spouse" means an individual who is caring for one or more of the children (as defined in Section 31843) of a deceased member and who is:

- (a) The widow or widower of such deceased member, or
- (b) The divorced former spouse of such deceased member, from whom he or she was receiving not less than one-half of his or her support at the time of his or her death.

31843. As used in this article "child" means a member's child who is dependent upon such member at the time of his death and while such child is unmarried and:

- (a) Under 18 years of age, or
- (b) Whether under or over 18 years of age, totally disabled and such disability occurred prior to such child attaining age 18 years.

31844. As used in this article "parent" means:

The father or mother of the deceased member who at the time of the death of such member was not less than 62 years of age and was receiving not less than one-half of his or her support from the member, and who has not remarried since the member's death.

31845. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to his death, survived by an eligible spouse, if such eligible spouse waives the amount, if any, payable as a death benefit pursuant to Section 31781, such eligible spouse shall be paid a monthly survivor's allowance equal to the sum, based upon the member's compensation at the time of his death and the number of children for which such eligible spouse is caring, specified in Section 31849 minus the amount to which such eligible spouse is entitled pursuant to Section 31765, 31765.1, 31781.1, 31781.2, or 31787.

31846. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to his death and who is survived by one or more children, during such time as no eligible spouse is entitled to a survivor's allowance pursuant to this article, if the father or mother having custody or

guardian of such child or children waives the amount, if any, payable as a death benefit pursuant to Section 31781, such child or children shall be entitled to a monthly survivor's allowance equal to the sum, based upon the member's compensation at the time of his death and the number of children, specified in Section 31849 minus the amount to which such children are entitled pursuant to Section 31765, 31765.1, 31781.1, 31781.2, or 31787.

31847. The monthly survivor's allowance in the case of two or more children entitled thereto shall be divided equally between them.

31848. Upon the death of a member prior to retirement who was a member continuously for not less than 10 years immediately prior to his death, who is survived by one or both parents, if no death benefit is paid to any one pursuant to Section 31781 other than the member's widow, widower, or children, such parent, or both of such parents shall each be entitled to a monthly survivor's allowance equal to the sum, based upon the member's compensation at the time of his death, specified in Section 31849.

31849. Monthly survivors' allowances shall be based upon the following table:

Member's survivors	Monthly
allowances	
Surviving spouse caring for one child	
\$591.80	
Surviving spouse caring for two or more children ...	
690.40	
One child only	
295.90	
Two children only	
581.80	
Three or more children	
690.40	
Widow or widower age 62 (no child)	
327.10	
Each of two dependent parents at age 62	
295.90	
Sole dependent parent at age 62	
325.50	
Lump sum payment	
255.00	

31850. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to his death survived by a widow or widower with whom he was living at the time of his death, the retirement system shall pay to such widow or widower in addition to all other payments due, if any, to such widow or widower a lump sum supplemental survivorship benefit of two

hundred fifty-five dollars (\$255). If such member is not survived by such a widow or widower, the retirement system shall apply such lump sum supplemental survivorship benefit to reimburse the person who paid the funeral expenses of such member to an amount not to exceed two hundred fifty-five dollars (\$255).

31851. In addition to the contributions required elsewhere in this chapter there shall be deducted from the salary or wages of each member (to finance the costs of the benefits provided in this article) an amount specified in the regulations of the board. The board shall fix the additional contributions of members at amounts which it finds will pay one-half of the cost of the survivors' benefits and lump sum supplemental survivorship benefit provided for in this article. Unless and until such regulations otherwise provide such amount shall equal eighty-eight cents (\$0.88) per month for safety members and sixty-eight cents (\$0.68) per month for all other members.

31852. The amounts deducted pursuant to Section 31851 shall not be considered to be a portion of a member's accumulated contributions and shall not be refunded to a member upon termination of service, or for any other reason.

Article 15.6 Survivors' Allowances 31855-31855.12

31855. It is the intent of the Legislature to provide by this article a means by which any county which has provided all or any of officers and employees with both retirement benefits pursuant to this chapter and federal social security benefits on a nonintegrated basis may provide the benefits set forth herein as an alternative to survivorship benefits under social security. Accordingly, this article shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote and specifying the class or classes of employees to which it applies, make the provisions of this article applicable in such county, and a majority of the members of the affected class or classes voting at an election held during 1974 with more than 50 percent of the members participating favor the termination of supplemental survivorship benefits under social security. Any such resolution may specify a date subsequent to the date of adoption as the operative date for implementation of this article.

31855.1. This article shall not be applicable to any member who has retired or been placed in a deferred retirement status prior to the date this article becomes operative in any county; provided, however, that if such member reenters county employment on a full-time basis subsequent to the operative date of the article, it shall become applicable to such member.

31855.2. Adoption of an enabling resolution by a board of supervisors shall make the provisions of this article applicable only to officers and employees of that county. If the governing board of any special district whose employees are within the retirement system of that county desire to include their employees within the coverage of this article, they shall do so by adoption of a resolution so to do by a majority of all of the members of the board.

31855.3. As used in this article "child" means a member's child who is dependent upon such member at the time of the member's death and while such child is unmarried and:

- (a) Under 18 years of age, or
- (b) Whether under or over 18 years of age, totally disabled and such disability occurred prior to such child attaining age 18 years, or
- (c) Eighteen years of age or over, but has not attained the age of 22 years, and is enrolled as a full-time student in an accredited school, as determined by the board.

31855.4. As used in this article "parent" means the father or mother of the deceased member who at the time of the death of such member was not less than 62 years of age and was receiving not less than one-half of his or her support from the member, and who has not remarried since the member's death.

31855.5. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death, the member's surviving spouse shall be paid a monthly survivor's allowance equal to the sum, based upon the appropriate factual circumstances, specified in Section 31855.8.

31855.6. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death and who is survived by one or more children but no surviving spouse, such child or children shall be entitled to a monthly survivor's allowance as specified in Section 31855.8. The monthly survivor's allowance of two or more children shall be divided equally as to such children.

31855.7. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death, the member's surviving parent or parents shall be entitled to a monthly survivor's allowance as specified in Section 31855.8.

31855.8. Monthly survivor's allowances shall be based upon the following table:

	Monthly
Member's survivors allowances	
Surviving spouse caring for one child	\$591.80
Surviving spouse caring for two or more children	690.40
One child only	295.90
Two children only	581.80
Three or more children	690.40
Widow or widower age 62 (no child)	327.10
Each of two dependent parents at age 62	295.90
Sole dependent parent at age 62	325.50
Lump sum payment	255.00

31855.9. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to his death who is survived by a spouse with whom the member was living at the time of death, the retirement system shall pay to such surviving spouse, in addition to all other payments due, if any, a lump sum supplemental survivorship benefit of two hundred fifty-five dollars (\$255), as set forth in Section 31855.8. If such member is not survived by a spouse with whom the member was living, the retirement system shall apply such lump sum supplemental survivorship benefit to reimburse the person who paid the funeral expenses of such member to an amount not to exceed two hundred fifty-five dollars (\$255).

31855.10. In addition to the contributions required elsewhere in this chapter there shall be deducted from the salary or wages of each member covered by the provisions of this article, to finance the cost of the benefits provided herein, the sum of three dollars and fifty cents (\$3.50) per month and an equivalent amount to be paid by the county as an additional county contribution. The amounts deducted pursuant to this section shall not be considered to be a portion of a member's accumulated contributions and shall not be refunded to a member upon termination of service or for any other reason. The board is empowered to change the contribution figures set forth herein from time to time based on actuarial recommendation as to contributions needed to fund these benefits.

31855.11. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death and who is survived by one or more children but no surviving spouse, or who is survived by one or more children who are not being cared for by the surviving spouse, the child or children shall be entitled to a monthly survivor's allowance as specified in Section 31855.8 or 31855.12, as the case may be. The monthly survivor's allowance of two or more children shall be divided equally as to those children.

This section is an alternative to Section 31855.6.

This section shall not be operative in any county which has adopted this article, until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

31855.12. Monthly survivor's allowances shall be based upon the following table:

Member's survivors	Monthly allowances
Surviving spouse caring for one child	\$1,390
Surviving spouse caring for two or more children ...	1,622
One child only	695
Two children only	1,390
Three or more children	1,622
Widow or widower age 62 (no child)	768
Widow or widower age 60 (no child)	663
Each of two dependent parents at age 62	695
Sole dependent parent at age 62	795
Lump-sum payment	255

This section is an alternative to Section 31855.8.

This section shall not be operative in any county which has adopted this article, until the board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

Article 16 Alternate Survivors' Allowances 31861-31869

31861. This article shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make the provisions of this article applicable in such county.

31862. In counties to which this article applies, this article provides an alternative system of survivors' allowance applicable only to the members who elect to participate.

31863. Except as otherwise provided in Section 31864, any member within 30 days after this article becomes operative in the county, or within 30 days after entry into service, or during the calendar months of November or December of any year, may elect to make contributions for, and participate in, the benefits provided for by this article. An election made more than 30 days after this article becomes operative in this county and more than 30 days after entrance into service shall become operative the following January first.

31864. Any member who has elected to participate in the benefits provided for by this article may rescind such election during the months of November or December of any year. Such election shall become operative on the following January first. No part of the contributions deducted, pursuant to this article from his salary or wages will be refunded to such member. Such member may not again elect to participate in the benefits provided for by this article.

31865. If a member elects to participate in the benefits of this article all of the provisions of Article 15.5 shall apply to such member and to his eligible spouse, children, and parents, and to all other persons to whom Article 15.5 applies, and such provisions are herein incorporated by reference as if set forth in full except as hereinafter in this article provided otherwise.

31866. The board shall fix the additional contributions of members at amounts which it finds will pay one-half of the cost of the survivors' benefits and lump sum supplemental survivorship benefit provided for in this article.

31866.1. Members who because of county service, are subject to the federal old age and survivors insurance provisions of the Federal Social Security Act shall pay the entire cost of the survivors benefits and lump sum supplemental survivorship benefit provided for in this article.

31867. Until the regulations of the board designate otherwise the additional contribution of each safety member shall be one dollar and

thirty cents (\$1.30) per month and of each other member shall be one dollar and seventy-one cents (\$1. 71) per month.

31868. If a member elected to participate in the benefits provided for by this article more than 30 days after this article became operative in the county, a survivor's allowance shall not be due to either his eligible spouse or child, and a lump sum supplemental survivorship benefit shall not be due, unless additional deductions were made pursuant to this article from the salary or wages of such member for not less than 18 months.

31869. If a member elected to participate in the benefits provided for by this article more than 30 days after this article becomes operative in the county, a survivor's allowance shall not be due to any parent of such member unless additional deductions were made pursuant to this article from the salary or wages of such member for not less than 10 years.

Article 16.5 Cost of Living Adjustment 31870-31874.6

31870. The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or a superseded system, who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 2 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 2 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.

31870.01. (a) The board of retirement shall, before April 1 of each year, determine whether there has been an increase or decrease in the cost-of-living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter, every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or a superseded system, who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased to the nearest one-tenth of 1 percent, by 40 percent of the annual increase or decrease in the cost-of-living as of January 1st of each year as shown by the then current (year ending December) Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers for the United States City Average, except that no decrease shall reduce the allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance.

(b) The allowance shall be increased a minimum of 2 percent in any year in which the board's determination of cost-of-living change of allowance would result in less, provided that the member or beneficiary has an accumulated unpaid cost-of-living account sufficient to provide the 2 percent increase.

(c) When this section becomes applicable in a county, the accumulated unpaid cost-of-living account of each retired member or beneficiary under the superseded Section 31870, shall be transferred to a like account under this section. Thereafter, no increases shall be made to such account.

(d) The board of retirement may adopt this section to be effective in lieu of Section 31870, provided, that no increase in unfunded actuarial liability nor in current member or employer contributions to the system are required as a result of the adoption and is so attested by an enrolled actuary. After adoption, the effective date

for increases or decreases in allowances pursuant to this section shall be the next succeeding April 1.

(e) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022, as amended by Chapter 1204 of the Statutes of 1971.

31870.1. The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 3 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 3 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.

31870.11. (a) The board of retirement shall, before April 1 of each year, determine whether there has been an increase or decrease in the cost-of-living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter, every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or a superseded system, who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased to the nearest one-tenth of 1 percent, by 60 percent of the annual increase or decrease in the cost-of-living as of January 1st of each year as shown by the then current (year ending December) Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers for the United States City Average, except that no decrease shall reduce the allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance.

(b) The allowance shall be increased a minimum of 3 percent in any year in which the board's determination of cost-of-living change of allowance would result in less, provided that the member or beneficiary has an accumulated unpaid cost-of-living account sufficient to provide the 3 percent increase.

(c) When this section becomes applicable in a county, the accumulated unpaid cost-of-living account of each retired member or beneficiary under the superseded Section 31870.1, shall be transferred to a like account under this section. Thereafter, no increases shall be made to such account.

(d) The board of retirement may adopt this section to be effective

in lieu of Section 31870.1, provided, that no increase in unfunded actuarial liability nor in current member or employer contributions to the system are required as a result of the adoption and is so attested by an enrolled actuary. After adoption, the effective date for increases or decreases in allowances pursuant to this section shall be the next succeeding April 1.

(e) This section shall apply only in a county of the first class, as established by Sections 28020 and 28022, as amended by Chapter 1204 of the Statutes of 1971.

31870.2. The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 5 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 5 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this section, whichever is later.

31870.3. Notwithstanding Section 31870.1, the board shall, before April 1st of each year, determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter, every retirement allowance, optional death allowance, or annual death allowance payable to, or on account of, any member of this system who was covered under Section 31751 who retires or dies, or who has retired or died, shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 4 percent per year; however, the amount of any cost of living increase or decrease in any year which is not met by the maximum annual change of 4 percent in allowances shall be accumulated to be met by increases or decreases in allowances in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this section, whichever is later.

31870.4. Notwithstanding any other provision of law, the accumulation established in Section 31870, 31870.1, 31870.2, or 31870.3 shall be computed by multiplying the existing accumulation from prior years by an amount equal to one plus the amount of any cost-of-living increase or decrease in the current year, and adding to this result the "accumulation adjustment," where "accumulation adjustment" means the amount of any cost-of-living increase or decrease in the current year that is not met by the maximum annual change in allowances provided in Section 31870, 31870.1, 31870.2, or 31870.3, whichever is applicable. At no time may the accumulation established in Section 31870, 31870.1, 31870.2, or 31870.3 be less than zero.

This section shall not be operative in any county until it is adopted by a majority vote of the board of supervisors. Upon adoption of this section by the board of supervisors, the accumulation of each member under Section 31870, 31870.1, 31870.2, or 31870.3, whichever is applicable, shall be recomputed as if this section had been in effect on the member's date of retirement.

31871. Any increases in allowances which are based upon service rendered prior to the applicable date of this article (as fixed pursuant to Section 31874) shall be funded insofar as possible from the moneys in the reserve described in Section 31592 which are in excess of one (1) percent of the assets of the retirement system; except that in counties which have applied Section 31592.2 the board of supervisors may fund all or part of the increases from the county general fund.

31872. Any such increases in allowances which are not funded as provided in Section 31871 and any such increases which are based upon service rendered after the applicable date of this article (as fixed pursuant to Section 31874) shall be funded by contributions set by the board, as it determines necessary.

31873. Any increases in contributions shall be shared equally between the county or district and the contributing members, with the individual member's contributions based upon the member's age at his or her nearest birthday at time of entrance into the retirement system. The board of supervisors by a majority vote may elect to pay part of the costs of the contributions which would otherwise be assessed to the individual members.

31873.1. Any cost-of-living contributions required for benefits under Section 31870.3 shall be shared equally between the county or district and the contributing members. The individual member's contributions shall be based upon the member's age at the member's nearest birthday at time of entrance into the retirement system, and shall be expressed as a percentage of the member's normal contribution rate. The board of supervisors by a majority vote may elect to pay all or part of the costs of the contributions which would otherwise be assessed to the individual members.

Until revised by subsequent actuarial studies, the member's cost-of-living contribution rate shall be 39.57 percent of the member's normal contribution rate. These initial cost-of-living contribution rates are shown in the following table, according to the member's age at the time of entry into the system:

Age of entry into system	Percentage of contribution
16	1.16
17	1.16
18	1.16
19	1.16
20	1.16
21	1.16
22	1.16
23	1.16
24	1.16
25	1.17
26	1.17
27	1.18
28	1.18
29	1.19
30	1.20
31	1.20
32	1.21
33	1.22
34	1.23
35	1.24
36	1.25
37	1.26
38	1.27
39	1.28
40	1.29
41	1.30
42	1.31
43	1.32
44	1.33
45	1.34
46	1.36
47	1.37
48	1.38
49	1.40
50	1.41
51	1.43
52	1.44
53	1.46
54 and over	1.47

31874. This article (commencing with Section 31870) may be made applicable in any county on the date specified in the ordinance, or if no such date is specified, on the first day of the month after the effective date of an ordinance adopted by the board of supervisors to this effect, provided that an actuarial survey of the retirement system has been made by the adopting county prior to the passage of

said ordinance. No provision of this chapter shall prevent or be construed to prevent the use and expenditure of surplus described in Section 31592.2 to fund any part or all of any increases in allowances otherwise permitted after this article or Article 16.6 (commencing with Section 31875) or both this article and Article 16.6 or any of the provisions of this article or Article 16.6 have been made applicable.

Except in a county of the first class, upon adoption by a county providing increases in allowances pursuant to this article, of Article 5.5 (commencing with Section 31510) of this chapter, only that portion of the increases in allowances which is paid from surplus earnings described in Section 31592.2 shall be paid, instead, from the Supplemental Retiree Benefits Reserve established pursuant to Section 31510.8.

31874.1. Whenever the percentage of annual increase in the cost of living as of January 1st of each year as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers exceeds 3 percent, all or part of such excess over 3 percent shall be applied to the retirement allowances, optional death allowances or annual death allowances increased in Section 31870 or 31870.1. The board of supervisors shall determine the amount of such excess to be applied, and the cost of the increases in allowances provided shall be paid from county and district contributions.

This section shall not be operative in any county until it is adopted by a majority vote of the board of supervisors.

31874.2. The board of supervisors in any county, by a majority vote, may enact an ordinance providing that the maximum annual change pursuant to this article shall be increased to 4, 5, or 6 percent, as determined by the board, on the operative date of such ordinance.

31874.3. (a) (1) Whenever the percentage of annual increase in the cost of living as of January 1 of each year as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers exceeds the maximum benefit increase provided in Section 31870, 31870.1, 31870.2, or 31870.3, whichever is applicable, the board of retirement may provide that all or part of the excess percentage increase shall be applied to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3. The board shall determine the amount of the excess to be applied, which amount shall not exceed an amount that can be paid from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(2) The supplemental increases in excess of the increases applied to the retirement allowances, optional death allowances, or annual death allowances pursuant to Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances, or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has

elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(b) (1) The board of retirement may, instead of taking action pursuant to subdivision (a), provide supplemental cost-of-living increases, effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, that only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 shall equal or exceed 20 percent as of January 1 of the year in which the board of retirement adopts an increase under this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(c) (1) The board of retirement may, instead of taking action pursuant to subdivision (a) or (b), provide supplemental cost-of-living increases, on a prefunded basis and effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 equal or exceed 20 percent as of January 1 of the year in which the board of retirement takes action pursuant to this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall become a part of the retirement allowances, optional death allowances, or annual death allowances and shall serve to reduce the accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3, as applicable, by the same percentage as the payment that is made pursuant to this section.

(3) Before the board of retirement provides benefits pursuant to this subdivision, the costs of the benefits shall be determined by a qualified actuary and the board of retirement shall, with the advice of the actuary, provide for the full funding of the benefits utilizing funds in the reserve against deficiencies established pursuant to Section 31592.2, using surplus earnings that exceed 1 percent of the total assets of the retirement system.

(4) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(d) Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefit Reserve established pursuant to

Section 31618.

31874.4. Notwithstanding any other provision of law, the board of supervisors in a county of the 10th class may provide in any ordinance implementing any section in this article that the provision of this article requiring unused increases or decreases in any year to be accumulated for future years shall not apply to those employees and officials specified in the ordinance.

31874.5. Whenever the percentage of annual increase in the cost of living as of January 1 of each year as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers exceeds a full 3 percent of the existing cost-of-living increase factor provided by any provision of this article, an additional 1 percent of the excess for each full 3 percent over the existing increase factor shall be applied to the retirement allowances, optional death allowances, or annual death allowances increased by any provision of this article. The increases in allowances resulting from the adoption of this section shall be used to offset any accumulated carryover balances under existing cost-of-living adjustments. The cost of implementing this section shall be prefunded commencing with the adoption of this section by the board of supervisors. The method of paying the cost of implementing this section may be mutually agreed to in a memorandum of understanding executed by the employer and employee representatives. The board of retirement shall conduct the actuarial studies to determine those costs.

This section shall not be operative in any county until it is adopted by a majority vote of the board of supervisors.

31874.6. (a) Notwithstanding any other provision of law, on an annual basis, the board of retirement may, with the approval of the county board of supervisors, grant a cost-of-living adjustment on a prefunded basis to the retirement allowances, optional death allowances, or annual death allowances payable to or on account of eligible members. The action by the board of retirement may specify a date as of which the adjustment shall be effective and, if no effective date is specified, the adjustment shall be made in allowances payable for the time commencing on the first day of the month following the action by the board of retirement or approval by the county board of supervisors, whichever is later.

(b) Before the board of retirement may grant an adjustment pursuant to this section, the total costs of the adjustment shall be determined by a qualified actuary and the board shall determine, with the advice of the actuary, that full funding of the adjustment can be provided from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(c) The adjustment provided by this section shall be payable only to those retired members, survivors, beneficiaries, or successors in interest whose accumulated loss of purchasing power equals or exceeds 20 percent as of January 1 of the year the board of retirement takes action pursuant to this section. Loss of purchasing power shall be determined by the board of retirement based on the difference between the following:

(1) The initial retirement allowance, optional death allowance, or annual death allowance as it would have been increased by the cumulative total effect of the annual changes, rounded to the nearest one-half of 1 percent, in the Consumer Price Index for All Urban Consumers for the area in which the county seat is situated.

(2) The retirement allowance, optional death allowance, or annual death allowance as actually increased by cost-of-living adjustments previously granted with respect to the allowance.

(d) A cost-of-living adjustment granted pursuant to this section shall become part of the retirement allowance, optional death allowance, or annual death allowance to be increased by any subsequent cost-of-living adjustments. The granting of an increase pursuant to this section in any particular year does not create any continuing entitlement to additional increases in subsequent years, and does not create any claim by a retired member, survivor, beneficiary, or successor in interest against the county, district, or retirement fund for any increase in any allowance paid or payable prior to the effective date of the action by the board of retirement pursuant to this section.

(e) This section shall only be applicable in a county of the 19th class, as defined by Sections 28020 and 28040, as amended by Chapter 1204 of the Statutes of 1971.

**Article 16.6 Retrospective Cost-of-Living Adjustment
31875-31879.2**

31875. Any county may provide by ordinance that the principles set forth in Article 16.5 (commencing with Section 31870), as a basis for adjustment of retirement allowances in accordance with future cost-of-living changes, shall be applied for the purpose of adjusting retirement allowances in accordance with past cost-of-living changes.

31876. The retirement allowances payable following the effective date of this article in the county shall be in the same amounts as would be payable if Article 16.5 had been in effect in the county on the date specified in the ordinance as the date for application of this article in the county.

31877. Any adjustment made pursuant to this article with reference to changes in the Consumer Price Index for All Urban Consumers which occurred prior to the effective date of this article in a county shall apply prospectively only; and no right, claim or interest whatsoever shall be created by the application of the provisions of this section in any county with respect to retirement allowance payments made for time prior to the effective date of this article in the county.

31878. (a) This article may be adopted by any county by ordinance.

(b) The ordinance shall specify a date as of which Article 16.5 shall be deemed applicable. The applicable date may be the first day of any prior year. If no applicable date is specified, Article 16.5 shall be deemed applicable as of the first day of the year preceding the year of retirement of the earliest retired member who is currently being paid a retirement allowance at the time the ordinance is adopted.

(c) The ordinance shall specify a date as of which the adjustments made pursuant to this article shall be effective. If no effective date is specified, the adjustments shall be made in allowances payable for time commencing on the first day of the month following the adoption of the ordinance.

31879. Any county may adopt or readopt this article alone from time to time, adopt Article 16.5 alone, or adopt this article and Article 16.5 at the same time or different times. If both articles are adopted, any accumulated increases in excess of two percent (2%) per year which are accumulated under this article shall be applicable to the computation of future allowance adjustments as provided in Article 16.5 and any allowance which is increased as provided in this article shall be subject to future increase or decrease as provided in Article 16.5.

31879.1. Any county may adopt or readopt this article alone from time to time, adopt Article 16.5 alone, or adopt this article and Article 16.5 at the same time or different times. If both articles are adopted, any accumulated increases in excess of three percent (3%) per year which are accumulated under this article shall be applicable to the computation of future allowance adjustments as provided in Article 16.5 and any allowance which is increased as provided in this article shall be subject to future increase or decrease as provided in Article 16. 5.

31879.2. Any county may adopt or readopt this article alone from time to time, adopt Article 16.5 alone, or adopt this article and Article 16.5 at the same time or different times. If both articles are adopted, any accumulated increases in excess of 5 percent per year which are accumulated under this article shall be applicable to the computation of future allowance adjustments as provided in Article 16.5 and any allowance which is increased as provided in this article shall be subject to future increase or decrease as provided in Article 16.5.

system on division date, and who desire coverage under the federal system and of those who become members of the system after division date. The division date shall be set by the pension board so as to permit modification of the federal-state agreement to include services of employees who are members of the second part of said system.

31889. The division shall be conducted in accordance with Section 218(d)(7) of the Social Security Act and applicable federal and board rules and regulations, by the pension board.

31890. Upon receiving evidence satisfactory to him with respect to any division of a retirement system that the conditions specified in Section 218(d)(7) of the Social Security Act have been met, the Governor or any other state official now or hereafter authorized by federal law, shall so certify to the federal agency.

31891. For the purposes of this article, policemen, as defined in Section 31886, and firemen, as defined in Section 31887, shall each be deemed to belong to separate retirement systems.

31892. When federal benefits are to be extended to any firemen's or policemen's position pursuant to this part it shall be done only by a vote of such firemen or policemen as provided in Section 31801.

31893. The pension board shall apply to the board in accordance with the provisions of this article, and the board shall execute on behalf of the State an agreement with the federal agency for the coverage of employees of the county under the federal system in conformity with the provisions of Section 218 of the Social Security Act and applicable federal regulations.

31894. Notwithstanding the provisions of Section 31893, however, before the board shall execute on behalf of the State an agreement with the federal agency as herein provided, the pension board and the board shall enter into a written agreement, which agreement shall include such provisions not inconsistent with this article which the board deems necessary in the administration of the said federal system as it affects the State and the county and its employees.

**Article 17.5 Termination of Social Security in Counties with
a Population Exceeding 6,000,000
31894.1-31894.3**

31894.1. This article shall apply only in a county with a population exceeding 6,000,000 and shall apply in that county only if the board of supervisors has provided notice of intent to terminate benefits under federal social security.

31894.2. Any county which has provided the notice specified in Section 31894.1 shall provide a vote of the affected members, the results of which shall be advisory to the board of supervisors. The board of supervisors may, following the advisory vote, cancel their notice of intent to withdraw from social security at least 30 days prior to the effective date of termination of coverage under the federal system.

Nothing in this section shall be construed to waive any rights that employees may have to secure by appropriate judicial proceeding new benefits comparable to those provided under the federal social security system.

31894.3. The board of supervisors shall, by resolution, certify to the Board of Administration of the Public Employees' Retirement System that the provisions of Section 31894.2 have been complied with. In the event that the board of supervisors cannot certify compliance with the provisions of Section 31894.2, the board of supervisors shall cancel their notice of intent to withdraw from social security at least 30 days prior to the effective date of termination of coverage under the federal system.

Article 18 Adjustment to Fit Other Allowances 31895-31898

31895. As used in this article "public agency" includes the federal government or any federal department or agency, this state, any other state or any state department or agency, a county, city, public corporation, or public district of this state or any other state. Section 31478 does not apply to this article.

31895.5. As used in this article, "total benefits" means the retirement allowance or other benefit payable to any beneficiary pursuant to the provisions of this chapter plus any other monetary payments due to the same beneficiary from any public agency.

31896. If an increase in the retirement allowance or other benefit payable to any beneficiary pursuant to the provisions of this chapter, whether such increase begins prior or subsequent to the effective date of this article, results in the decrease of the amount of any monetary payments due to the same beneficiary from any public agency, such retirement allowance or other benefit shall be so reduced as to result in the maximum total benefits to such beneficiary.

31896.5. If the statutes, ordinances, rules, regulations, or orders of any public agency are so changed, or if for any other reason the effect of the increase of the retirement allowance or other benefit payable to any beneficiary pursuant to the provisions of this chapter on the amount of any monetary payments due to the same beneficiary by such public agency are changed, the board shall adjust such retirement allowance or other benefit, but not to an amount greater than otherwise authorized by this chapter so as to result in the maximum total benefits to such beneficiary.

31897. The provisions of this article are mandatory and not subject to option or election by any member or other beneficiary. Every such beneficiary shall inform the board of all facts necessary in order to comply with this article. The board shall ascertain such facts by such procedures as it sees fit to adopt.

31897.5. If the board in good faith diligently seeks to ascertain all facts necessary in order to comply with this article, but, despite such effort, a payment of a retirement allowance or other benefit to any beneficiary is made without having been reduced as required by this article, neither the board, nor any member thereof, nor any public officer nor public employee shall be liable for such excess payment.

31897.6. The board shall deduct the amount of advanced disability pension payments made to a local safety member pursuant to Section 4850.3 or 4850.4 of the Labor Code from the member's retroactive

disability pension payments. If the retroactive disability allowance is not sufficient to reimburse the total advanced disability pension payments, an amount no greater than 10 percent of the member's monthly disability allowance shall be deducted and reimbursed to the local agency until the total advanced disability pension payments have been repaid. The local safety member and this system may agree to any other arrangement or schedule for the member to repay the advanced disability pension payments.

31898. A retirement allowance or other benefit payable to a beneficiary pursuant to this chapter shall not be reduced pursuant to this article if such reduction would impair the constitutional rights of any person.

**CHAPTER 3.9 INTERNAL REVENUE CODE COUNTY COMPLIANCE AND
REPLACEMENT BENEFITS PROGRAM 31899-31899.9**

31899. The purpose of this chapter is to ensure the federal tax-exempt status of the county employees' retirement systems, to preserve the deferred treatment of federal income tax on public employer contributions to public employee pensions, and to ensure that members are provided with retirement and other related benefits that are commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of Section 415 of the Internal Revenue Code.

To achieve this purpose, this chapter incorporates certain pension payment limitations and elects the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code. Also, this chapter provides for certain replacement benefits.

31899.1. (a) The definitions in Chapter 3 (commencing with Section 31450) of this part shall apply to this chapter.

(b) The term "Internal Revenue Code" includes all regulations, revenue rulings, notices, and revenue procedures issued by the Internal Revenue Service.

31899.2. (a) In accordance with Section 31899.3, the retirement benefits for any person who for the first time became a member of the system on or after January 1, 1990, shall be subject to the payment limitations of Section 415 of the Internal Revenue Code. The retirement benefits for any person who became a member of the system before January 1, 1990, also shall be subject to the payment limitations of Section 415 of the Internal Revenue Code to the extent that those benefits are not exempt from those limitations under the "grandfather" election that has been made under that section and this section.

(b) The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made. All members of a retirement system who joined the system prior to January 1, 1990, are exempt from the Section 415 limits to the extent permitted by the Internal Revenue Code.

(c) This section does not apply in a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

31899.3. (a) Notwithstanding any other provision of law, the retirement rights conferred by this chapter and by Chapter 3 (commencing with Section 31450) of this part upon any person who for the first time becomes a member of a retirement system on or after January 1, 1990, shall be subject to the limitations in the Internal Revenue Code upon benefits that may be paid by public retirement systems. That person may not have any retirement right or benefit that exceeds those limitations, and no retirement right or benefit may accrue to or vest in that person under Chapter 3 (commencing with

Section 31450) that exceeds those limitations. That person may, however, have retirement rights and benefits under the replacement benefits program established under this chapter.

(b) Each retirement board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution, prior to employment, to each person who may become a member and to each person who for the first time becomes a member on or after January 1, 1990.

(c) Chapter 3 (commencing with Section 31450) shall be construed as if it included this section.

(d) This section does not apply in a county of the first class as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, which county is instead subject to Article 2.1 (commencing with Section 31510) of Chapter 3.

31899.4. (a) Each county and district shall provide a program to replace the benefits that are limited by Section 415 of the Internal Revenue Code for members whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Section 31538. The replacement benefits program shall provide benefits that, together with the benefits provided by the retirement system, are the same as, and may not exceed, the benefits that would be paid by the retirement system but for the application of the limits of Section 415. Notwithstanding the foregoing, the county or district may modify its replacement benefits program and may add, modify, or eliminate any replacement benefits, as necessary, to carry out the purpose of this chapter. A replacement benefit may not be reduced if the reduction would impair the vested rights of any person.

(b) Each county shall establish and administer its own replacement benefits program for members whose retirement benefits are limited by Section 415 of the Internal Revenue Code.

(c) A county may, pursuant to a contract with a district, agree to administer the district's replacement benefits program for the district's members whose retirement benefits are limited by Section 415 of the Internal Revenue Code. The county may charge each district a reasonable fee for administering the district's program and the county and district may agree on any other conditions relating to that administration. If a district does not contract with the county to administer its replacement benefits program, it shall establish and administer its own replacement benefits program.

(d) Upon the recommendation of the retirement system's actuary, and in accordance with its obligation to recommend county and district contribution rates under Sections 31453 and 31453.5, the board shall adjust the contributions required to be made by a county or district to the extent that benefits are payable under a replacement benefits program of that county or district.

(e) The county, and any district that establishes and administers its own program, shall enact an ordinance or prescribe regulations or other written documentation setting forth the terms of its replacement benefits program.

(f) Notwithstanding any other provision of this chapter, a county of the first class, as defined in Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, is not required to provide

replacement benefits to any member under this section if that member participates in General Plan F or Safety Plan F under Article 2.1 (commencing with Section 31510) of Chapter 3.

31899.5. Each county, and each district that establishes its own replacement benefits program, shall administer the replacement benefits program established by it pursuant to this chapter. The board may, pursuant to an agreement with the county or the district that establishes its own program, assist in the administration of the replacement benefits program to the extent permitted under the Internal Revenue Code.

31899.6. If the Internal Revenue Service determines that any provision of Chapter 3 (commencing with Section 31450) of this part or this chapter cannot be given effect without placing a retirement system administered under this chapter or Chapter 3 (commencing with Section 31450) of this part out of conformity with Section 415 of the Internal Revenue Code, that provision, only to the extent that it causes that nonconformity and only with respect to the affected parties shall become inoperative with respect to the payment of benefits pursuant to Chapter 3 (commencing with Section 31450) of this part, as of the effective date of the determination. The retirement board shall notify the Secretary of State of inoperation under this section.

31899.7. (a) If Section 415 of the Internal Revenue Code is amended to exclude public retirement systems, or if the application of Section 415 of the Internal Revenue Code to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all sections of this chapter, except this section, shall become inoperative as of the effective date of that amendment or decision. The retirement board shall immediately notify the Secretary of State whenever any provision of this chapter becomes inoperative pursuant to this section.

(b) Whenever all sections of this chapter, except this section, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the retirement board, county, and districts shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 of the Internal Revenue Code for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and pay benefits that are due under the system to the affected annuitants without regard to any limitations of Section 415 of the Internal Revenue Code.

(3) Take any and all other actions they deem necessary and feasible.

31899.8. It is the sole intent of the Legislature, in enacting this chapter, to fully comply with the provisions of the Internal Revenue Code that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems, to elect the "grandfather" option in Section 415(b)(10) of the Internal Revenue Code, and to require that

each county and district provide benefits that replace the benefits that are limited by Section 415 of the Internal Revenue Code for affected members of the county employees' retirement systems.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of the Internal Revenue Code are a federal mandate within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2, as construed in *City of Sacramento v. State of California* (50 Cal. 3d 51).

It is the intent of the Legislature that this chapter not be construed to impose upon local public agencies that are maintaining county retirement systems pursuant to Chapter 3 (commencing with Section 31450) of this part, state-reimbursable, state-mandated local program benefit costs within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2.

If either the Commission on State Mandates or a court determines that this chapter imposes upon any local agency, state-mandated local program benefit costs, notwithstanding any other provision of law, no reimbursement therefor shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 or from any other state fund.

31899.9. The Legislature reserves the power and right to amend this chapter, as needed to effect its purposes. This chapter shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

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**VENTURA COUNTY DEPUTY SHERIFFS' ASSOCIATION et al., Plaintiffs and
Appellants, v. BOARD OF RETIREMENT OF VENTURA COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION, Defendant and Respondent;
COUNTY OF VENTURA, Real Party in Interest and Respondent.**

No. S055682.

SUPREME COURT OF CALIFORNIA

*16 Cal. 4th 483; 940 P.2d 891; 66 Cal. Rptr. 2d 304; 1997 Cal. LEXIS 4415; 97 Cal.
Daily Op. Service 6466; 97 Daily Journal DAR 10557*

August 14, 1997, Decided

SUBSEQUENT HISTORY: Rehearing Denied October 1, 1997 (S055682), Reported at: *1997 Cal. LEXIS 6193*.

PRIOR HISTORY: Superior Court of Ventura County. Super. Ct. No. 153666. Edwin M. Osborne, Judge.

DISPOSITION: The judgment of the Court of Appeal is reversed with directions to order the superior court to grant the petition for mandamus and remand the matter for further proceedings consistent with this opinion.

SUMMARY:**CALIFORNIA OFFICIAL REPORTS SUMMARY**

The trial court denied a petition for a writ of mandamus, brought by a county deputy sheriffs' association and three retirees, challenging the county retirement board's determination of retirement allowances under a retirement system that was established pursuant to the County Employees Retirement Law of 1937 as codified in 1947 (CERL) (*Gov. Code, § 31450 et seq.*). The board refused plaintiffs' request to include as "final compensation" in the calculation of base retirement benefits various forms of compensation that were over and above the basic salary paid to all employees in the same job classification. (Superior Court of Ventura

County, No. 153666, Edwin M. Osborne, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B095993, affirmed, concluding that only those bonuses, incentives, and other forms of compensation that were paid uniformly to all employees in a job classification were "compensation earnable" under *Gov. Code, § 31461*, and thus most of the subject payments were not part of the retirees' "final compensation." However, the Court of Appeal concluded that the county's contributions to an employee's deferred compensation plan were "compensation earnable."

The Supreme Court reversed the judgment of the Court of Appeal with directions to order the superior court to grant the petition for a writ of mandamus and remand the matter for further proceedings. The court held that the county's contributions to employees' deferred compensation plan were not "compensation" as defined in CERL (*Gov. Code, § 31460*). *Gov. Code, §§ 31460 and 31461*, provide for treatment, as "compensation" and "compensation earnable," of amounts deducted from an employee's wages for participation in a deferred compensation plan, but neither statute mentions a county's contributions. This omission indicates a legislative intent that these contributions not be included as "compensation" for purposes of CERL. The court further held that the other disputed premiums were "compensation." With the exception of overtime pay, items of "compensation" paid in cash, even if not earned

by all employees in the same grade or class, were required to be included in the "compensation earnable" and "final compensation" on which an employee's pension was based. (Opinion by Baxter, J., expressing the unanimous view of the court.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

(1) Pensions and Retirement Systems § 1--Statutory Construction. --Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute.

(2) Statutes § 30--Construction--Language--Plain Meaning Rule. --Under *Code Civ. Proc.*, § 1858, the function of the court in construing a statute is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, the construction to be adopted, if possible, is that which will give effect to all. If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs. Therefore, if a statute is unambiguous, it must be applied according to its terms. Judicial construction is neither necessary nor permitted. When statutory construction is necessary, the court's primary responsibility is to carry out the intent of the Legislature to the extent possible.

(3) Pensions and Retirement Systems § 6--Amount and Computation of Benefits--County Employees Retirement Law of 1937--Compensation Earnable. --Under the County Employees Retirement Law of 1937 (CERL) (*Gov. Code*, § 31450 *et seq.*), although the pertinent statutes are ambiguous in some respects, there is a logical progression in the statutory framework under which a pension is calculated. Application of *Gov. Code*, § 31460, is the first step, since an item must meet this section's broad definition of "compensation" if it is also to fall within the narrower category of "compensation earnable" defined in *Gov. Code*, § 31461, and thus form the basis for the calculation of "final compensation" on which the pension is based pursuant to *Gov. Code*, § 31462, or *Gov. Code*, § 31462.1. Before any payment to an employee qualifies as "compensation earnable," and thus is part of a retiring employee's final compensation

for purposes of calculating the employee's pension, the payment must be "compensation" within the meaning of *Gov. Code*, § 31460. To constitute "compensation," a payment must be "remuneration" that is not excluded from "compensation" by that section. The Legislature has specified that "compensation" means the remuneration paid in cash and any amount deducted from a member's wages for participation in a deferred compensation plan.

(4) Pensions and Retirement Systems § 6--Amount and Computation of Benefits--County Employees Retirement Law of 1937--What Constitutes "Compensation"--Contributions to Employees' Deferred Compensation Plan. --A county's contributions to county employees' deferred payments to a compensation plan were not "compensation" under *Gov. Code*, § 31460, of the County Employees Retirement Law of 1937 (*Gov. Code*, § 31450 *et seq.*). Thus, the contributions were not includable in the calculation of base retirement benefits of retiring employees' base retirement benefits. Under the plan, allowed by *Gov. Code*, § 53213, which postpones payment of income taxes until the funds are received, a portion of the current wages of a participating employee is deducted, invested, and paid at the time of retirement. *Gov. Code*, § 31460, provides the "amount deducted from a member's wages for participation in a deferred compensation plan" is to be treated as part of the employee's "remuneration paid in cash," and *Gov. Code*, § 31461, provides that compensation "that has been deferred shall be deemed 'compensation earnable' when earned, rather than when paid." None of these statutes address the status of the county contribution to an employee's deferred compensation plan. Moreover, insofar as deferred compensation is concerned, the Legislature has adopted a restrictive definition of "compensation" in *Gov. Code*, § 31460, which leaves no room for inclusion of any contributions to a deferred compensation plan that are not deducted from a member's wages. The omission of any reference to county contributions to employees' deferred compensation plans compels a conclusion that the Legislature did not consider those contributions to be "compensation."

(5a) (5b) (5c) Pensions and Retirement Systems § 6--Amount and Computation of Benefits--County Employees Retirement Law of 1937--Bonuses and Incentives Earned by Employees. --A county's various forms of compensation to its deputy sheriffs, which were

over and above the basic salary paid to all employees in the same job classification, were "compensation" under *Gov. Code*, § 31460, and "compensation earnable" under *Gov. Code*, § 31461, of the County Employees Retirement Law of 1937 (CERL) (*Gov. Code*, § 31450 *et seq.*). Thus, the contributions were includable in the calculation of base retirement benefits of retiring employees. CERL excludes from "compensation" the monetary value of an advantage provided in kind. However, when the advantage is one received in cash, the *Gov. Code*, § 31460, exclusion for the "monetary value" of the advantage is not applicable. Thus, although annual leave is not "compensation," the payment of cash in lieu of accrued vacation is "compensation." Other items not available to all employees, such as bilingual pay and uniform maintenance allowance, were so closely related to services the employees performed that they were remuneration for services and therefore "compensation." Further, an item need not be paid to all employees to be considered "compensation earnable." Retirement statutes that preexisted CERL suggest that "compensation earnable" is the average pay of the individual retiring employee computed on the basis of the number of hours worked by other employees in the same class and pay rate, that is, the average monthly pay, excluding overtime, received by the retiring employee for the average number of days worked in a month by the other employees in the same job classification at the same base pay level. This history and the language of *Gov. Code*, § 31461, indicate that the premiums in question, although not necessarily available to all employees, were "compensation earnable." (Disapproving to the extent inconsistent: *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal.App.3d 297 [193 Cal.Rptr. 343].)

[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency and Employment, § 340.]

(6) Statutes § 32--Construction--Language--With Settled Legal Meaning. --When words used in a statute have acquired a settled meaning through judicial interpretation, the words should be given the same meaning when used in another statute dealing with an analogous subject matter. This is particularly true where both statutes were enacted for the welfare of employees and are in harmony with each other.

(7) Courts § 37--Decisions and Orders--Doctrine of Stare Decisis: Words, Phrases, and Maxims--Stare

Decisis. --Stare decisis is a fundamental jurisprudential policy that a prior applicable precedent of an appellate court usually must be followed by that court even though the case, if considered anew, might be decided differently by the current justices.

COUNSEL: Silver, Shaeffer & Hadden, Stephen H. Silver and Susan Silver for Plaintiffs and Appellants.

Carrol, Burdick & McDonough and Christopher D. Burdick as Amici Curiae on behalf of Plaintiffs and Appellants.

James L. McBride, County Counsel, Dennis L. Slivinski and Andrew B. Gustafson, Assistant County Counsel, for Defendant and Respondent and for Real Party in Interest and Respondent.

JUDGES: Opinion by Baxter, J., expressing the unanimous view of the court.

OPINION BY: BAXTER

OPINION

[*487] [**893] [***306] **BAXTER, J.**

Ventura County employees receive retirement benefits (pensions) under a retirement system established pursuant to the County Employees Retirement Law of 1937 (CERL) as codified in 1947. (*Gov. Code*, § 31450 *et seq.*)¹ The amount of a pension is based in part on the earnings of the retiree during a selected three-year period or one-year period prior to retirement. In Ventura County the one-year period is used in calculating pensions. We are asked to decide whether various payments by the county over and above the basic salary paid to all employees in the same job classification are "compensation" within the meaning of the statute which defines compensation (§ 31460), and, if so, whether those payments are also "compensation earnable" (§ 31461) and thus part of a retiring employee's "final compensation" (§ 31462 or 31462.1) for purposes of calculating the amount of a pension.

¹ Unless otherwise indicated, all statutory references are to the Government Code.

Plaintiffs, an employee association and three retired employees, contend that the Court of Appeal erred in holding that only those bonuses, incentives, and other

forms of compensation that are paid uniformly to all employees in a job classification are "compensation earnable." Defendant retirement board and real party in interest Ventura County (hereafter referred to jointly as the county) disagree and also contend that the Court of Appeal erred in holding that the county's contribution to an employee's deferred compensation plan is "compensation earnable."

After considering the language and legislative history of the pertinent CERL provisions, we conclude that the Legislature did not intend to require that a county include its contributions to an employee's deferred compensation plan in "compensation" as defined in CERL. We also conclude, however, that the other disputed premiums are "compensation." With the exception of overtime pay, items of "compensation" paid in cash, even if not earned by all employees in the same grade or class, must be included in the "compensation earnable" and "final compensation" on which an employee's pension is based.

[*488] We shall, therefore, reverse the judgment of the Court of Appeal.

I. BACKGROUND

Pursuant to a 1992 memorandum of agreement with plaintiff association, from July 19, 1992, to July 15, 1995, the relevant time period, the county paid qualifying members of the association, in cash, bilingual premium pay,² a uniform maintenance allowance,³ educational incentive pay,⁴ additional compensation for scheduled meal periods for designated employees,⁵ pay in lieu of annual leave [*894] [***307] accrual,⁶ holiday pay,⁷ a motorcycle bonus,⁸ and a field training officer bonus.⁹ During the same period, the three individual plaintiffs were subject to a resolution fixing the wages, hours, and terms of [*489] employment of management, confidential clerical, and other unrepresented employees. As such they were entitled to cash payments for a uniform maintenance allowance,¹⁰ a longevity incentive,¹¹ pay in lieu of annual leave accrual,¹² and matching deferred compensation payments.¹³

² Employees assigned to positions requiring the use of bilingual skills were to be compensated by a premium in addition to their base pay at rates initially set at 50 cents per hour and then in ranges of 65 cents, 80 cents, or 90 cents per hour based on their level of proficiency, not to exceed 80

hours per pay period.

³ A total annual uniform maintenance allowance of \$ 675 was to be paid in the first pay period of each November.

⁴ Educational incentive pay was given to employees possessing an intermediate or advanced Peace Officer Standards and Training (POST) certificate who had five years of law enforcement experience in a POST-accredited California law enforcement agency and met other criteria. The additional pay ranged from \$ 77.74 to \$ 172.71 biweekly, depending on the level of certification, the employee classification, and the time period. Employees classified as "sheriff's pilot" who met experience, pilot certification, and salary criteria were also entitled to educational incentive pay.

⁵ Deputy sheriffs and senior deputy sheriffs assigned to patrol divisions, pilots, and crew chiefs, were to receive \$ 60 biweekly in lieu of overtime for meal periods during which they were subject to call. The county has agreed that this item is furnished uniformly to all employees classified as sheriff's pilots and therefore "compensation earnable." It is no longer in dispute as to those employees. As a result of this concession, this pay is included for purposes of computing the pension of an employee who served as a sheriff's pilot during the applicable period, but the identical amount is not included in computing the pension of a deputy sheriff, senior deputy sheriff, or sergeant.

⁶ After using a specified minimum days of annual leave, an employee could elect to receive pay in lieu of up to 40 hours of annual leave accrual and on accruing 400 hours could elect to be paid for another 40 hours.

⁷ Employees on a four-day-on, two-day-off schedule were to receive cash payments equal to the value of 50 percent of the number of hours normally worked on a regular day for an assigned holiday that fell on a regularly scheduled workday. When other employees worked on a holiday falling on a regularly scheduled workday, they were to receive a cash payment of pay for one and one-half times the number of hours actually worked on the holiday in addition to payment for the number of hours normally worked by the employee on a regularly scheduled workday. Provision also was made for cash

payment when an assigned holiday fell on a regularly scheduled day off.

8 The motorcycle bonus was \$ 20 per pay period.

9 Deputy sheriffs in class No. 00550 designated as field training officers were to receive \$ 8 per shift when a trainee or deputy was assigned to them and they actually performed training-related duties.

10 This annual uniform maintenance allowance was \$ 520.

11 Employees in this category with five years of county service were entitled to a lump sum annual leave credit for eight hours per year for each year of service, not to exceed one hundred four hours. The credits could be accrued as annual leave or taken in the form of additional compensation.

12 The annual leave redemption differed in the number of hours that had to be used and in the amount that could be redeemed, but like that of employees subject to the memorandum of agreement, was elective.

13 For these employees the county agreed to match employee contributions to a deferred compensation plan in percentages ranging from a 100 percent match when an employee deferred 1 percent of salary to a 50 percent match when the employee deferred 6 percent or more of salary.

When the county refused to include the cash payments agreed to in the memorandum of agreement and the resolution in computing employees' "final compensation" upon which their pensions were based, plaintiffs initiated this mandamus proceeding (*Code Civ. Proc.*, § 1085) by which they sought to compel recalculation of their pension rights based on a computation of "compensation," "compensation earnable," and "final compensation" which did include these cash payments. The superior court denied the petition without a statement of decision, none having been requested, and plaintiffs appealed.

The Court of Appeal, relying in part on *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal. App. 3d 297 [193 Cal. Rptr. 343] (*Guelfi*), agreed with the implicit conclusion of the trial court that none of the premiums identified by the association constituted compensation that had to be included in calculating pensions, but held that the county's matching deferred compensation payments were includable compensation. It

therefore "affirmed" the judgment of the superior court and "remanded" the matter to the retirement board for recalculation of the retirement benefits of the three individual plaintiffs. ¹⁴

14 Since the question arose on petition for writ of mandate which the trial court had denied, we deem this to have been an order reversing the superior court judgment and directing that court to issue a peremptory writ of mandate ordering the board to include the county contributions to those plaintiffs' deferred compensation plan in its calculation of their pensions.

This court granted petitions for review by both plaintiffs and defendants.

[**895] [***308] The county argues that the Court of Appeal erred in reading a 1995 amendment of *section 31461* which provided that deferred compensation [*490] was to be deemed "compensation earnable" in the year earned rather than the year paid as recognition that matching contributions to an employee's deferred compensation plan constituted "compensation earnable." The parties had agreed that the amendment did not change the law, but the county contends that matching funds were never "compensation earnable" under *section 31461*.

Plaintiffs contend that both the *Guelfi* court and the Court of Appeal in this case erred in their construction of *sections 31460* and *31461*, and in doing so ignored legislative history which reflects intent that all of the claimed cash payments be included in the "final compensation" on which county employee pensions are calculated under CERL.

II. STATUTORY DEFINITIONS AND THE GUELFİ CONSTRUCTION

The payments required by CERL to be included in the calculation of the pension of an employee whose county employer has elected to establish a retirement system governed by CERL presents a question of statutory construction, and thus legislative intent. Under CERL an employee's pension is a combination of a retirement annuity based on the employee's accumulated contributions supplemented by a pension established with county contributions sufficient to equal a specified fraction of the employee's "final compensation." (See, e.g., § 31664, 31676.1.) Other provisions of CERL limit

the amount of employee pensions to a percentage of (see, e.g., § 31664.5), or not more than (see, e.g., § 31676.1), the employee's "final compensation."

Which payments to a county employee other than base pay must be included when determining an employee's final compensation is a question crucial to the proper administration of a CERL pension system, including the ability of the county to anticipate and meet its funding obligation. We necessarily begin our analysis with the definitions in CERL, as those definitions govern construction of CERL unless the context otherwise requires. (§ 31455.) (1) Any ambiguity or uncertainty in the meaning of pension legislation must be resolved in favor of the pensioner, but such construction must be consistent with the clear language and purpose of the statute. (*Guelfi, supra*, 145 Cal. App. 3d at p. 303; *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 940 [179 Cal. Rptr. 287]; *Neeley v. Board of Retirement* (1974) 36 Cal. App. 3d 815, 822 [111 Cal. Rptr. 841].)

A. "Compensation"

Section 31460 defines "compensation" as "the remuneration paid in cash out of county or district funds, plus any amount deducted from a member's [*491] wages for participation in a deferred compensation plan . . . but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to a member."

B. "Compensation earnable"

Under *section 31461*, "'[c]ompensation earnable' by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. . . ."

Amendments to *section 31461* in 1993 and 1995, which the parties agree were not intended to make any substantive change in that definition added: "Compensation, as defined in *Section 31460*, that has been deferred shall be deemed 'compensation earnable' when earned, rather than when paid."

C. "Final compensation"

Section 31462.1, which applies in Ventura County, defines "final compensation" as "the average annual compensation earnable by a member during any year elected by a member at or before the time he files an application for retirement, or, if he fails to elect, [**896] [***309] during the year immediately preceding his retirement."

These definitions were construed and applied by the Court of Appeal in *Guelfi*, in which two retired peace officers claimed that their disability retirement pensions should be calculated on the basis of preretirement earnings including overtime, educational incentive pay, and a uniform allowance. Pursuant to *section 31727.4*, the amount of a peace officer's service-connected disability retirement, like a longevity retirement, is based on the employee's "final compensation."

The *Guelfi* court first concluded that a uniform allowance is among the "other advantages furnished to a member" which are excluded from "compensation" by *section 31460*. (145 Cal. App. 3d at p. 304.) The court noted that a uniform allowance had been held to fall within the term "other advantages" as used in *section 20022*, a part of the Public Employees' Retirement Law (§ 20000 et seq.) because the uniform was a substitute for other personal attire which an employee must normally furnish at the employee's own expense. (*Guelfi, supra*, 145 Cal. App. 3d at p. 304, citing [*492] *Rose v. City of Hayward, supra*, 126 Cal. App. 3d at p. 943.) Educational incentive pay, by contrast, was remuneration for training that benefited the employer and thus did constitute "compensation" within the definition of *section 31460*. (145 Cal. App. 3d at p. 304.)

The Court of Appeal then considered whether the payment was "compensation earnable" within the meaning of *section 31461*, since, under *section 31462.1*, only "compensation earnable" is part of the "final compensation" on which a pension is calculated, and held that it was not. The court reasoned that not all employees in the same grade or class of positions qualified for educational incentive pay. Therefore, if that pay were to be included in "compensation earnable," not all employees in a class could be said to receive the same rate of pay and *section 31461* provided that "compensation earnable" was to be based on " 'the average number of days ordinarily worked by persons in the same grade or class of positions . . . and at the same rate of pay. . . .' " (*Guelfi, supra*, 145 Cal. App. 3d at p.

304, italics added.) Similar reasoning led the court to conclude that overtime pay was not "compensation earnable." (*Id. at p. 305.*)¹⁵ The court concluded that the Legislature's reference to "days" ordinarily worked by other employees in the same class, rather than "hours" suggested that "compensation earnable" contemplated the average standard work week of employees in the class, and not additional overtime hours. (*Id. at p. 306.*) The retirement board was free to include those benefits in its retirement calculation if it elected to do so, but CERL did not require that they be included. (*Id. at p. 307, fn. 6.*)

15 Because the court found the language of *section 31461* clear and unambiguous, it was not necessary to consider statutes that are part of the Public Employees' Retirement Law and the State Teachers' Retirement Law (former § 20025.2 (now § 20635); *Ed. Code*, § 22114, *subd. (b)*), which expressly exclude overtime pay in calculating pensions.

III. "COMPENSATION" AND "COMPENSATION EARNABLE" IN CERL

(2) The function of the court in construing a statute "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (*Code Civ. Proc.*, § 1858.) "If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.'" (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal. 4th 263, 268 [36 Cal. Rptr. 2d 563, 885 P.2d 976].) Therefore, if a statute is unambiguous, it must be applied according to its terms. Judicial construction is neither [*493] necessary nor permitted. When statutory construction is necessary, the court's primary responsibility is to carry out the intent of the Legislature to the extent [**897] [***310] possible. (*Code Civ. Proc.*, § 1859; *People v. Wells* (1996) 12 Cal. 4th 979, 985 [50 Cal. Rptr. 2d 699, 911 P.2d 1374]; *Parris v. Zolin* (1996) 12 Cal. 4th 839, 845 [50 Cal. Rptr. 2d 109, 911 P.2d 9].)

(3) As this case and *Guelfi* reflect, both *section 31460* and *section 31461*, the proper construction of which is at the heart of this dispute, are ambiguous in some respects. *Section 31460* specifies that "remuneration paid in cash" is "compensation" while the

monetary value of board, lodging, fuel, and laundry is not to be considered "compensation." It does not specify whether remuneration not ordinarily paid in cash, such as accrued vacation, becomes "compensation" when the employee elects to receive cash in lieu of the in-kind remuneration, and does not identify or define the other in-kind "advantages" that are to be excluded from "compensation." Finally, *section 31460* specifies that deferred compensation deducted from an employee's wages is "compensation," but neither *section 31460* nor any other statute indicates whether a county's matching contributions to a deferred compensation plan are "compensation."

Section 31461, in turn, fails to specify whether, assuming cash payments for advantages ordinarily furnished in kind are "remuneration paid in cash" within the meaning of *section 31460*, they and employer contributions to employees' deferred compensation plans are to be considered in determining the "compensation earnable" of a retiring employee. It also fails to specify if "average compensation . . . [computed] upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay" contemplates inclusion of only the base pay for those positions or requires either that all "compensation" to all employees in the same grade or class of positions is to be included in determining the employee's "average compensation" or if the "average compensation" is that of the individual retiring employee, including all nonexcluded cash payments, but computed over the average number of days worked by all employees in the employee's grade or class for the period on which the individual employee's retirement pay is based. We therefore disagree with the *Guelfi* court and the Court of Appeal here that the meaning of *sections 31460* and *31461* is clear.

We agree with *Guelfi* that there is a logical progression in the statutory framework under which a pension is calculated. Application of *section 31460* is the first step, since an item must meet its broad definition of "compensation" if it is also to fall within the narrower category of "compensation earnable" defined in *section 31461* and thus form the basis for the [*494] calculation of "final compensation" on which the pension is based pursuant to *section 31462* or *31462.1*.

A. "Compensation"

Before any payment qualifies as "compensation

earnable," the payment must be "compensation" within the meaning of *section 31460*. To constitute "compensation," a payment must be "remuneration" which is not excluded from "compensation" by that section. The Legislature has specified that "[c]ompensation" means the remuneration paid in cash [and] any amount deducted from a member's wages for participation in a deferred compensation plan"

1. *County contributions to deferred compensation*

(4) *Section 53213* permits a county to establish a deferred compensation plan for its employees. Under such a plan, which postpones payment of income taxes until the funds are received, a portion of the current wages of a participating employee is deducted, invested and paid at the time of retirement. *Section 53214* provides that "[n]otwithstanding any other provision of law, a participant in a deferred compensation plan may also participate in a public retirement system, and, in ascertaining the amount of compensation of such participant for purposes of computing the amount of his contributions or benefits under a public retirement system, any amount deducted from his wages pursuant to this article shall be included." *Section 31460* provides in turn that the "amount deducted from a member's wages for participation in a deferred compensation plan" is to be treated as part of the employee's "remuneration paid in cash," and *section [*898] [***311] 31461* provides that "[c]ompensation as defined in *Section 31460*, that has been deferred shall be deemed 'compensation earnable' when earned, rather than when paid." None of these statutes address the status of the county's contribution to an employee's deferred compensation plan. Moreover, insofar as deferred compensation is concerned, the Legislature has adopted a restrictive definition of "compensation" in *section 31460*. That section provides that an "amount deducted from a member's wages for participation in a deferred compensation plan" is "compensation." That definition leaves no room for inclusion of any contributions to a deferred compensation plan that are not deducted from a member's wages. *Section 31460* recognizes that but for the employee election to defer payment of those wages, they would be "remuneration paid in cash" as part of the employee's regular wages. That cannot be said of a county contribution to an employee's deferred compensation plan.

The Legislature added reference to deferred

compensation to the predecessor of *section 31460* and enacted *section 53214* in 1972 as part of the [*495] legislation which permitted counties to create a deferred compensation program. (Former § 18310, added by Stats. 1972, ch. 1370, § 5, 10, 11, pp. 2734-2736.) *Section 53214* makes it clear that the Legislature had in mind the computation of county employee pensions when reference to deferred compensation was added to *section 31460* in 1972. It again had the subject in mind when reference to deferred compensation was added to *section 31461* in 1993. Yet none of these sections provide that any funds added to a deferred compensation plan other than funds deducted from the employee's wages are to be considered in computing a pension. The references to deferred compensation in *sections 31460* and *31461* make it clear that the deferred funds, which clearly would have been "compensation" if paid in the normal course, do not lose that status for pension purposes even though they had not been received by the employee at the time the pension was calculated. The omission of any reference to county contributions to employees' deferred compensation plans compels a conclusion that the Legislature did not consider those contributions to be "compensation" and did not intend to mandate inclusion of any county contribution to an employee's deferred compensation plan in the "compensation" on which the employee's pension is computed.

2. *Other cash payments*

(5a) When *section 31460* was enacted in 1947, it provided: " 'Compensation' means the remuneration paid in cash out of county or district funds . . . plus the monetary value . . . of board, lodging, fuel, laundry, and other advantages furnished to a member in payment for his services." (Stats. 1947, ch. 424, § 1, p. 1264.) It appears from this that the Legislature considered the type of in-kind advantages identified in *section 31460* to be "remuneration" if they were provided to an employee in payment or partial payment for the employee's services. Since both cash wages and the value of in-kind "advantages" such as room, board, laundry and fuel were remuneration, both were to be included in "compensation" for purposes of determining pension benefits. In 1951, however, *section 31460* was amended to provide that the monetary value of those items and other advantages was not to be included in "compensation" for this purpose.

Plaintiffs argue that *section 31460* now permits

exclusion only of the monetary value of advantages furnished in kind and that the exclusion for the monetary value of in-kind advantages is not applicable to cash payments even when the payments are made in lieu of providing the advantages described in that section in kind. The county argues that the uniform allowance is not "compensation," relying on *Guelfi* for that position.

[*496] The parties in *Guelfi*, *supra*, 145 Cal. App. 3d 297, agreed that the Marin County uniform allowance in issue there was "remuneration" and the Court of Appeal impliedly agreed. The court held, however, that the uniform allowance was not "compensation." In so doing it relied on *Rose v. City of Hayward*, *supra*, 126 Cal. App. 3d at page 943. (6) (See fn. 16.) *Rose* construed former section 20022, a provision of the Public Employees' Retirement Law [*899] [***312] (PERL) (§ 20000 et seq.),¹⁶ which at that time defined "compensation" for purposes of that retirement system as "remuneration paid in cash" and, like the original version of section 31460, added "plus the monetary value . . . of living quarters, board, lodging, fuel, laundry, and other advantages of any nature" with the additional qualification "furnished [to] a member by his employer in payment for his services."¹⁷

16 "[W]hen words used in a statute have acquired a settled meaning through judicial interpretation, the words should be given the same meaning when used in another statute dealing with an analogous subject matter; this is particularly true, where . . . both statutes were enacted for the welfare of employees and are in harmony with each other." (*Kuntz v. Kern County Employees' Retirement Assn.* (1976) 64 Cal. App. 3d 414, 422 [134 Cal. Rptr. 501].)

17 These "other advantages" to state employees are now governed by section 19822, which expressly limits those to be included in "compensation" for pension purposes to advantages provided as remuneration for the employee's work. The PERL definition of "compensation" differs from section 31460 in that it does not exclude these maintenance items.

Section 19822 provides:

"(a) The director shall determine the fair and reasonable value of maintenance, living quarters, housing, lodging board, meals, food, household supplies, fuel, laundry, domestic servants and

other services furnished by the state as an employer to its employees.

"The value so determined shall constitute the charge to be made to state employees for any such maintenance or other services furnished by the state, unless the employee is entitled thereto as compensation for his or her services or as actual and necessary expenses incurred in the performance of the state's business. Whenever a state employee is entitled to such maintenance or other services as part or full compensation for services rendered, the value thereof for retirement purposes, as defined by Section 20022 [defining compensation], and for salary or wage fixing purposes, shall also be determined in accordance with the values established by the department hereunder. . . ."

(5b) The *Rose* court did not attempt a comprehensive construction of "other advantages" as used in former section 20022, but reasoned that provision of a uniform or uniform allowance that substituted for clothing the employee would normally be expected to provide was among the other advantages that were to be included in compensation under the controlling PERL statute. The court rejected an argument that the uniform allowance was not compensation because the uniform was for the convenience of the employer. "To say that the uniform allowance benefits the employer . . . begs the question. The issue is whether or not the allowance provides an 'advantage' to the *employee*. While it is accurate to say that uniformity of attire provides a benefit to the employer in that it makes these civil servants readily identifiable to the public, it is at the same time accurate to say that [*497] the uniform allowance provides a benefit to the employee in that the uniform substitutes for personal attire which the employee would otherwise be forced to acquire with personal resources. Therefore, the uniform allowance must be included in the computation of pension benefits." (*Rose v. City of Hayward*, *supra*, 126 Cal. App. 3d at p. 943, fn. omitted.) In distinguishing some work-related attire such as specially designed asbestos uniforms, which would not constitute "compensation," the court equated provision of work-related attire and cash in lieu of such attire for pension computation purposes. (*Id.* at p. 943, fn. 2.)

CERL differs from the PERL legislation under consideration in that it excludes, rather than includes, the

monetary value of an advantage provided in kind. It does not follow, however, that when the advantage is one received by the employee in cash, the *section 31460* exclusion for the "monetary value" of the advantage is applicable. Under the distinction the statute makes for in-kind advantages, even though a noncash "advantage" may be "remuneration" for the employee's services, the Legislature has relieved CERL counties of the obligation to assign a cash value to in-kind advantages provided to employees and of including that amount in "compensation" for pension purposes. The Legislature has recognized that some employees receive remuneration other than wages or salary but has concluded that if those "advantages" are not paid in cash, their value need not be included in "compensation" for purposes of computing a pension. It has not done so for cash payments made in lieu of providing the same advantages in kind. When paid in cash, the payment is remuneration [**900] [***313] and, as it is not excluded, it is "compensation" under *section 31460*.

Here, the Court of Appeal held, without analysis other than a citation to a portion of *Guelfi* which discusses *section 31461* rather than *section 31460*, that annual leave redemption and the county's longevity incentive were "compensation" under *section 31460*. We agree that both the longevity bonus and cashed-out accrued vacation are remuneration under *section 31460* and, since neither is an excluded "advantage," both are "compensation."

Plaintiffs concede that when annual leave is received as time off, it does not meet the statutory definitions of "compensation" or "compensation earnable." When annual leave is taken as time off, the employee simply continues to receive regular salary or wages without the necessity of performing services. Receipt of that pay is part of the employee's "remuneration" for past services and is "compensation." When an employee elects to receive cash in lieu of accrued vacation and the wages or salary the employee would receive during the vacation period, the cash, like the vacation [*498] pay the employee would otherwise receive, is part of the employee's "remuneration" for past services. The same analysis applies to the county's "longevity incentive" since that item simply grants additional vacation hours to be accrued or cashed out to those employees with five years or more service who are covered by the resolution. Payment to longtime employees, whether in salary for vacation days on which no work is performed or in

additional cash, is equivalent to increased pay that often accompanies seniority. It, too, is "remuneration" and "compensation." ¹⁸

18 In 1996, the county replaced the "longevity incentive" for unrepresented employees with increased compensation.

The other items plaintiffs claim should be recognized as "compensation" also are so closely related to services performed by employees that they must be considered remuneration for services. Bilingual premium pay is available only to employees in positions requiring bilingual skills. The amount of the pay is based in part on the number of hours in which the employee fills the position and in part on the level of the employee's ability to use the second language. Thus, the premium is paid for services in which these skills are used by the employee. For similar reasons, pay for acting as a field training officer and for motorcycle duty appears to be remuneration for services, as are overtime pay, holiday pay, and specified payments in lieu thereof. "Educational incentive pay" is remuneration for services presumably performed at the higher level of competence expected or required of employees holding POST or pilot certification. These methods of paying employees for services that are expected to be performed with special skills or at a higher level of competence cannot be distinguished for this purpose from classification schemes which create separate job categories or levels within employment categories to reflect special skills required or additional duties performed by the employee.

Guelfi, supra, on whose reasoning the Court of Appeal also relied in concluding that educational incentive pay is "compensation," ¹⁹ held that Marin County educational incentive pay, similar to that allowed by Ventura County, was not an excluded "advantage" and is "remuneration" that is to be included in "compensation." (145 Cal. App. 3d at p. 304.) The *Guelfi* court reasoned that the education and training which qualified the employee for the pay was for the benefit of the employer, and recognized that the amount of pay and the extent of education and training varied with the employee's certification. (*Ibid.*) As the foregoing discussion reflects, we agree. These [*499] items are remuneration for special skills or qualifications. The remuneration is paid in cash. It is, therefore, compensation within the meaning of *section 31460*.

19 The court did not separately address the status

of bilingual premium pay and the field training bonus as "compensation" under *section 31460*. It assumed that this pay is "remuneration" and "compensation" when it addressed whether they were "compensation earnable" under *section 31461*.

B. "Compensation earnable"

The principal dispute between the parties is over the meaning of "compensation [**901] [***314] earnable" as that term is used in *section 31461*. The meaning of the term is crucial to the outcome of this case because, as noted earlier, the "final compensation" upon which an employee's pension is based is his or her "average annual compensation earnable" over the applicable three-year (§ 31462) or one-year (§ 31462.1) period.

Pursuant to *section 31461* the county determines a retiring employee's "compensation earnable" for the selected period "upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence."

The county argues that under this formula only that pay which is received by all employees in the grade or class in which the retiring employee worked must be considered and that neither overtime nor any premiums paid for special skills or certification need be included in determining "compensation earnable." It relies on *Guelfi* where the Court of Appeal held that overtime, educational incentive pay, and a uniform allowance were excludable in computing "compensation earnable." The *Guelfi* court first reasoned that *section 31461* would have been unnecessary if all items of "compensation" received by a retiring employee not specifically excludable under *section 31460* were to be included in "compensation earnable." Therefore, *section 31461* contemplated something more than a calculation of the retiring employee's average pay during the selected year. It was necessarily a narrowing definition. (*Guelfi, supra, 145 Cal. App. 3d at pp. 304-305.*)

The *Guelfi, supra*, court then considered educational incentive pay, and held that, because *section 31461* defines "compensation earnable" as a figure "based on the average number of days ordinarily worked by persons in 'the same grade or class of positions . . . , and at the same

rate of pay,' " educational incentive pay was not includable. (*145 Cal. App. 3d at p. 305.*) Not all persons in the same grade or class of positions qualified for educational incentive pay and those who did qualify might not hold the same certificates. Employees who were in similarly graded or classified positions were not compensated at the same rate of pay. Therefore, "*section 31461 [**500]* does not contemplate inclusion of such compensation in its definition of 'compensation earnable.'" (*Ibid.*) CERL created a "fixed" rather than a "fluctuating" retirement plan. (*Id. at p. 306.*)

As to overtime pay, "[t]wo obstacles in the definition prevent an interpretation which would include overtime pay. First, the Board must make its determination upon the basis of the number of 'days' ordinarily worked. The choice of the word 'days' rather than 'hours' or some other temporal measure suggests reference to a standard work week (or month) and not to any extra hours put in as overtime. Appellants themselves view that language as clearly indicating an intent that the Board use the *day* as a unit of measure. Second, the Board is to base its determination on the number of days 'ordinarily' worked by others of the same rank. In common usage, 'ordinarily' means 'in the ordinary course of events' or 'usually.' (Webster's Third New Internat. Dict. (1965) p. 1589.) *Omission* of the word 'ordinarily' might suggest calculation based upon the *actual* number of days worked by others (assuming for the sake of argument that whole days of overtime are worked), and even then, the basis would be the number of days worked by *others*, not the number of days personally worked by the retired or retiring member. However, the word is specifically inserted and must be read as qualifying the phrase which it precedes so as to give it meaning. We therefore conclude . . . that overtime pay is not 'compensation earnable' and thus is not to be included in computing appellant's 'final compensation.'" (*Guelfi, supra, 145 Cal. App. 3d at pp. 306-307, original italics.*) The same reasoning led the court to conclude that uniform allowances and educational incentive pay were excluded from "compensation earnable." (*Id. at p. 307.*)²⁰

20 The exclusion of overtime pay from "compensation earnable" is not challenged by plaintiffs.

[**902] [***315] *Guelfi* thus held that an item of compensation must be received by all employees in the applicable grade or class of position if it is to be part of a

retiring employee's "compensation earnable." The Court of Appeal here relied on *Guelfi*, holding that because "compensation earnable" means the "average ordinary pay of workers in a class; not the actual pay of any individual," none of the items sought to be included by plaintiffs (except contribution of matching funds to a deferred compensation plan) qualified. Were these incentives and premiums included in the computation, the average pay for all workers in the class would be unjustifiably increased. While plaintiffs accept the *Guelfi* construction of *section 31461* insofar as it applies to overtime pay, they argue that the exclusion of the premiums in dispute here from "compensation earnable" is not supported by the statutory language or the legislative history of *section 31461*. They contend that the [*501] Court of Appeal in this case erred in directing that the *Guelfi* formulation of "compensation earnable" be applied to those items in the computation of their pensions.

As noted earlier, *section 31461* defines "[c]ompensation earnable" as "the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay." The purpose of this definition, plaintiffs argue, is simply to ensure that overtime is omitted from the calculation and to ensure that if an absence resulted in an employee working fewer days than those ordinarily worked by comparable employees, the employee would nonetheless be deemed to have been compensated for the difference at the same rate attached to the position at the time the absence commenced. Nothing in the wording of *section 31461* requires that the amount of pay included in "compensation earnable" be only that received by all employees in the same job category. The reference to persons "at the same rate of pay" simply identifies the category of employees who must be considered in determining the average number of days ordinarily worked and provides the reference for determining the compensation to be considered for a period of absence. If, as the Court of Appeal and the *Guelfi* court held, only those items of "compensation" received uniformly by all persons in the pay grade are to be included, there would be no need to find the "average" compensation of persons in that pay grade. The Court of Appeal formulation, they argue, renders the term "average" surplusage. The only construction which gives meaning to the command that "compensation earnable" be based on the "average

compensation" of persons in the pay grade is one which anticipates that the individual compensation of persons in the pay grade is not uniform so that there is something to "average."

In plaintiffs' view, *section 31461* in directing that "average compensation for the period under consideration" be calculated "upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period and at the same rate of pay" does no more than ensure that a retiring employee's average compensation be determined in relation to what the employee would have earned if he worked the average number of days ordinarily worked by employees in the same grade or class and at the same rate of pay. This is consistent with the penultimate sentence of *section 31461* which provides that "compensation earnable" for any period of absence is to be based on "the compensation of the position held" at the beginning of the absence.

Plaintiffs also argue that the history of *section 31461* supports their construction. They rely on the wording of the predecessor to *section 31461* [*502] in the 1937 version of CERL and legislative history which indicates that while the present wording of *section 31461* differs from that found in CERL when enacted in 1937, the rewording of the provision was not intended to make any substantive change. First they note that *section 31461*, adopted in 1947 (Stats. 1947, ch. 424, § 1, p. 1264),²¹ is simply a codification of the [***316] 1937 [**903] law. (Stats. 1937, ch. 677, § 1, p. 1898.) The 1947 statute was enacted as part of Senate Bill No. 1117 (1947 Reg. Sess.) which codified and consolidated laws related to counties. A Legislative Counsel's report on Senate Bill No. 1117 advised that the bill "makes no substantive changes in existing law, but rearranges and restates in simplified language the substance of existing laws, and repeals obsolete and superseded statutes."²²

21 As enacted, *section 31461* read: "'Compensation earnable' by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by him at the beginning of the absence." (Stats. 1947,

ch. 424, § 1, p. 1264.)

22 Plaintiffs' request that we take judicial notice of this document is granted. A reviewing court is required to take judicial notice of matters properly noticed by the trial court and those the trial court was required to notice under *section 451* or *453 of the Evidence Code*. (*Evid. Code*, § 459.) Plaintiffs requested that the Court of Appeal take judicial notice of various items of legislative history, including this document, but it is not clear from the record whether that court did so. The Court of Appeal opinion recites that consideration of the materials is unnecessary as the statutes under review are unambiguous, but the opinion does not indicate whether the request for judicial notice was granted.

Arguably the Court of Appeal was required to take judicial notice of all of the items encompassed by plaintiffs' request other than a publication of the county supervisors association as all of the other items are copies of documents which reflect "official acts of the legislative [and] executive . . . departments" of this state. (*Evid. Code*, § 452.) Plaintiffs' request complied with *Evidence Code section 453*. This court is therefore required to take judicial notice of the items. It does not follow, however, that all are relevant and must be considered by the court. A memorandum from a staff member of the Attorney General to the Governor does not appear to be relevant in ascertaining the legislative intent underlying *section 31461* inasmuch as there is no indication that the views of the author regarding the purpose and content of Senate Bill No. 1117 were before the Legislature at the time the bill was enacted and therefore may be deemed to reflect legislative intent.

Section 8.5 of article 1 of CERL in 1937, the predecessor to *section 31461*, provided: "'Compensation earnable' by a member shall mean the compensation as determined by the retirement board which would have been earned by the member had he worked throughout the period under consideration, the average number of days ordinarily worked by persons in the same grade or class of positions as the positions held by him during such period, and at the rates of compensation attached to such positions, it being assumed [*503] that during any absence he was in the position held by him at the

beginning of such absence." (Stats. 1937, ch. 677, § 8.5, pp. 1898-1899, italics added.)²³

23 Section 8 of CERL then defined "compensation" as "the remuneration paid in cash out of county or district funds controlled by the board of supervisors, plus the monetary value, as determined by the board of retirement, of board, lodging, fuel, laundry and other advantages of any nature furnished to a member in payment for his services." (Stats. 1937, ch. 677, § 8, p. 1898.)

Section 9 defined "final compensation" as "the average annual compensation earnable by a member during the three years immediately preceding his retirement." (Stats. 1937, ch. 677, § 9, p. 1899.)

Assuming that, as plaintiffs contend, *section 31461* is nothing more than a restatement of section 8.5 of the 1937 version of CERL, section 8.5 supports plaintiffs' proposed construction of *section 31461*, as do other statutes which predate CERL and used the term "compensation earnable" in creating state employee pensions.²⁴ The term is found in the act which established a retirement system for state employees in 1931. (Stats. 1931, ch. 700, § 1, p. 1442.) Section 13 of that act provided: "'Compensation earnable' by a member shall mean the average compensation as determined by the board upon the basis of the average period of employment of members in the same class of employment and at the same rate of pay, but such 'compensation earnable' shall not exceed four hundred sixteen dollars and sixty-six cents per month."²⁵ The term was used [*904] [***317] again in 1935 when the 1931 act was amended to provide for retirement of California Highway Patrol Officers. (Stats. 1935, ch. 850, § 3, p. 2277.) Section 13 of the 1931 act was then amended to read: "'Compensation earnable' by a member shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence and that prior to entering State service he was in the position first held by him in such service, but such 'compensation earnable' shall not exceed four hundred sixteen dollars and sixty-six cents per month." (*Ibid.*)

24 The term "compensation earnable" is used in

some 80 pension-related code sections, primarily in the Government Code and Education Code. The definition sections in the Education Code differ significantly from those for state and county employee pensions. (See, e.g., *Ed. Code*, § 22115, 22119.2.)

25 Section 12 of the act defined "compensation" as "the remuneration paid in cash out of funds controlled by the state plus the monetary value, as determined by the board of administration, of board, lodging, fuel, laundry and other advantages of any nature furnished by the state to a member in payment for his services." (Stats. 1931, ch. 700, § 12, p. 1443.)

The definition was repeated in substantially the same terms in the 1945 legislation which codified the state retirement system, now the Public Employees' Retirement System (PERS). (§ 20000 et seq., added by Stats. 1945, [*504] ch. 123, § 1, p. 573 et seq.) As enacted in 1945, section 20023 defined " 'Compensation earnable' by a member" as "the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay. The computation for any absence of a member shall be based on the compensation of the position held by him at the beginning of the absence and that for time prior to entering State service shall be based on the compensation of the position first held by him in such service." (Stats. 1945, ch. 123, § 1, p. 575.)²⁶

26 The second sentence of section 20023 was amended a second time by the 1949 Legislature and read: "The computation for any absence of a member shall be based on the compensation earnable by him at the beginning of the absence and that for time prior to entering state service shall be based on the compensation earnable by him in the position first held by him in such service." (Stats. 1949, ch. 1218, § 1, pp. 2143-2144.)

The Legislature is presumed to be aware of other statutes on the same or analogous subject matter in which the same language is used. Since we have no reason to think that the Legislature intended that the same specifically defined term take on a different meaning in computing the pension of a county employee, the

construction of "compensation earnable" should be consistent under CERL, the 1931 State Employee Retirement Act, and PERL, which is the successor to the 1931 act.

Each of these definitions suggests that "compensation earnable" is the average pay of the individual retiring employee computed on the basis of the number of hours worked by other employees in the same class and pay rate--that is the average monthly pay, excluding overtime, received by the retiring employee for the average number of days worked in a month by the other employees in the same job classification at the same base pay level.

The above version of section 20023--the PERL definition of "compensation earnable"--was repealed in 1993 and replaced with a new section 20023 that expressly included "special compensation" in "compensation earnable," and made it clear that the individual employee's pay is the basis for computing the employee's "compensation earnable." (§ 20023 as enacted by Stats. 1993, ch. 1297, § 6.) Moreover, the items plaintiffs seek to have included in their "compensation earnable" appear to be the type of "special compensation" items which are included in the "compensation earnable" of PERS members. (§ 20636.)²⁷ The Legislative Counsel's Digest [*905] [***318] of Senate Bill No. 53 (1993-1994 Reg. Sess.), which contained former section 20023, [*505] notes that bill recasts and redefines "compensation" and "compensation earnable," but does not indicate that the inclusion of "special compensation" in the definition adds anything that was not included under the prior legislation or results in higher "final compensation" or increased pensions.

27 Section 20636 now provides: "(a) 'Compensation earnable' by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

"(b)(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. . . .

"(c)(1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays

or hours, or other work conditions.

"(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph 2, of subdivision (e)."

Section 20636, subdivision (g) is applicable only to state members of PERS and includes special compensation. It defines "compensation earnable" as "the average monthly compensation . . . upon the basis of the average time put in by members of the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. . . ." (*Ibid.*) Section 21752.5 limits the amount of compensation considered in computing benefits for employees who become members of PERS on or after July 1, 1996, to that permitted by the Internal Revenue Code for public retirement systems.

We agree with plaintiffs therefore that both the language and the history of *section 31461* support a conclusion that the premiums in dispute are "compensation earnable" within the meaning of that section and must be included when their pensions are calculated. To the extent that *Guelfi* is inconsistent with this conclusion, it is disapproved.

The county does not address plaintiff's legislative history argument and does not acknowledge the definition of the term "compensation earnable" in PERL or its predecessor. It claims only that *Guelfi* properly construed *sections 31460* and *31461*; that the Legislature has acquiesced in this construction; and that the doctrine of *stare decisis* teaches that this long-standing construction should be respected by this court.

The county's legislative acquiescence argument is based on what it claims are almost 100 amendments to various provisions of CERL between 1984 and 1995, 11 of which occurred in the year immediately following

Guelfi. None of those amendments made any change in the language construed by the Court of Appeal in *Guelfi*, however.

The county also relies on the principle of statutory construction teaching that "[t]he failure of the Legislature to change the law in a particular respect [*506] when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended." (*Cole v. Rush* (1955) 45 Cal. 2d 345, 355 [289 P.2d 450, 54 A.L.R.2d 1137]; see also *Bailey v. Superior Court* (1977) 19 Cal. 3d 970, 977, fn. 10 [140 Cal. Rptr. 669, 568 P.2d 394]; *Estate of McDill* (1975) 14 Cal. 3d 831, 837-838 [122 Cal. Rptr. 754, 537 P.2d 874].) This principle assumes legislative knowledge of judicial construction of the law. (See *Fontana Unified School Dist. v. Burman* (1988) 45 Cal. 3d 208, 219 [246 Cal. Rptr. 733, 753 P.2d 689]; *Cole v. Rush*, *supra*, at pp. 355-356.)

It is not clear, however, that the general subject of county employee pensions was before the Legislature when any of the amendments to which the county refers was enacted. Instead, the amendments appear to address discrete aspects of the law or to have a general but nonsubstantive effect, such as gender-neutral wording. The county identifies none which suggests that the subject of pension computation generally was before the Legislature when one or more of the amendments was enacted. " ' ' ' [S]omething more than mere silence is required before [legislative] acquiescence is elevated into a species of implied legislation.' " ' ' " (*Ornelas v. Randolph* (1993) 4 Cal. 4th 1095, 1108 [17 Cal. Rptr. 2d 594, 847 P.2d 560].) That being so, we cannot infer that the Legislature had *section 31461* and *Guelfi* in mind when those amendments were adopted and intended by inaction to acquiesce in the *Guelfi* construction of that statute.

Two of the amendments did affect *section 31461*. The 1995 amendment (Stats. 1995, ch. 558, § 1) added the last sentence ensuring that deferred compensation would be included [*906] [***319] in "compensation earnable" in the year earned. That sentence had been part of a subdivision added to *section 31461* in 1993 (Stats. 1993, ch. 396, § 3) which was applicable only to Los Angeles County and was repealed in the 1995 amendment. Again, however, we cannot assume that, in enacting a measure regarding the time at which deferred compensation is earned for pension purposes, the

Legislature had the general subject of pension computation or specifically the *Guelfi* definition of "compensation earnable" in mind.

The stare decisis argument is also unpersuasive. (7) Stare decisis is, as we have recognized, "a fundamental jurisprudential policy that prior applicable precedent [of an appellate court] usually must be followed [by that court] even though the case, if considered anew, might be decided differently by the current justices." (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal. 3d 287, 296 [250 Cal. Rptr. 116, 758 P.2d 58].) (5c) *Guelfi* is not prior precedent of this court, however. The issue is one of first impression in this court.

[*507] Finally, the county asserts that the 20 CERP counties whose actuarial calculations, and thus whose contributions to the retirement system, are based on the *Guelfi* construction of *section 31461* would face practical problems if we depart from *Guelfi*. It claims that absent the certainty afforded by the *Guelfi* formulation, counties cannot perform their statutory obligations to adequately fund their retirement systems. *Guelfi*, they argue, has clarified any ambiguities in the statutory language in holding that compensation which is not paid uniformly to all persons in the same grade or class is not "compensation earnable." No other county is before us in this matter, however, and we need not decide whether this decision applies retroactively to any other county.

There may be unanticipated costs to Ventura County

if the pensions of the individual plaintiffs and the employees the association represents must be recalculated and adjusted upward. If so, to comply with the financial provisions of CERP (§ 31580 et seq.) and accommodate future increases, the county may have to make a supplemental appropriation and adjust the future annual appropriation for its contribution to the pension fund to cover the increase in future retiree pensions that results from inclusion of additional items of "compensation" in "compensation earnable." Past experience should enable the county to anticipate the number of employees who will receive premium pay, however, and adjustments of this nature are contemplated by CERP. (See § 31453, 31454.) Nothing in this record suggests that the burden on the county fisc justifies either perpetuation of an erroneous construction of the applicable statutes or denying these plaintiffs the benefit of our decision.

IV. DISPOSITION

The judgment of the Court of Appeal is reversed with directions to order the superior court to grant the petition for mandamus and remand the matter for further proceedings consistent with this opinion.

George, C. J., Mosk, J., Kennard, J., Werdegar, J., Chin, J., and Brown, J., concurred.

The petition of all respondents for a rehearing was denied October 1, 1997.

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9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF CONTRA COSTA

11 VERNON D. PAULSON, GEOFFREY C.
NANKERIUS, BENTON R. WRIGHT,
12 GREGORY OSHEROFF, ROBERT H.
CHAPMAN, EDWARD B. KUIDIS,
13 SR., and MELVIN E. STRONG,
individually and on behalf of
14 all others similarly
situated,

15 Petitioners,

16 vs.

17 BOARD OF RETIREMENT OF THE
CONTRA COSTA COUNTY EMPLOYEES'
18 RETIREMENT ASSOCIATION; CONTRA
COSTA COUNTY EMPLOYEES'
19 RETIREMENT ASSOCIATION; DOES
ONE through THIRTY, inclusive,
20

21 Respondents.
_____ /

22 Petitioners allege:

23 1. Petitioners Vernon D. Paulson, Geoffrey C. Nankerius,
24 Benton R. Wright, Gregory Osheroff, Robert H. Chapman, Edward B.
25 Kuidis, Sr. and Melvin E. Strong are retired employees who are
26 members of the Contra Costa County Employees Retirement

No. **C 96-02939** ↓

PETITION FOR WRIT OF MANDATE
COMPELLING PAYMENT OF
RETIREMENT ALLOWANCES IN
CORRECT AMOUNTS

CLASS ACTION



1 Association by virtue of their former employment. Petitioners
2 currently receive retirement allowances from said Retirement
3 Association purportedly in accordance with and pursuant to the
4 County Employees Retirement Law of 1937, Chapter 3 of Division 4
5 of Title 3 of the California Government Code, which has been
6 adopted by the County of Contra Costa pursuant to Government Code
7 §§ 31500-31509, inclusive.

8 2. Petitioners, prior to and at the time of their
9 retirement, were public employees who regularly received cash
10 payments for various pay items which were not correctly credited
11 as "compensation" by Respondents for purposes of calculating
12 Petitioners' retirement allowances.

13 3. Petitioners bring this action for their own benefit and
14 on behalf of all retired members of the Contra Costa Employees
15 Retirement Association, their beneficiaries and their successors
16 in interest who have been and are being deprived by Respondents
17 of a part of the retirement allowances to which they are lawfully
18 entitled, as particularly set forth below. The question which is
19 the subject of this action is one of common and general interest
20 to all such persons who are affected by the conduct complained of
21 herein in the same manner as petitioners are affected and who are
22 so numerous that it is impractical to bring them all before the
23 Court.

24 4. Respondent Contra Costa County Employees' Retirement
25 Association ("Retirement Association") is a retirement
26 association organized and existing pursuant to California



1 Government Code §§ 31500 et seq. The Retirement Association
2 administers retirement, disability and death benefit plans for
3 the benefit of its members, participants and beneficiaries
4 including Petitioners herein.

5 5. Respondent Board of Retirement of the Contra Costa
6 County Employees' Retirement Association ("Board of Retirement")
7 is an agency of the County of Contra Costa and is responsible for
8 the management and control of the Retirement Association pursuant
9 to and in accordance with Government Code §§ 31520 - 31535,
10 inclusive.

11 6. Respondents Does One through Thirty, inclusive, are
12 fictitiously named Respondents so named because the true names
13 and capacities of such persons are not presently known to
14 Petitioners. Petitioners pray leave to amend to add these
15 fictitiously named Respondents when their names and capacities are
16 ascertained.

17 7. Under the County Employees Retirement Law of 1937, the
18 amount of the retirement allowances to be paid retired members of
19 the Retirement Association, their beneficiaries and their
20 successors in interest is set at a percentage of the "final
21 compensation" received by such members prior to retirement.

22 8. "Final compensation" for the purpose of computing said
23 retirement allowances is defined by Government Code §31462 as the
24 average annual compensation earnable by a member during his
25 period of final compensation.

26 9. "Compensation" for the purpose of computing said "final



1 compensation" is defined by Government Code §31460.

2 10. Certain active employees who are members of the
3 Retirement Association have regularly received cash compensation
4 payments from their employers designated as various pay items
5 including, but not limited to:

- 6 FLSA Premium Pay
- 7 Retroactive Pay Increases
- 8 Uniform Allowance
- 9 Educational Incentive
- 10 Sales Commissions
- 11 Certification Allowance
- 12 Management Incentive
- 13 CIA/CPA Incentive
- 14 P.O.S.T. Certificate
- 15 Department Head Auto Allowance
- 16 Peace Officers Career Incentive
- 17 Engineer Certificate Differeeeential
- 18 On-call/Standby Pay
- 19 Basic & Advanced Life Support Certificate
- 20 Emergency Medical Technician Certificate
- 21 Fire Emergency Recall
- 22 Weights and Measures Incentive
- 23 Watch Commander
- 24 Senior Right of Way Certificate
- 25 Acting Pay
- 26 Holiday Pay
- Physical Fitness Differential
- Special Position Stipends
- Registrar and Ambulatory Recognition Stipends
- Pay for Performance

19 11. At all times pertinent herein, respondent Board of
20 Retirement and its officers, agents, and employees, and Does One
21 through Thirty, inclusive, have had and continue to have the duty
22 by reason of the provisions of the County Employees Retirement
23 Law of 1937, when they include any such pay item for active
24 employees as "compensation" in determining and computing the
25 amount of retirement allowances, to also extend that
26 "compensation" designation to all similarly situated retired



1 members who received that pay item during the period used to
2 determine their "final compensation".

3 12. Respondent Board of Retirement has included the pay
4 items specified in paragraph 10 above and other pay items as
5 "compensation" for some retirees but has failed to include said
6 pay items as "compensation" in the calculation of retirement
7 benefits for all other similarly situated retirees for the full
8 term of their period of final compensation.

9 13. At all times herein, Respondents, and each of them,
10 have failed and refused to perform, and continue to fail and
11 refuse to perform, their duty, as set forth above, as a result of
12 which the Petitioners and the class they seek to represent have
13 been, are and will in the future, be deprived of a part of the
14 retirement allowances to which they are lawfully entitled, all to
15 their great and irreparable injury.

16 14. Petitioners have no plain, speedy or adequate remedy at
17 law to compel Respondents to perform such duties other than by
18 the issuance of a peremptory writ of mandate. A writ of mandate
19 is a proper and appropriate remedy to compel governmental
20 officers and agencies to pay retirement allowances to pensioners
21 in the amounts required by law.

22 15. Petitioners have exhausted all lawful, required and
23 non-futile administrative remedies.

24 16. By their actions as alleged herein, Respondents have
25 acted in an arbitrary and capricious manner and have abused their
26 discretion.



1 17. This action seeks to confer a significant benefit on
2 the general public within the meaning of California Code of Civil
3 Procedure §1021.5.

4 WHEREFORE, Petitioners pray judgment as follows:

5 1. For a peremptory writ of mandate issued under the seal
6 of this Court compelling Respondents and their officers, agents
7 and employees to take all actions necessary to include as
8 "compensation" in determining and computing the amount of the
9 retirement allowances due to Petitioners and the class they seek
10 to represent all pay items which the Board has designated to be
11 "compensation" and which items were paid to them during the
12 period used to determine their "final compensation", and to take
13 all actions necessary to compute and to pay such corrected
14 retirement allowances to Petitioners and the class they represent
15 in the amounts so determined and computed for the period
16 beginning three years immediately preceding the commencement of
17 this action until judgment becomes final herein, with interest at
18 the legal rate upon all such retroactive retirement allowance
19 payments and to compute and pay such corrected retirement
20 allowance amounts in future years.

21 2. That attorneys' fees be awarded to Petitioners pursuant
22 to Government Code §800, Government Code §31536, Code of Civil
23 Procedure §1021.5, and any other applicable section;

24 3. That Petitioners' attorneys be awarded reasonable
25 attorneys' fees from the common fund created by the judgment
26 herein, and that such fees be made a lien upon the judgment; and

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- 4. For Petitioners' costs of suit incurred herein; and
- 5. For such other and further relief as the Court deems just and proper.

Dated: 6/24, 1996

DAVIS, COWELL & BOWE

By W. David Holsberry
W. David Holsberry
Attorneys for Petitioners



**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 COUNTY PAY ITEMS
 For Settlement Purposes
 Last Revised 1/27/98**

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
no	02	Other Non-Ret Base	A category to report miscellaneous pay items that aren't to be included as retirement comp. (see also Code 50)
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
yes	06	Career Incentive	Similar to Longevity Pay
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	08	Management Incentive	Similar to Longevity Pay
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments
yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to about 20 mental hlth lead positions in mgmnt., Local 1 and Local 535 under terms of an MOU for unit leadership in 24 hour institutions.

yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient illnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
no	21	FLSA Overtime	
no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
yes	25	Gross Pay Adj.	Used for regular or differential pay missed in prior periods. Had been used in past for other, non-includible pay items which will now be reported under Code 02
no	26	AWOP	Reported as a negative number.
no	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions. Full new base is already included in Base Pay.
no	28	#3 Base Pay	
no	29	Furlough	
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in "on call" status.
no *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
yes	34	ER Bonus	Emergency room differential
no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	36	SR Fire Ret Allot	Amount paid to San Ramon Firefighters as a result of converting from 95% subvention w/o 414(h)(2) to 414(h)(2) with no subvention.
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferential	Pay for work on keyboard/VDT's.
yes	39	Prof Acct Differential	CPA/CIA/CMA certification

no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory
yes	47	Acting Pay	Pay for work in a temporary assignment. Currently paid to San Ramon firefighters only.
yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes *	50	Other Ret Base Pay	Miscellaneous pay items which are to be included in retirement compensation. This code is the "companion" to Code 02.
yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
yes	55	Hazard Pay Adjustment	Adjustment to Hazard Duty Pay
yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.
no	59	Mgmt. Disability Pay	Payments under a long-term disability insurance program for management employees.
no	60	Court Reporter Pay	Per diem paid to hourly court reporters not in the Retirement System
yes	62	Sale of Vacation	Value of vacation time sold back to county annually
no	63	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was NOT earned in the final compensation period. See also Code 80.

yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
yes	65	Structural Engineer	Pay for achieving/maintaining this certification.
yes	66	Haz Mat	Pay for working with hazardous materials
yes	67	Officer in Charge	Self explanatory
yes	68	Standby Diff.	Similar to On Call pay
no	70	Miscellaneous	Being phased out. Payroll reporting staff have been advised to use Code 50 for includible pay items and Code 02 for non-includible pay items.
no	71	Pay in Lieu	Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA
no	72	Sickleave Payoff	Payment, if made at all, is made only to members who terminate and take a refund of their account.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	75	FICA refund	
no	76	Hospital Contract Pay	
no	77	Contract Pay	
yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	80	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final compensation period. See also Code 63.
yes	83	Evening Clinic Bonus	Similar to shift differential.
yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
→ yes	88	Flex Medical Refund	Used in '94-'96 as a cash alternative to medical expenses.

→	yes	89	Medical Reimbursement	Used in '94-'96 along with pay code 88.
	yes	90	Phys. Weekend Rounds	A form of shift differential for physicians.
	yes	94	RN Hospital Diff.	Registered nurses.
	yes	95	Incident Response Team	Pay for serving on this team.
	yes	96	Lead Worker Bonus	self explanatory.
	No	---	Employer-paid member retirement contributions	
	No	---	Employer-paid insurance benefits.	

*** SPECIAL NOTES:**

- 13 We understand that this pay item is used to reflect a variety of lump sum payments not otherwise given their own code. This pay item should be used in the future for only those lump sum pay items which are includible as compensation under the Board's policy.
- 19 We understand that this pay item has been used to report time both scheduled and unscheduled. In this pay item should be used to report pay for scheduled work on a weekend.
- 32 The payroll system will have to distinguish between the pay for being in "on call" status (which is includible) versus the additional pay received if an employee is actually called in to work (which is not includible and will need a new pay item code.).
- 50 This Code and companion Code 02 were created from Code 70 to distinguish between miscellaneous pay items which should be included in compensation and those which shouldn't. Included here are such miscellaneous pay items as the coroner differential, "SIT" differential paid to two employees, added pay for serving on commissions and/or boards, etc.

Updated 1/27/99

plementing the "Ventura Decision"
Includible/Excludible SPECIAL DISTRICT Pay Items
April 14, 1998
 Last revised: 1/27/99

BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Pay	Regular straight time hours.
yes	Bonuses	Bonuses paid at various times of the year.
no	Overtime	Not allowed per Ventura decision/Retirement Board Policy.
yes	Sick Leave Used	Six days/year earned.
no	Sick "Cash Out"	No annual payoff allowed per District. 30 day maximum accumulation. Applied towards retirement only (add'l service credit).
yes	Vacation Used	Vacation hours.
yes	Vacation "Cash Out"	Annual sell-back allowed per District policy. Employees should take vacation annually, but may cash out amount not taken.
yes	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

BYRON-BRENTWOOD-KNIGHTSEN CEMETERY DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Pay	Regular straight time hours.
yes	Vacation Used	Vacation hours.
yes	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
yes	Sick Leave Used	Sick hours.
yes	Sick Payoff	Lump sum of accumulated, unused sick time, paid upon termination that was earned in the final compensation period. Can be paid off in full or for a portion of it; remainder applied towards retirement.
no	overtime	
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

CENTRAL CONTRA COSTA SANITARY DISTRICT

<u>Included</u>	<u>Pay Code</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	AA,11	Administrative leave	Three days leave for MS/CG or five days leave for Management to be used at employees' discretion per contract agreements
yes	AB,23	Birthday Holiday	General employees receive a paid leave day for his or her birthday per contract agreement.

CENTRAL CONTRA C		SANITARY DISTRICT (continued)	
<u>Included</u>	<u>Pay Code</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	CR	Capital Regular	Employee's regular time billed to a specific capital project.
yes	AC,7	Comp Time taken	Compensation in time off in lieu of pay. (part of regular pay-internal tracking)
yes	AH,6	Holiday	All District employees receive 13 paid holidays a year per contract agreements.
yes	10	Holiday Comp taken	In lieu of pay, employees may bank holiday time worked to be taken at a later date.
yes	18	Jury Duty	If an employee is called for jury duty, he/she may either take the time off with pay and turn over to the District any monies received, or he/she may take vacation leave or leave without pay and keep all the monies paid to the employee.
yes	19	Military Leave	Employees who are assigned to military duty are entitled to military leave in accordance with the provisions of applicable state laws.
yes	1	Regular Hours	The normal work week for most full-time, non-shift employees is eight hours per day, Monday through Friday.
yes	21	Other authorized absence	Paid time off that does not fall into any other category – sometimes used to pay someone awaiting disciplinary action.
yes	AS,9	Sick Leave & Adj.	Current regular or probationary employees, hired by the District prior to May 1, 1985 earn fifteen days sick leave per year. Regular or probationary employees hired after May 1, 1985 earn twelve sick days per year.
yes	3A	System Adjustment	This code makes up the difference between monthly hours compared to 173.3333 hours in order to create a full monthly salary amount.
yes	AV,8	Vacation & Adj.	Current regular or probationary employees, hired by the District prior to May 1, 1985 earn ten hours of vacation per month plus additional allowance for longevity after 5 years. Regular or probationary employees hired after May 1, 1985 earn 6.67 hours of vacation per month worked 0-3 years, and ten hours of vacation per month worked 3-5 years, plus additional allowance for longevity after five years worked. Vacation payoff includible to the extent that it was earned in the final compensation period.
yes	LP	Longevity	A two and one-half percent career service pay increase will be granted to employees after 10 years of employment with the District.
yes	RD	Registration Differential	Salary merit increase to regular employees who achieve registration or license as Professional Engineer, Land Surveyor, or Certified Public Accountant while employed by the District in a position not requiring such a registration or license.
yes	RS	Retirement Subv(>30yrs)	District employees who were members of CCCERA on or prior to March 1, 1973 and who have vested thirty years service in the Retirement Plan shall be entitled to receive a cash supplement to their compensation equivalent to and in lieu of any District payment granted and made as a portion of employee retirement contributions to the retirement program.
yes	5	Night Differential	Night shift differential applies only to employees who are regularly scheduled to work night shift. The rate of pay is determined by increasing the basic hourly salary for the job by seven and one-half percent.

CENTRAL CONTRA COSTA SANITARY DISTRICT (continued)

<u>Included</u>	<u>Pay Code</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	OC	Out of Class	A temporary assignment where an employee works in a higher classification in the absence of their supervisor, when the supervisor is absent for one or more continuous weeks. The employee shall receive a minimum of one salary step. Or, when a supervisor is absent for one or more continuous weeks and where more than one employee is assigned to the supervisor's responsibilities at different times during the absence, which may be less than one week per employee, then those employees shall receive a minimum of one salary step for the actual hours worked in the higher classification.
yes	12	Stand-by	Employees <i>required</i> to be on Stand-by Call are generally on call once every two months for one week. The employee on Stand-by Call receives nine hours extra overtime pay (at one and one-half times the basic pay) for the week on call. Pumping Station Operators receive eleven hours extra overtime pay for the week on call.
no	17	Stand-by Earned (O/T)	In addition to the basic stand-by compensation, the employee receives a minimum of three hours' pay at time and one-half for each initial call. If a call requires over three hours, the employee receives time and one-half for the actual time worked.
yes	4	Swing Differential	Swing Shift Differential applies only to employees who are regularly scheduled to work Swing Shift. The rate of pay is determined by increasing the basic hourly salary for the job by five percent.
yes	C1,C2,C3	Cafeteria Plan Cash	MS/CG employees are provided \$170 per month and Management employees are provided \$375 per month for use on the Cafeteria Plan or to be taken in cash as an option.
yes	MW	Medical Waiver	Employees having dual coverage under a health insurance program may withdraw from the District's health insurance coverage and, in lieu of such coverage, receive additional monthly compensation in the amount of \$140 effective May 1, 1996.
no	50	AWOP	Absent without Pay – reported as a negative number.
no	CO	Capital Project O/T-150%	Not allowed per Ventura decision/Retirement Board Policy.
no	CO	Capital Project O/T-200%	Not allowed per Ventura decision/Retirement Board Policy.
no	13	Comp Time Earned	Compensatory time for overtime worked at the rate of time and one-half hours may be accumulated as "Earned Overtime," to a maximum of forty hours per year and eighty hour limit of Earned Overtime taken per year.
no	16	Comp Time Earned-200%	Compensatory time for overtime worked on holidays at the rate of double time hours may be accumulated as "Earned Overtime," to a maximum of forty hours per year and eighty hour limit of Earned Overtime taken per year.
yes	3	Holiday Overtime	All regular employees who are <i>required</i> to work on a holiday, will be paid at the rate of time and one-half the normal regularly assigned basic pay rate in addition to the normal monthly pay except for New year's Day, Thanksgiving Day, and Christmas which will be paid at a double-time rate in addition to the normal monthly pay.
no	3	Holiday Overtime	All regular employees who are authorized to work on a holiday, will be paid at the rate of time and one-half the normal regularly assigned basic pay rate <i>in addition to the normal monthly pay</i> except for New year's Day, Thanksgiving Day, and Christmas which will be paid at a double-time rate in addition to the normal monthly pay.

CENTRAL CONTRA COSTA S. ...TARY DISTRICT (continued)

<u>Included</u>	<u>Pay Code</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	20	Holiday Comp Earned	Holiday Compensatory Time is earned when an employee's regular day off falls on a holiday. Earned at the rate of straight time and time off is given at the rate of straight time. (part of regular pay-internal tracking)
no	MS	Manual Salary Adjustment	Adjusts monthly salary when an employee is raised to a higher step if the raise was received in the middle of the paycycle. Full monthly salary at the higher amount reported to CCCERA.
no	15	Night Overtime	Night overtime is paid based on the employee's basic salary.
no	2	Regular Overtime	Not allowed per Ventura decision/Retirement Board Policy.
no	12	Stand-by Credit (Comp)	Compensatory time earned for stand-by O/T earned to be used as time off.
no	14	Swing Overtime	Swing overtime is paid based on the employee's basic salary.
yes	none	Provisional Appointments	A temporary assignment for a period of more than 30 days, generally not to exceed six months duration, where an employee assumes all the responsibilities of the higher class.
no	none	Contributed Time	Vacation or Comp time that is donated or contributed by another employee and becomes the sick time of the recipient. (Per Retirement Board action of March 10, 1998)
yes	none	Vacation Cash Out	All employees may sell back vacation time on an annual basis, however one bargaining group may only sell this time after showing economic hardship. All annual vacation sell back is includible for retirement purposes per Retirement Board action of March 10, 1998.
yes	none	Sick Leave Payoff	Central San has a collective bargaining agreement item that allows its' employees to receive cash for 85 % or 40% of their unused sick leave balances at termination. Per Retirement Board action of April 14, 1998, the payoff to the employee is included in final compensation to the extent of their annual accrual for sick leave and the full amount of sick leave on the books is applied as additional service credit for retirement purposes.
no	none	401(a) Contributions	District contributions to employees deferred compensation account - payments in lieu of District contributions to Social Security..
yes	none	Meal Allowance	Amounts paid to employees as meal allowance. No expense reimbursement is required to receive these monies. (Specifically, \$12 received for meals)
no		Employer-paid member retirement contributions	
no		Employer-paid insurance benefits	

CONTRA COSTA MOSQUITO & VECTOR CONTROL DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Pay	Regular straight time hours.
yes	Auto Allowance	In lieu of travel - currently affects one employee.
yes	Standby Pay	On-call for emergency response. (this pay item is seasonal, most employees elect to accrue comp time, but may elect to be paid)

CONTRA COSTA MOSQUITO & VECTOR CONTROL DISTRICT (continued)

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Per Diem	In effect 7/1/97 thru 12/31/97 only. (discontinued)
yes	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
no	Overtime	No ordinarily expected overtime.
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

CONTRA COSTA COUNTY HOUSING AUTHORITY DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Base Salary	This includes regular pay for hours worked and paid holidays, IRC 125/Cafeteria Payments which are employee pre-tax contributions for medical and dependent care expenses, and Utility Reading time. Video display/Word Processing differentials were folded into regular base pay salary schedule 6-1-93.
yes	Longevity Pay	Payment of a 2.5% differential to management employees with ten (10) years or more of service.
yes	Auto Allowance	Payment to designated management employee(s) for auto expense in lieu of "agency vehicle use".
yes	Sick Leave "Cash Out"	Payments for accrued sick leave hours in excess of the minimum threshold set by the Housing Authority (currently 200 hours); payment not to exceed 40 hours.
yes	Vacation "Cash Out"	Payments for accrued vacation hours. Limited to 50 % of the maximum annual vacation accrual per calendar year.
yes	Bi-lingual Pay	Payment differential to county certified Linguist.
yes	Terminal Leave Payments	Final/Last payments to employees who cease to be employed with the agency. Payment consists of all Annual Leave and Personal Holiday Leave on record at termination. Retirement benefit is limited to a maximum of one (1) year's accrual.
yes	Acting Pay	Temporary assignment working in a higher or different classification.
no	overtime	
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

DELTA DIABLO SANITATION DISTRICT

<u>Included</u>	<u>Pay Code</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	001	Regular Hours	Regular straight time hours.
yes	005	Holiday Hours	Straight time pay for holidays.
yes	007	Training Hours	Straight time pay for training/seminars.
yes	010	Union Work/O&M	Straight time pay for hours spent on negotiations.
yes	012	Union Work/P&T	Straight time pay for hours spent on negotiations.
yes	013	Union Work/Management	Straight time pay for hours spent on negotiations.
yes	014	Negative Pay Adjustment	Used to do negative adjustment for overpayment of regular hours.
yes	015	Pay Adjustment	Retroactive increase for regular hours.
yes	018	Salary Continuation	Special payment for medical leaves/reduces use of employee's leave banks. This enables an employee to receive up to 100% of regular salary while on a medical leave-combines with Worker's Compensation, SDI and employee sick leave not to exceed normal salary.
yes	031	Vacation Used	Vacation hours.
yes	041	Sick Leave Used	Sick leave hours.
yes	051	Comp Time Used	Compensatory time hours, not cash payment.
yes	061	Floating Holiday Used	Floating holiday hours.
yes	063	Administrative Hours Used	Administrative leave hours.
yes	070	Bereavement Leave	Straight time hours while on bereavement leave.
yes	071	Jury Duty	Straight time hours while on jury duty.
yes	072	Other Leave Hours	Straight time hours for special circumstances.
yes	073	Military Leave	Straight time hours while on reserve duty.
yes	081	Benefit Option	2-10% Deferred Compensation Benefit. An additional pay for some bargaining groups-is treated as part of regular salary but there are some stipulations as to a percentage that must be deferred into a Section 457 Plan.
yes	085	Industrial Injury	Straight time pay for on the job injury not yet eligible for worker's compensation.
yes	009	Standby Pay	One hour of pay for each four hours of stand-by in addition to normal wages.
yes	016	Out of Class	Compensation for working in a higher class or "acting pay".
yes	020	Car Allowance	Monthly allowance for District use of employee's vehicle.
yes	032	Vacation Sold	Accrued vacation hours sold. Operations and Maintenance Group cannot accumulate more than twice their annual accrual rate and do not have the option to sell vacation leave. The other bargaining groups have to meet certain stipulations but are allowed to sell up to their annual accrual rate (80 to 200 hours) depending on length of service.

DELTA DIABLO SANITATIC TRICT (continued)

<u>Included</u>	<u>Pay Code</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	032	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
yes	042	Sick Leave "Cash Out"	Annual incentive for non-use of sick leave (maximum eligible to be sold = 40 hours).
yes	080	Medical In Lieu	Payment in lieu of District's medical insurance.
yes	090	Swing Differential	Additional amount per hour for straight time work during "swing" shift.
yes	092	Grave Differential	Additional amount per hour for straight time work during "grave" shift.
yes	SA	Suggestion Award	Award for money saving and safety related implemented suggestions.
yes	TB	Trail Blazer Award	Award for implementing new ideas.
no	002	Overtime Hours	1.5 time hourly rate for hours worked in excess of "regular" hours.
no	003	Part Time Hours	Hours for employees that are not participants of CCCERA.
no	004	Double Time Hours	2.0 times hourly rate for hours worked in excess of 12 hours in a day.
no	008	Training Overtime	1.5 time hourly rate for hours worked in excess of "regular" hours for training.
no	011	Overtime Negative Adj.	Adjustment for overtime overpayment.
no	017	Overtime to Comp Time	Only affects overtime hours (is for budget distribution purposes).
no	033	Vacation Catastrophic Donations	Donation of Vacation Hours to a Leave Bank for Catastrophic Leaves.
no	043	Negative Sick Leave Used	Adjustment of sick leave bank.
no	052	Compensatory Time Sold	Compensatory hours sold (same as overtime wages).
no	083	Commute Allowances	For taxable purposes only.
no	084	Group Term Life Insurance	For taxable purposes only.
no	091	Swing Differential on O/T	Additional amount per hour for overtime work during "swing" shift.
no	093	Grave Differential on O/T	Additional amount per hour for overtime work during "grave" shift.
no	LT	L/T Disability Advance	Advance of third party payments (employee full wages already being reported).
no	WC	Worker's Comp Advance	Advance of third party payments (employee full wages already being reported).
yes	006	Holiday Overtime	Holiday is part of normal work schedule.
no	006	Holiday Overtime	Holiday is not part of normal work schedule.
no		Employer-paid member retirement contributions	
no		Employer-paid insurance benefits	

DIABLO WATER DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Pay	Regular straight time hours
no	Overtime	Not allowed per Ventura decision/Retirement Board Policy.
no	Comp Time Paid	Paid at time worked, at end of year or upon termination of employment.
yes	Holidays	Ten holidays observed by the District.
no	Holiday Overtime	Not part of regular work schedule.
yes	Vacation Used	Vacation Hours.
yes	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
yes	Per Diem Meal Allowance	Amount paid to employees as Per Diem. (Specifically, \$9 received for meals)
yes	Sick Leave Used	Sick leave hours.
yes	Bereavement Leave	Straight time hours while on bereavement leave.
yes	Jury Duty	Straight time hours while on jury duty.
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

IRONHOUSE SANITARY DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Pay	Regular straight time hours
no	Overtime	Not allowed per Ventura Decision/Retirement Board Policy.
yes	Vacation Used	Vacation hours.
yes	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
yes	Sick Leave Used	Sick leave hours.
yes	Standby Pay	Certain employees are assigned standby on a rotating schedule. (also known as "on call pay")
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

CITY OF PITTSBURG

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Hours	Regular straight time hours.
yes	Educational Incentive	Safety only- Peace Officer Standards & Training (POST) Certificates.

CITY OF PITTSBURG (continued)

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Dept Head Auto Allowance	Previously paid thru Accounts Payable.
yes	Other Auto Allowance	For other than dept. heads.
yes	Holiday Pay	Police officers required to work holidays.
yes	Longevity Pay	Paid to those hired prior to December 5, 1970 - 5% after 15 years of service and 7.5 % after 20 years of service.
yes	Lump Sum Payments	Retro for contract settlements or other lump sum payments.
yes	Management Incentive	Police Chief and Commanders only.
yes	Safety Uniform	Sworn Officers only.
yes	Uniform allowance	Non sworn personnel.
yes	Standby Pay	Emergencies may arise in city operations, so department heads shall prescribe stand-by service required to meet the needs of the city.
yes	Pay for Performance	Based on prior performance. Pay cannot exceed the value of 10% of the employee's base rate calculated for a three month time period.
yes	Shared Savings Pay	Recognize and reward outstanding performance while stimulating creativity and initiative in the performance of public services.
yes	Medical & Dental Alternative	Payment in lieu of medical/dental coverage.
yes	Vacation "Cash Out"	Annual vacation can be sold back up to 80 hours in a 12-month period.
yes	Vacation Payoff	Lump sum of accumulated, unused vacation, paid upon termination that was earned in the final compensation period.
no	Overtime	
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

RODEO SANITARY DISTRICT

<u>Included</u>	<u>Pay Item</u>	<u>Explanation</u>
yes	Regular Hours	Regular straight time pay.
yes	Swing Shift Differential	In contract, but nobody currently earning this.
yes	Holiday Hours	Straight time pay for holidays.
no	Holiday Overtime	Not part of regularly scheduled hours.
yes	Acting Pay	Temporary assignment working in a higher or different classification.
yes	Sick Leave Used	Sick hours.
yes	Vacation Used	Vacation hours.
yes	Vacation payoff	Maximum accrual of 30 days, must use, be paid off or lose those hours in excess of 30 days (payment allowed to the extent that vacation time was earned in the final compensation period.
no	Employer-paid member retirement contributions	
no	Employer-paid insurance benefits	

EXCLUDIBLE FOR ALL DISTRICTS

- no Employer-paid member contributions
- no Employer-paid insurance benefits

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**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 SAN RAMON VALLEY FIRE DISTRICT**

For Settlement Purposes

Last Revised 3/23/99

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
no	02	Other Non-Ret Base	A category to report miscellaneous pay items that aren't to be included as retirement comp. (see also Code 50)
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
Yes	F05	Fire Mgmt Educ Incentive	5% permanent Educational Incentive for Fire Mgmt
yes	06	Career Incentive	Similar to Longevity Pay
yes	F06	Fire Mgmt Educ Incentive	2.5% for Fire Management Employees only
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	F07	Fire Mgmt Educ Incent Cont.	Additional for Fire Management Employees only
yes	08	Management Incentive	Similar to Longevity Pay
yes	F08	Fire Mgmt Longevity Pay	Fire Management Employees District longevity
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
Yes	F09	Fire San Ramon Longevity	San Ramon Valley Fire Longevity
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
Yes	F10	Fire Holiday Pay	Holiday pay for San Ramon Valley Fire.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift

yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments
yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to about 20 mental hlth lead positions in mgmnt., Local 1 and Local 535 under terms of an MOU for unit leadership in 24 hour institutions.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient illnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
yes	F20	Fire Scheduled FLSA Pay	Scheduled FLSA pay paid as a flat amount
no	21	FLSA Overtime	
no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
yes	25	Gross Pay Adj.	Used for regular or differential pay missed in prior periods. Had been used in past for other, non-includible pay items which will now be reported under Code 02
no	26	AWOP	Reported as a negative number.
no	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions. Full new base is already included in Base Pay.
yes	F27	Fire ALSEC Paramedic	10% differential to qualified paramedics assigned to Advanced life support Engine Company
no	28	#3 Base Pay	
no	29	Furlough	
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	F30	Fire Paramedic Training	For all paramedic training on duty
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes	F31	Fire Basic Life Support	BLS for San Ramon Valley Fire only
yes *	32	On Call Pay	Pay for being in "on call" status.

Yes	F32	Fire Advanced Life Support	ALS for San Ramon Valley Fire only
no *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
	yes	34	ER Bonus Emergency room differential
no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	36	SR Fire Ret Allot	Amount paid to San Ramon Firefighters as a result of converting from 95% subvention w/o 414(h)(2) to 414(h)(2) with no subvention.
yes	F36	SR Fire Ret Allot	Off set to retirement deduction – SRVF only
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferential	Pay for work on keyboard/VDT's.
yes	F38	Fire Sched. FLSA OT	SRVFD only – scheduled FLSA overtime
yes	39	Prof Acct Differential	CPA/CIA/CMA certification
no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
No	F40	Vol/Reserve Firefighters	Reserve/Voluntary Fire Fighter pay.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory
yes	47	Acting Pay	Pay for work in a temporary assignment. Currently paid to San Ramon firefighters only.
Yes	F47	Fire Acting Pay	Acting Pay for firefighters – San Ramon and Rodeo Fire only
yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes *	50	Other Ret Base Pay	Miscellaneous pay items which are to be included in retirement compensation. This code is the "companion" to Code 02.

yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
yes	55	Hazard Pay Adjustment	Adjustment to Hazard Duty Pay
yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.
no	59	Mgmt. Disability Pay	Payments under a long-term disability insurance program for management employees.
no	60	Court Reporter Pay	Per diem paid to hourly court reporters not in the Retirement System
yes	62	Sale of Vacation	Value of vacation time sold back to county annually
no	63	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was NOT earned in the final compensation period. See also Code 80.
yes	F63	Fire Standby Diff.	Standby at 5% of reg pay – San Ramon Valley Fire District only
yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
yes	F64	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation off-duty Standby Team
yes	65	Structural Engineer	Pay for achieving/maintaining this certification.
yes	66	Haz Mat	Pay for working with hazardous materials
yes	F66	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation off-duty Standby Team
yes	67	Officer in Charge	Self explanatory
yes	F67	Fire Recall & Standby	Local 1230 Fire Inspectors assigned to participate in the Fire Investigation Off-duty Standby
yes	68	Standby Diff.	Similar to On Call pay

yes	F68	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation Off-duty Standby Team
no	70	Miscellaneous	Being phased out. Payroll reporting staff have been advised to use Code 50 for includible pay items and Code 02 for non-includible pay items.
no	71	Pay in Lieu	Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA
no	72	Sickleave Payoff	Payment, if made at all, is made only to members who terminate and take a refund of their account.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	75	FICA refund	
no	76	Hospital Contract Pay	
no	77	Contract Pay	
yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	80	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final compensation period. See also Code 63.
yes	83	Evening Clinic Bonus	Similar to shift differential.
yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
yes	88	Flex Medical Refund	Used in '94-'96 as a cash alternative to medical expenses.
yes	89	Medical Reimbursement	Used in '94-'96 along with pay code 88.
yes	90	Phys.Weekend Rounds	A form of shift differential for physicians.
yes	94	RN Hospital Diff.	Registered nurses.

yes	95	Incident Response Team	Pay for serving on this team.
yes	96	Lead Worker Bonus	self explanatory.
No	---	Employer-paid member retirement contributions	
No	---	Employer-paid insurance benefits.	

*** SPECIAL NOTES:**

- 13 We understand that this pay item is used to reflect a variety of lump sum payments not otherwise given their own code. This pay item should be used in the future for only those lump sum pay items which are includible as compensation under the Board's policy.
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- 50 This Code and companion Code 02 were created from Code 70 to distinguish between miscellaneous pay items which should be included in compensation and those which shouldn't. Included here are such miscellaneous pay items as the coroner differential, "SIT" differential paid to two employees, added pay for serving on commissions and/or boards, etc.

Updated 3/17/99

**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 MORAGA-ORINDA FIRE PROTECTION DISTRICT**

For Settlement Purposes

Last Revised 3/23/99

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
no	02	Other Non-Ret Base	A category to report miscellaneous pay items that aren't to be included as retirement comp. (see also Code 50)
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
Yes	F05	Fire Mgmt Educ Incentive	5% permanent Educational Incentive for Fire Mgmt
yes	06	Career Incentive	Similar to Longevity Pay
yes	F06	Fire Mgmt Educ Incentive	2.5% for Fire Management Employees only
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	F07	Fire Mgmt Educ Incent Cont.	Additional for Fire Management Employees only
yes	08	Management Incentive	Similar to Longevity Pay
yes	F08	Fire Mgmt Longevity Pay	Fire Management Employees District longevity
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments

yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to about 20 mental hlth lead positions in mngmnt., Local 1 and Local 535 under terms of an MOU for unit leadership in 24 hour institutions.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient illnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
yes	F20	Fire Scheduled FLSA Pay	Scheduled FLSA pay paid as a flat amount
no	21	FLSA Overtime	
no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
yes	25	Gross Pay Adj.	Used for regular or differential pay missed in prior periods. Had been used in past for other, non-includible pay items which will now be reported under Code 02
no	26	AWOP	Reported as a negative number.
no	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions. Full new base is already included in Base Pay.
yes	F27	Fire ALSEC Paramedic	10% differential to qualified paramedics assigned to Advanced life support Engine Company
no	28	#3 Base Pay	
no	29	Furlough	
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	F30	Fire Paramedic Training	For all paramedic training on duty
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in "on call" status.
no *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
yes	34	ER Bonus	Emergency room differential

no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferencial	Pay for work on keyboard/VDT's.
yes	39	Prof Acct Differential	CPA/CIA/CMA certification
no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
No	F40	Vol/Reserve Firefighters	Reserve/Voluntary Fire Fighter pay.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory
yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes *	50	Other Ret Base Pay	Miscellaneous pay items which are to be included in retirement compensation. This code is the "companion" to Code 02.
yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
yes	55	Hazard Pay Adjustment	Adjustment to Hazard Duty Pay
yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.
no	59	Mgmt. Disability Pay	Payments under a long-term disability insurance program for management employees.
no	60	Court Reporter Pay	Per diem paid to hourly court reporters not in the Retirement System

yes	62	Sale of Vacation	Value of vacation time sold back to county annually
no	63	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was NOT earned in the final compensation period. See also Code 80.
yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
yes	F64	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation off-duty Standby Team
yes	65	Structural Engineer	Pay for achieving/maintaining this certification.
yes	66	Haz Mat	Pay for working with hazardous materials
yes	F66	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation off-duty Standby Team
yes	67	Officer in Charge	Self explanatory
yes	F67	Fire Recall & Standby	Local 1230 Fire Inspectors assigned to participate in the Fire Investigation Off-duty Standby
yes	68	Standby Diff.	Similar to On Call pay
yes	F68	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation Off-duty Standby Team
no	70	Miscellaneous	Being phased out. Payroll reporting staff have been advised to use Code 50 for includible pay items and Code 02 for non-includible pay items.
no	71	Pay in Lieu	Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA
no	72	Sickleave Payoff	Payment, if made at all, is made only to members who terminate and take a refund of their account.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	75	FICA refund	
no	76	Hospital Contract Pay	
no	77	Contract Pay	

yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	80	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final compensation period. See also Code 63.
yes	83	Evening Clinic Bonus	Similar to shift differential.
yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
yes	88	Flex Medical Refund	Used in '94-'96 as a cash alternative to medical expenses.
yes	89	Medical Reimbursement	Used in '94-'96 along with pay code 88.
yes	90	Phys.Weekend Rounds	A form of shift differential for physicians.
yes	94	RN Hospital Diff.	Registered nurses.
yes	95	Incident Response Team	Pay for serving on this team.
yes	96	Lead Worker Bonus	self explanatory.
No	---	Employer-paid member retirement contributions	
No	---	Employer-paid insurance benefits.	

*** SPECIAL NOTES:**

- 13 We understand that this pay item is used to reflect a variety of lump sum payments not otherwise given their own code. This pay item should be used in the future for only those lump sum pay items which are includible as compensation under the Board's policy.
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- 50 This Code and companion Code 02 were created from Code 70 to distinguish between miscellaneous pay items which should be included in compensation and those which shouldn't. Included here are such miscellaneous pay items as the coroner differential, "SIT" differential paid to two employees, added pay for serving on commissions and/or boards, etc.

Updated 3/17/99

**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 RODEO HERCULES FIRE DISTRICT
 For Settlement Purposes**

Last Revised 3/23/99

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
no	02	Other Non-Ret Base	A category to report miscellaneous pay items that aren't to be included as retirement comp. (see also Code 50)
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
Yes	F05	Fire Mgmt Educ Incentive	5% permanent Educational Incentive for Fire Mgmt
yes	06	Career Incentive	Similar to Longevity Pay
yes	F06	Fire Mgmt Educ Incentive	2.5% for Fire Management Employees only
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	F07	Fire Mgmt Educ Incent Cont.	Additional for Fire Management Employees only
yes	08	Management Incentive	Similar to Longevity Pay.
yes	F08	Fire Mgmt Longevity Pay	Fire Management Employees District longevity
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commissioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments

yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to about 20 mental hlth lead positions in mgmnt., Local 1 and Local 535 under terms of an MOU for unit leadership in 24 hour institutions.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient illnes.
Yes	F19	Fire Call Back Pay	Paid on annual basis – Rodeo Hercules.
yes	20	Scheduled FLSA	Overtime that’s normally expected to be worked
yes	F20	Fire Scheduled FLSA Pay	Scheduled FLSA pay paid as a flat amount
no	21	FLSA Overtime	
no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
yes	25	Gross Pay Adj.	Used for regular or differential pay missed in prior periods. Had been used in past for other, non-includible pay items which will now be reported under Code 02
no	26	AWOP	Reported as a negative number.
no	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions. Full new base is already included in Base Pay.
yes	F27	Fire ALSEC Paramedic	10% differential to qualified paramedics assigned to Advanced life support Engine Company
no	28	#3 Base Pay	
no	29	Furlough	
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	F30	Fire Paramedic Training	For all paramedic training on duty
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in “on call” status.
no *	new	On-Call Overtime	Pay for work when actually called in while in “on call” status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus

yes	F33	Fire EMT Diff	EMT Diff for Rodeo Hercules only
yes	34	ER Bonus	Emergency room differential
no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferential	Pay for work on keyboard/VDT's.
yes	39	Prof Acct Differential	CPA/CIA/CMA certification
no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
No	F40	Vol/Reserve Firefighters	Reserve/Voluntary Fire Fighter pay.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory
yes	F47	Fire Acting Pay	Acting Pay for Firefighters – San Ramon /Rodeo
yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes *	50	Other Ret Base Pay	Miscellaneous pay items which are to be included in retirement compensation. This code is the "companion" to Code 02.
yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
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yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.

no	59	Mgmt. Disability Pay	Payments under a long-term disability insurance program for management employees.
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yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
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yes	66	Haz Mat	Pay for working with hazardous materials
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no	72	Sickleave Payoff	Payment, if made at all, is made only to members who terminate and take a refund of their account.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.

no	75	FICA refund	
no	76	Hospital Contract Pay	
no	77	Contract Pay	
yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	80	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final compensation period. See also Code 63.
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yes	87	Rad/Angio Pay	A form of hazardous duty pay.
yes	88	Flex Medical Refund	Used in '94-'96 as a cash alternative to medical expenses.
yes	89	Medical Reimbursement	Used in '94-'96 along with pay code 88.
yes	90	Phys.Weekend Rounds	A form of shift differential for physicians.
yes	94	RN Hospital Diff.	Registered nurses.
yes	95	Incident Response Team	Pay for serving on this team.
yes	96	Lead Worker Bonus	self explanatory.
No	---	Employer-paid member retirement contributions	
No	---	Employer-paid insurance benefits.	

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- 50 This Code and companion Code 02 were created from Code 70 to distinguish between miscellaneous pay items which should be included in compensation and those which shouldn't. Included here are such miscellaneous pay items as the coroner differential, "SIT" differential paid to two employees, added pay for serving on commissions and/or boards, etc.

Updated 3/17/99

**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 BETHEL ISLAND FIRE DISTRICT**

For Settlement Purposes

Last Revised 3/23/99

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
no	02	Other Non-Ret Base	A category to report miscellaneous pay items that aren't to be included as retirement comp. (see also Code 50)
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
Yes	F05	Fire Mgmt Educ Incentive	5% permanent Educational Incentive for Fire Mgmt
yes	06	Career Incentive	Similar to Longevity Pay
yes	F06	Fire Mgmt Educ Incentive	2.5% for Fire Management Employees only
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	F07	Fire Mgmt Educ Incent Cont.	Additional for Fire Management Employees only
yes	08	Management Incentive	Similar to Longevity Pay
yes	F08	Fire Mgmt Longevity Pay	Fire Management Employees District longevity
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments

yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to about 20 mental hlth lead positions in mngmnt., Local 1 and Local 535 under terms of an MOU for unit leadership in 24 hour institutions.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient illnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
yes	F20	Fire Scheduled FLSA Pay	Scheduled FLSA pay paid as a flat amount
no	21	FLSA Overtime	
no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
yes	25	Gross Pay Adj.	Used for regular or differential pay missed in prior periods. Had been used in past for other, non-includible pay items which will now be reported under Code 02
no	26	AWOP	Reported as a negative number.
no	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions. Full new base is already included in Base Pay.
yes	F27	Fire ALSEC Paramedic	10% differential to qualified paramedics assigned to Advanced life support Engine Company
no	28	#3 Base Pay	
no	29	Furlough	
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	F30	Fire Paramedic Training	For all paramedic training on duty
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in "on call" status.
no *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
yes	34	ER Bonus	Emergency room differential

no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
yes	37	Word Processing	Pay for work on keyboard/VDT's
yes	38	VDT diferential	Pay for work on keyboard/VDT's.
yes	39	Prof Acct Differential	CPA/CIA/CMA certification
no	40	Reserve Pay	The regular pay of hourly firefighters working as Reserves. Hourly firefighters are not covered by CCCERA.
No	F40	Vol/Reserve Firefighters	Reserve/Voluntary Fire Fighter pay.
yes	41	OES Differential	Pay for assignment to Office of Emergency Services.
yes	42	Grade All Differential	Pay for work on a particular piece of equipment.
yes	43	Investigator Pay	Paid to Sheriff's investigators.
yes	44	Charge Nurse Diff	Assignment to charge nurse duties.
yes	45	Building Inspector Diff.	Self-explanatory
yes	48	Performance Stipend	
yes	49	Double Shift Premium	self explanatory
yes *	50	Other Ret Base Pay	Miscellaneous pay items which are to be included in retirement compensation. This code is the "companion" to Code 02.
yes	52	Shift Pay	Pay for working any shift after 5:00 p.m.
yes	53	Shift Pay Adj.	Adjustment to Shift Pay previously recorded.
yes	54	Hazard Duty Pay	Pay for exposure to hazards on the job.
yes	55	Hazard Pay Adjustment	Adjustment to Hazard Duty Pay
yes	56	Board and Commission	Paid to Board of Supervisors while "sitting" in the capacity of a commission. Also paid to Ret. Bd. Sheriff, Planning Dept. and Transportation Dept.
yes	57	Bilingual Pay	Bonus for being bilingual in specified positions
yes	58	Truck Allowance	Received by 7 Animal Services and Health Services employees for using a truck while commuting to and from work.
no	59	Mgmt. Disability Pay	Payments under a long-term disability insurance program for management employees.
no	60	Court Reporter Pay	Per diem paid to hourly court reporters not in the Retirement System

yes	62	Sale of Vacation	Value of vacation time sold back to county annually
no	63	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was NOT earned in the final compensation period. See also Code 80.
yes	64	Uniform Allowance	Pay in recognition that uniforms must be worn for the Job. Paid to non-safety employees: animal services, Plumbers, painters, etc.
yes	F64	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation off-duty Standby Team
yes	65	Structural Engineer	Pay for achieving/maintaining this certification.
yes	66	Haz Mat	Pay for working with hazardous materials
yes	F66	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation off-duty Standby Team
yes	67	Officer in Charge	Self explanatory
yes	F67	Fire Recall & Standby	Local 1230 Fire Inspectors assigned to participate in the Fire Investigation Off-duty Standby
yes	68	Standby Diff.	Similar to On Call pay
yes	F68	Fire Investigation standby	Local 1230 #29 monthly pay diff for Fire Inspectors assigned to participate in the Fire Investigation Off-duty Standby Team
no	70	Miscellaneous	Being phased out. Payroll reporting staff have been advised to use Code 50 for includible pay items and Code 02 for non-includible pay items.
no	71	Pay in Lieu	Extra amount received by employees who don't receive regular County benefits and aren't covered by CCCERA
no	72	Sickleave Payoff	Payment, if made at all, is made only to members who terminate and take a refund of their account.
yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	75	FICA refund	
no	76	Hospital Contract Pay	
no	77	Contract Pay	

yes	78	Uniform-Safety	Pay in recognition that uniforms must be worn for the job: safety members
yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	80	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final compensation period. See also Code 63.
yes	83	Evening Clinic Bonus	Similar to shift differential.
yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
yes	88	Flex Medical Refund	Used in '94-'96 as a cash alternative to medical expenses.
yes	89	Medical Reimbursement	Used in '94-'96 along with pay code 88.
yes	90	Phys.Weekend Rounds	A form of shift differential for physicians.
yes	94	RN Hospital Diff.	Registered nurses.
yes	95	Incident Response Team	Pay for serving on this team.
yes	96	Lead Worker Bonus	self explanatory.
No	---	Employer-paid member retirement contributions	
No	---	Employer-paid insurance benefits.	

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Updated 3/17/99

**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 EAST DIABLO FIRE PROTECTION DISTRICT
 For Settlement Purposes**

Last Revised 3/17/99

Included	Code	Pay Item	Explanation
no	01	Taxable Auto	Additional mileage that Assessors receive in excess of the Fed. Maximum. Also includes \$3/day charged to employees using a county car to commute.
no	02	Other Non-Ret Base	A category to report miscellaneous pay items that aren't to be included as retirement comp. (see also Code 50)
yes	03	Dept Head Auto	Pay for business use of personal auto.
yes	04	Riteoway Pay	Form of hazardous duty pay for work in traffic situations.
yes	05	Longevity Pay	Bonus based upon length of County service.
Yes	F05	Fire Mgmt Educ Incentive	5% permanent Educational Incentive for Fire Mgmt
yes	06	Career Incentive	Similar to Longevity Pay
yes	F06	Fire Mgmt Educ Incentive	2.5% for Fire Management Employees only
yes	07	Career Incentive CTG	Similar to Longevity Pay
yes	F07	Fire Mgmt Educ Incent Cont.	Additional for Fire Management Employees only
yes	08	Management Incentive	Similar to Longevity Pay
yes	F08	Fire Mgmt Longevity Pay	Fire Management Employees District longevity
yes	09	Assessors Education	Bonus for achieving professional certification for certain employees.
yes	10	Holiday Pay	Pay for work on a scheduled holiday.
yes	11	Agric.Differential	For possession of Commisioner License
yes	12	Wght/Meas Incentive	For possession of Weights and Measures License
yes *	13	Lump Sum Payment	
yes	14	Nurses Weekend Bonus	Pay to nurses who work a weekend shift
yes	15	Holiday Pay (1996)	Pay for hours not otherwise scheduled to work.
yes	15	Search Warrant Pay (1997)	Animal Services employees for special assignments

yes	16	Nurses Longvity	Same as Management Pay
yes	17	Watch Commander	Safety category, form of shift differential
yes	18	Mental Hlth Lead Diff.	Paid to about 20 mental hlth lead positions in mngmnt., Local 1 and Local 535 under terms of an MOU for unit leadership in 24 hour institutions.
yes *	19	Call Back/Weekend	Pay to med. Personnel if called in on weekend or After hours due to patient illnes.
yes	20	Scheduled FLSA	Overtime that's normally expected to be worked
yes	F20	Fire Scheduled FLSA Pay	Scheduled FLSA pay paid as a flat amount
no	21	FLSA Overtime	
no	22	Overtime Adj. Prior Yr.	Payroll adjusting entry
no	23	Overtime Adj. Curr. Yr.	Payroll adjusting entry
yes	25	Gross Pay Adj.	Used for regular or differential pay missed in prior periods. Had been used in past for other, non-includible pay items which will now be reported under Code 02
no	26	AWOP	Reported as a negative number.
no	27	#2 Base Pay	Used when an employee works a portion of a month at different pay rate. Working out of class or mid-month promotions. Full new base is already included in Base Pay.
yes	F27	Fire ALSEC Paramedic	10% differential to qualified paramedics assigned to Advanced life support Engine Company
no	28	#3 Base Pay	
no	29	Furlough	
yes	30	Training Diff.	Flat monthly amount paid to Sheriff staff for periods they train staff.
yes	F30	Fire Paramedic Training	For all paramedic training on duty
yes	31	BLS Cert-Fire	Basic Life Support Training bonus
yes *	32	On Call Pay	Pay for being in "on call" status.
no *	new	On-Call Overtime	Pay for work when actually called in while in "on call" status.
yes	33	EMT Diff-Fire	Emergency Medical Technician bonus
yes	34	ER Bonus	Emergency room differential

no	35	Workers Comp Pay	Paid by WC on account of illness and in lieu of salary. Not taxed
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yes	73	Physical Fitness	For safety members
yes	74	Crt. Appearance Pay (1996)	Self explanatory
yes	74	Advncd. Life Support(1997)	Pay for achieving/maintaining this certification.
no	75	FICA refund	
no	76	Hospital Contract Pay	
no	77	Contract Pay	

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yes	79	Special Bonus	Used to pay bonuses for special assignment.
yes	80	Vac/PTO Payoff	Lump sum of accumulated, unused vacation, paid upon termination, that was earned in the final compensation period. See also Code 63.
yes	83	Evening Clinic Bonus	Similar to shift differential.
yes	84	Holiday overtime adj.	Adjustment to Holiday Pay
yes	85	Graveyard Pay	Similar to shift differential.
no	86	SDI Buyback	Offsetting payments in the state disability insurance program. Not a wage item.
yes	87	Rad/Angio Pay	A form of hazardous duty pay.
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Updated 3/17/99

**IMPLEMENTING THE "VENTURA DECISION"
 INCLUDIBLE AND EXCLUDIBLE
 CONSOLIDATED FIRE
 For Settlement Purposes**

Last Revised 3/23/99

Included	Code	Pay Item	Explanation
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Updated 3/17/99

SETTLEMENT AGREEMENT

1. The undersigned parties, subject to Superior Court approval after notice to members of the proposed class, hereby agree to settle the cases of *Paulson v. Contra Costa County Employees' Retirement Association*, Contra Costa Superior Court No. C-96-02939 ("*Paulson*") and *Walden v. Contra Costa County Employees' Retirement Association*, Contra Costa County Superior Court No. C-97-03935 ("*Walden*") (collectively, the "Actions") on the following terms:

THE PARTIES

2. The parties to this Settlement Agreement (the "Settlement Agreement") consist of the following persons or entities: the named Petitioners in the above-named cases, Vernon D. Paulson, Geoffrey C. Nankerius, Benton R. Wright, Gregory Osheroff, Robert H. Chapman, Edward B. Kuidis, Sr., Melvin E. Strong, Herman Walden, Bruce N. Williams, Jeffrey Millman, Philip C. Shaof, in their individual and representative capacities (the "Named Petitioners"); the members of the Class who do not opt out of this Settlement ("Class Members"); the County of Contra Costa, the City of Pittsburg, the Bethel Island Municipal Improvement District, the Central Contra Costa Sanitary District, the Contra Costa Housing Authority, the Contra Costa Mosquito Abatement and Vector Control District, the Delta Diablo Sanitation District, the Diablo Water District, the Rodeo Sanitary District, the Contra Costa County Fire Protection District, the East Diablo Fire Protection District, the Moraga-Orinda Fire Protection District, and the San Ramon Valley Fire Protection District, and Rodeo-Hercules Fire Protection District, Ironhouse Sanitary District, Bethel Island Fire Protection District, (collectively the "Employers"); and the Contra Costa County Employees' Retirement Association ("CCCERA") and the Board of Retirement of the Contra Costa County Employees' Retirement Association (the "Retirement Board"). These persons or entities shall collectively be referred to as the "Parties." The following districts are participants in CCCERA but do not have any members who retired on or before September 30, 1997, and therefore are not Parties to this Settlement

Agreement Byron, Brentwood, Knightsen Union Cemetery District, and the Local Agency Formation Commission.

SETTLEMENT OF ACTIONS

3. IT IS HEREBY STIPULATED AND AGREED by, between, and among the Parties, through their duly authorized counsel, that the Actions, and any of the matters raised by the Actions, are hereby settled and compromised in full and will be dismissed on the merits and with prejudice on the terms and conditions set forth in this Settlement Agreement. The settlement, compromise, and dismissal with prejudice set forth herein shall be subject to approval by the Contra Costa County Superior Court (the "Superior Court") following notice to the proposed members of the Class as referenced below.

CONSOLIDATION OF CASES AND APPROVAL OF SETTLEMENT

4. The Parties to this Settlement agree to make appearances in both the *Paulson* and *Walden* Actions as necessary to obtain approval of this Settlement and certification of the class referenced below. The Parties agree to jointly move the Superior Court to consolidate the *Paulson* and *Walden* Actions, and agree to jointly move the Superior Court to certify the class referenced below, approve the Settlement, and thereupon dismiss the Actions with prejudice.

DEFINITION OF CLASS AND CLASS COUNSEL

FOR PURPOSES OF SETTLEMENT

5. The Named Petitioners in the *Paulson* and *Walden* Actions shall serve as the Class Representatives of a Petitioners' Class (the "Class"). The Class shall be certified for purposes of settlement of the Actions. The Class shall consist of all retired members of CCCERA whose effective retirement date was on or before September 30, 1997 and their beneficiaries.

6. As used in this Settlement Agreement, the term "Petitioners' Counsel" shall mean the law firm of Davis, Cowell & Bowe LLP.

TERMS AND METHODOLOGY OF SETTLEMENT

7. For compensation earned on or before September 30, 1997 by Class Members or by active employees all Parties agree to accept both the inclusions and exclusions from pensionable compensation set forth in Exhibit "A" hereto, which is incorporated herein by reference. These inclusions and exclusions will be made on a retroactive basis to calculate the retirement benefits of all Class Members. However, the increased benefits will be limited by the three-year statute of limitations set forth in California Code of Civil Procedure § 338(a), counting backwards from September 1, 1997, so that the increased benefits will be cut off as of September 1, 1994. Any increased benefits will be paid together with 7% per annum simple interest.

8. All Parties agree that the increased cost of the benefit payments called for by this Settlement Agreement shall be dealt with as if it were an unforeseen contingency that has created an experience loss, due to the increased cost of benefits granted to active employees and retirees for which contributions were not previously collected. Consequently, the normal costs for this unforeseen contingency will be funded, going forward from October 1, 1997, from increased contributions from the employers and active members in accordance with current policies. However, the portion of the unfunded liability arising from the underpayment of past contributions by employers, retirees, and active employees prior to that October 1, 1997 date shall be treated as an experience loss and shall be added to the Unfunded Actuarial Accrued Liability, which is reduced solely by employer contributions on an amortized basis, or by possible transfers from the Reserve Against Deficiencies in the discretion of the Retirement Board.

9. CCCERA will offset the increase in the Unfunded Actuarial Accrued Liability caused by this Settlement Agreement by a transfer of funds from the Reserve Against Deficiencies to the Employer Advance Reserve of \$90,000,000.00 (ninety million dollars). CCCERA shall not be obligated to make any further transfers from the Reserve Against Deficiencies to fund any increased benefit payments called for by this Settlement. However,

nothing in this Agreement prevents any Employer from asking the Retirement Board (at its discretion) to consider and make any such further transfer.

10. Neither the Class Members nor employees active after September 30, 1997 will be required to pay retroactive contributions otherwise due on additional pensionable compensation earned on or before September 30, 1997 as a result of including the items listed on Exhibit A hereto.

11. No additional contributions to fund the benefit payments called for by this Settlement will be required of any Employer until the actual claims for increased benefits have been made by the Class Members and evaluated and the real costs of the benefit payments can be more accurately calculated against CCCERA's initial \$90,000,000.00 asset transfer. Until that time, the Retirement Board will utilize an estimated actuarial liability of \$90,000,000.00 for the cost of the benefits, which will exactly offset the initial asset transfer, and which will be reduced along with the actuarial assets as the benefits are paid, maintaining a net differential of zero until the real costs of the benefit payments can be more accurately determined as set forth above. If the calculated liabilities then exceed the funds remaining from the initial \$90,000,000.00 transfer, then each employer's actual costs will become the basis for calculating any required additional employer contributions in order to eliminate any cross-subsidization among employers with regard to the payment of any such additional contributions. These additional employer contributions shall be amortized as a level dollar amount over a 20-year period commencing from the time that the differential in assets and liabilities is first calculated, unless a shorter period is otherwise agreed to between that employer and the Retirement Board.

12. If the initial \$90,000,000.00 asset transfer proves more than sufficient to fully fund the benefit payments, then the remaining unmatched excess assets will remain in the Employer Advance Reserve where they, like all other actuarial assets in the Employer Advance Reserve, will have the effect of reducing the need for future employer contributions otherwise required to reduce the Unfunded Actuarial Accrued Liability on an amortized basis.

13. All Parties shall bear their own costs and attorneys' fees. The Class Members agree to waive any and all claims for payment of their attorneys' fees and costs by CCCERA, the Retirement Board, or any Employer participating in this Settlement Agreement.

SETTLEMENT REPRESENTS COMPROMISES BY ALL PARTIES

14. The Settlement represents compromises by all Parties as set forth in the inclusions and exclusions identified in Exhibit A and the other terms of this Settlement Agreement. All Parties further gain from the termination of the litigation, as well as avoiding the attendant uncertainties and costs of complex litigation.

NOTICE TO CLASS MEMBERS AND HANDLING OF CLAIMS

15. The Board will provide Petitioners' Counsel for use in connection with this Settlement and for no other purpose, with a listing of all members of the proposed Class, along with each member's effective retirement date and last known address on address labels (the "Notice Information"). Petitioners' Counsel shall preserve the confidentiality of the Notice Information and use it only in connection with this Settlement and for no other purpose. The Board will provide the Notice Information to Petitioners' Counsel no later than 30 (thirty) days after the Superior Court has certified the class for settlement purposes and approved the form of notice to the Class. Petitioners' Counsel shall then be responsible for mailing a notice to each proposed Class Member no later than 30 (thirty) days after receiving the notice information from the Board. Petitioners' Counsel shall use the form of notice agreed upon by the Parties, which is attached hereto as Exhibit "B."

16. In addition, Petitioners' Counsel will publish a summary of the Class notice in such newspapers and/or periodicals and on such dates as are determined by CCCERA and Petitioners' Counsel. This summary notice shall include a brief notice of: (i) the proposed Settlement; (ii) the date, time, and place of any Superior Court hearing concerning approval of the Settlement; (iii) a proposed Class Member's right to object to the Settlement or request

exclusion from the Settlement; and (iv) information on how a proposed Class Member can obtain further information or ask questions concerning the Settlement. This summary notice shall be published at least once in each of the publications selected and agreed upon by CCCERA and Petitioners' Counsel.

17. The proposed Class Members shall have 30 (thirty) days from the postmarked date that notice was mailed to them in order to decide whether to remain in the Class or opt out of the Class. The request for exclusion shall be sent to the Clerk of the Superior Court, by first class mail, postage prepaid, sent to the address provided in the form of notice. All such requests for exclusion must be postmarked no later than 30 (thirty) days from the postmarked date of the notice sent to the Class Member. If the Parties' Settlement is approved by the Superior Court, then any proposed Class Member who has not submitted a timely, written request for exclusion from the Class shall be bound by all subsequent proceedings, orders, judgments, and settlements in the Actions.

18. Following the Superior Court's final approval of the Settlement and entry of its final order and judgment dismissing the Actions with prejudice, Petitioners' Counsel shall be responsible for sending to each Class Member a claim form for the Class Member to use if he or she wishes to submit a claim. The form of claim form agreed upon by the Parties is attached hereto as Exhibit "C". Class Members will submit the completed claim form to Petitioners' Counsel. The completed claim form shall contain: (i) the name and social security number of the retiree; (ii) the name and social security number of the beneficiary if the retiree is deceased; (iii) the name of the county department or district the retiree worked for during his/her final compensation period; (iv) the list of job classifications for which the retiree worked and received compensation during the final compensation period; (v) the list of differentials received during the final compensation period that should be considered and for what portion of the period such differentials were paid; (vi) copies of pay stubs or any additional supporting evidence in the claimant's possession that would validate his or her claim; and (vii) the claimant's current mailing address and telephone number.

19. Petitioners' Counsel shall send out the claim forms to the Class Members within 30 (thirty) days of the Superior Court's order providing final approval of the Settlement and dismissal of the Actions with prejudice. The Class Members must provide a completed claim form postmarked within 6 (six) calendar months from the date that the claim form was sent to the Class Member. If a Class Member has not submitted the claim form within this six-month period, the Class Member shall be permanently foreclosed and prohibited from submitting any claim for any increase in retirement benefits as a result of the inclusion of any item listed on Exhibit A. For purposes of enforcement of this six-month deadline, a completed claim form that is submitted within the six-month time frame but that is found to contain incomplete or incorrect information shall not be considered untimely, and the Class Member shall not be foreclosed or prohibited from submitting a corrected claim form within a 90 days of the postmark date of any notification that the original claim form was incomplete or contained inaccurate information.

20. Petitioners' Counsel will receive and screen the claims forms for completeness, and will contact the claimant to obtain any missing information before the claim is submitted to CCCERA, which will then evaluate each submitted claim, or return it to Petitioner's Counsel if it remains incomplete to obtain complete information from the claimant. Petitioners' Counsel will further screen the claims for potential eligibility, and will be responsible for communicating a rejection of claim to those Class Members whose claim forms show that they are not eligible to receive any increased benefits, either because they are not in the Class, or because they served in employment positions which did not receive any differentials that are subject to relief under this Settlement.

21. The burden of showing actual receipt of any included pay item listed on Exhibit A during the time period used to compute final compensation will remain with each Class Member. Although the burden of proof will remain with the Class Member, that burden may be satisfied from evidence in the employer records (to the extent that such records can be located by the Employer or CCCERA using reasonable efforts), even if the Class Member has no independent

documentary evidence in his or her own possession to show receipt of an included pay item within the final compensation period.

22. In the event that the claims process fails to produce agreement between the claimant and CCCERA, all affected Parties agree to undertake a good faith effort to resolve the dispute informally through negotiation and discussion. If this good faith effort does not result in a negotiated resolution of the dispute, then the matter will be submitted to binding arbitration. The costs of such binding arbitration will be evenly split between the parties to the arbitration, with each party to bear its own attorneys' fees and costs.

FINALITY OF SETTLEMENT AGREEMENT

23. All Parties agree that this Settlement Agreement settles and resolves all issues between the Parties with respect to the compensation to be considered for retirement benefits for the Class with respect to all of the items listed in Exhibit A, as well as the right to, and amount of, such retirement benefits. All Parties further agree that this Settlement is intended to be complete and final with respect to the issues that it has resolved, and that the Settlement will not be changed on behalf of the settling Parties or the Class Members in response to later court developments, whether favorable or unfavorable. All Parties agree that any subsequent determinations by a court of competent jurisdiction that enlarge, define, narrow, or in any other way relate to the scope of the decision of the California Supreme Court in *Ventura County Deputy Sheriffs' Association v. Board of Retirement*, 16 Cal. 4th 483 (1997) ("*Ventura County*") or the items of compensation to be included for benefit purposes under the 1937 County Employees Retirement Act shall have no effect on this Settlement or its terms. Although this Agreement is intended to be binding on the Parties regarding the retirement treatment of all pay items and benefits listed on Exhibit A, nothing in this Agreement is intended to expand or to limit, or to affect in any way, either positively or negatively, whatever rights any Party may have regarding the future continuation, modification or elimination of any listed pay item or benefit.

24. This Settlement Agreement constitutes the entire agreement among the Parties. The Parties expressly acknowledge that no other agreements, arrangements or understandings exist between them that are not expressed in this Settlement Agreement.

25. All Parties agree that this Settlement Agreement is clear and unambiguous, and agree that it was drafted by the respective counsel for the Parties at arm's length. All Parties agree that no parol or other evidence outside this Agreement may be offered to explain, construe, contradict, or clarify the terms of the Settlement Agreement, the intent of the Parties or their counsel, or the circumstances under which the Settlement Agreement was made or executed. Each Party, and counsel for each Party, has reviewed and revised, or has had the opportunity to review and revise, this Agreement, and accordingly, any rules of construction of this State, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendment of it.

26. The terms and provisions of this Settlement Agreement may only be amended, modified or expanded by written agreement of those Parties affected by the particular amendment sought.

27. In the event that this Settlement does not receive final approval by the Superior Court, then:

This Settlement Agreement shall be null and void and shall have no force or effect, and no party to this Settlement Agreement shall be bound by any of its terms;

This Settlement Agreement, all of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of any of the Parties or any Class Member;

All Parties shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement; and

Neither the provisions of this Settlement Agreement, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever.

AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT

28. Petitioners' Counsel represents that it is authorized to enter into this Agreement on behalf of the Named Petitioners. Petitioners' Counsel represents that it is seeking to protect the interests of the entire Class.

29. Each of the Named Petitioner Class Representatives represents and certifies (i) that he or she has read the operative pleadings in the Actions; (ii) that he or she has read this Settlement Agreement and agrees to its terms; (iii) that he or she has agreed to serve as a Representative of the Class proposed to be certified herein; (iv) that he or she is willing, ready, and able to perform all of the duties and obligations of a Representative of the Class; (v) that he or she has consulted with Petitioners' Counsel regarding the Actions, the Settlement Agreement, and the obligations of a Class Representative; (vi) that he or she has authorized Petitioners' Counsel to execute this Agreement on his or her behalf; and (vii) that he or she will remain and serve as a Representative of the Class, until the terms of the Settlement Agreement are effectuated, or until the Superior Court at any time determines that the Class Representative cannot represent the Class.

30. Each person executing this Settlement Agreement on behalf of any Party other than the Named Petitioners represents that he/she is authorized to enter into this Settlement Agreement on behalf of the Party for whom he/she is executing this Settlement Agreement.

CLASS MEMBERS' ACCESS TO CASE MATERIALS

31. Upon request by any Class Member, Petitioners' Counsel shall make available to the Class Member copies of the pleadings generated in the Actions, as well as this Settlement Agreement including all of its attached Exhibits.

CHOICE OF LAW AND EXCLUSIVE FORUM

32. This Settlement Agreement and any ancillary agreements shall be governed by, and interpreted according to, the laws of the State of California.

33. Any action to enforce this Agreement shall be commenced and maintained in the Superior Court for the State of California, Contra Costa County, and shall not be commenced or maintained in any other court.

MUTUAL RELEASE AND DISCHARGE

34. Effective upon the final approval of this Settlement Agreement by the Superior Court, the Class, the Named Petitioners in their individual and representative capacities on behalf of the Class Members, and the Parties, on their own behalf and on behalf of each of their respective officers, directors, employees, attorneys, agents, servants, representatives, predecessors, successors, assigns, heirs and executors **HEREBY RELEASE AND DISCHARGE** each other and each other's respective officers, directors, employees, attorneys, agents, servants, representatives, predecessors, successors, assigns, heirs and executors from any and all claims, demands, causes of action, obligations, damages and liabilities, known and unknown, suspected and unsuspected, that they, or any of them, now own or hold, or at any time heretofore or hereafter may have against each other that were asserted, or that could have been asserted in connection with, or that in any way relate to the inclusion in or exclusion from compensation for purposes of calculating retirement benefits of any of the items listed on Exhibit A and earned on or before September 30, 1997, or to the employer or employee contributions or asset transfers in any way related to those items. This mutual release and discharge does not include the obligations and rights created by this Settlement Agreement. Further, this mutual release and discharge does not preclude any action to enforce the terms of this Settlement Agreement.

WAIVER AND RELINQUISHMENT OF UNKNOWN CLAIMS

35. It is understood and agreed that with respect to the releases set forth in this Settlement Agreement, all rights under California Civil Code section 1542 and any similar law of any state or territory of the United States are hereby expressly waived and relinquished by the Parties. Section 1542 reads as follows:

"Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

36. In waiving and relinquishing the provisions of section 1542 of the California Civil Code, the Parties acknowledge that they may hereafter discover facts, information or evidence in addition to or different from those facts, information or evidence which they now believe to exist or be true, with respect to the subject matter of the Actions and other matters released herein, including the possibility of further clarifications and development in the case law pertaining to the inclusion or exclusion of items listed on Exhibit A in or from pensionable compensation under the provisions of the 1937 Retirement Act. The Parties agree that they have taken that possibility into account in determining the amount of consideration to be given under this Settlement Agreement. Further, the Parties agree that the releases given herein shall remain in effect as a full and complete general release of the matters described above, notwithstanding discovery of the existence of any such additional or different facts, information or evidence, or developments in the case law.

MATTERS AND RESERVATIONS APPLICABLE TO ENTIRE AGREEMENT

37. Nothing in this Settlement Agreement shall be interpreted as preventing CCCERA, its agents, and the employers from communicating with the Class Members within the normal course of their business activities.

38. The Settlement Agreement, its terms, and the negotiations and court proceedings relating to this Settlement Agreement shall not be construed as, or offered as, evidence of any kind in the Actions or in any other action or proceeding (except for a proceeding to enforce this Settlement Agreement).

39. The Settlement Agreement, its terms, and the negotiations and court proceedings relating to this Settlement Agreement shall not be construed as, or offered as, any type of evidence, admission, or concession of any liability or wrongdoing on the part of any person or entity. Defending Parties deny any wrongdoing alleged in the Actions and do not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that were alleged or could have been alleged against them in the Actions.

40. This Settlement Agreement shall be binding upon and for the benefit of the Parties hereto, their respective predecessors, successors, devisees, assigns, heirs, executors, affiliates, representatives, officers, directors, agents and employees.

41. The Parties and their attorneys undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in implementing the terms of this Settlement Agreement.

42. The Parties and their attorneys agree to cooperate fully with one another and agree to use their best efforts in obtaining consolidation of the Actions, Superior Court approval of the Settlement Agreement, and certification of the Class for settlement purposes. The Parties and their attorneys agree to execute any legal documents necessary to effectuate consolidation of the Actions, Superior Court approval of the Settlement Agreement, and certification of the Class.

43. The headings used in this Settlement Agreement are included for ease of reference, and such headings shall not control the specific language of any provision of this Settlement Agreement.

44. This Settlement Agreement shall not be binding upon any of the Parties until all of the Parties or their representatives have executed this Settlement Agreement.

45. This Settlement Agreement may be signed in counterparts, each of which shall constitute a duplicate original. Executed facsimile copies shall be deemed duplicate originals.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement on the following dates, through their authorized representatives as designated below.

RETIREMENT BOARD AND CCCERA

APPROVED AND AGREED TO BY AND ON BEHALF OF CONTRA COSTA EMPLOYEES' RETIREMENT ASSOCIATION ("CCCERA")

By: Patricia F. Wright

Dated: 3/12/99

APPROVED AND AGREED TO BY AND ON BEHALF OF BOARD OF RETIREMENT OF THE CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("RETIREMENT BOARD")

By: Patricia F. Wright

Dated: 3/12/99

NAMED PETITIONERS AND CLASS REPRESENTATIVES

APPROVED AND AGREED TO BY AND ON
BEHALF OF VERNON D. PAULSON

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF GEOFFREY C. NANKERIUS

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF BENTON R. WRIGHT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF GREGORY OSHEROFF

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF ROBERT H. CHAPMAN

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF EDWARD B. KUIDIS, SR.

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF MELVIN E. STRONG

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF HERMAN WALDEN

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF BRUCE N. WILLIAMS

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF JEFFREY MILLMAN

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF PHILIP C. SHAOF

By: _____

Dated: _____

EMPLOYERS

APPROVED AND AGREED TO BY AND ON
BEHALF OF COUNTY OF CONTRA COSTA

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF CITY OF PITTSBURG

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF BETHEL ISLAND MUNICIPAL
IMPROVEMENT DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF CENTRAL CONTRA COSTA
SANITARY DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF CONTRA COSTA HOUSING
AUTHORITY

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF CONTRA COSTA MOSQUITO
ABATEMENT and VECTOR CONTROL
DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF DELTA DIABLO SANITATION
DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF DIABLO WATER DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF RODEO SANITARY DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF CONTRA COSTA COUNTY FIRE
PROTECTION DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF EAST DIABLO FIRE
PROTECTION DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF MORAGA-ORINDA FIRE
PROTECTION DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF SAN RAMON VALLEY FIRE
PROTECTION DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF RODEO-HERCULES FIRE
PROTECTION DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF IRONHOUSE SANITARY
DISTRICT

By: _____

Dated: _____

APPROVED AND AGREED TO BY AND ON
BEHALF OF BETHEL ISLAND FIRE
PROTECTION DISTRICT

By: _____

Dated: _____

Time of Request: Wednesday, May 13, 2009 20:35:49 EST
Client ID/Project Name: 45/3.1
Number of Lines: 2068
Job Number: 1823:156814613

Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 9
Source: CA Cases, Administrative Decisions & Attorney General Opinions, ...
Search Terms: october w/10 2003 and ventura and retirement

Send to: LEUNG-FOX, OLIVIA
WILLIAM D ROSS
520 S GRAND AVE STE 300
LOS ANGELES, CA 90071-2600



9 of 18 DOCUMENTS

In re RETIREMENT CASES. [Eight coordinated cases.*]

* *Francis v. Board of Retirement of the Stanislaus County Employees' Retirement Association* (A097568; Stanislaus County Super. Ct. No. 172034); *Los Angeles County Professional Peace Officers' Association v. Board of Retirement of the Los Angeles County Employees' Retirement Association* (A097692; L.A. County Super. Ct. Nos. BS 051355, BS 051774); *Teamsters Union Local 856, AFL-CIO v. Board of Retirement of the San Mateo County Employees' Retirement Association* (A097701; San Mateo County Super. Ct. No. 404187); *Price v. Board of Retirement of the Sacramento County Employees' Retirement System* (A097705; Sacramento County Super. Ct. No. 97 CS 03043); *Buda v. Sacramento County Employees' Retirement System* (A097744; Sacramento County Super. Ct. No. 98 CS 00703); *Sacramento County Deputy Sheriff's Association v. Board of Retirement of the Sacramento County Employees' Retirement System* (A097924; Sacramento County Super. Ct. No. 98 CS 00443); *Service Employees International Union, Local 535, AFL-CIO v. Tulare County Employees' Retirement Board* (A098686; Tulare County Super. Ct. No. 98-183750).

A097568, A097692, A097701, A097705, A097744, A097924, A098686

**COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT,
DIVISION TWO**

110 Cal. App. 4th 426; 1 Cal. Rptr. 3d 790; 2003 Cal. App. LEXIS 1044; 2003 Cal. Daily Op. Service 6083; 2003 Daily Journal DAR 7643

July 11, 2003, Filed

SUBSEQUENT HISTORY: [***1]

Review denied by *In re Retirement Cases, 2003 Cal. LEXIS 7772 (Cal., Oct. 15, 2003)*

PRIOR HISTORY: Superior Court of San Francisco County, JCCP No. 4049, Stuart R. Pollak, Judge. Stanislaus County Super. Ct. No. 172034; L.A. County Super. Ct. Nos. BS 051355, BS 051774; San Mateo County Super. Ct. No. 404187; Sacramento County Super. Ct. No. 97 CS 03043; Sacramento County Super. Ct. No. 98 CS 00703; Sacramento County Super. Ct. No. 98 CS 00443; Tulare County Super. Ct. No. 98-183750.

DISPOSITION: Judgments affirmed.

SUMMARY:**CALIFORNIA OFFICIAL REPORTS SUMMARY**

Numerous petitions were filed on behalf of retired county employees seeking writs of mandamus against county retirement boards operating under the County Employees Retirement Law of 1937 (CERL), *Gov. Code, § 31450 et seq.* The suits sought rulings that a 1997 interpretation of compensation earnable was retroactive, that arrears contributions could not be collected from members not benefiting from retroactive relief, and that cash-outs by employees of unused leave upon separation, insurance-related payments made by employers, and employer pick-ups of mandatory employee retirement contributions should be included in the calculation of

final compensation for retirement benefits. The trial court ruled that the 1997 decision was retroactive. It held that retirement boards had the discretion to collect arrears contributions; that full arrears contributions were authorized, but not mandatory. Finally it ruled that the items of remuneration which the retired employees sought to have calculated as final compensation need not be included under CERL in the calculation of pension benefits. (Superior Court of San Francisco County, JCCP No. 4049, Stuart R. Pollak, Judge.)

The Court of Appeal affirmed. The 1997 judicial interpretation was retroactive. The interpretation did not establish a new law; it gave effect to the statutory rule, which had previously been misconstrued, thus enforcing the contractual right of employees to have their retirement calculated as mandated by CERL. The counties and retirement boards failed to meet their [*427] burden of proving that they would suffer a substantial hardship as a result of correcting mistakes in calculations based on an erroneous interpretation of law. The trial court's decision to retain jurisdiction to address any issue that might arise regarding the collection of arrears contributions was sound and correct. Until each retirement board had exercised its discretion to correct for its miscalculations under CERL, a trial court would not be able to determine whether the board had abused its discretion. The court held that certain items of remuneration that did not involve cash payments to the employee prior to his or her retirement should not be included in calculations of final compensation. The court held that it was the legislature's express intent to exclude employer payments into flexible benefit plans and payments of insurance carrier premiums from the calculation of retirement benefits because an insurance premium is an in-kind benefit, which is not compensation under *Gov. Code*, § 31460. Finally, the court held that a pick-up, an employer contribution directly to the retirement fund on behalf of an employee member, is not compensation under *Gov. Code*, § 31460, because it does not involve any deduction from the employee's salary. (Opinion by Lambden, J., with Haerle, Acting P. J., and Ruvolo, J., concurring.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports

(1) Pensions and Retirement Systems § 6--Generally--

Amount and Computation of Benefits.--County retirement boards are required to determine whether items of remuneration paid to employees qualify as "compensation" under *Gov. Code*, § 31460, and "compensation earnable" pursuant to *Gov. Code*, § 31461, and must be included as part of a retiring employee's "final compensation" for purposes of calculating the amount of a pension. (*Gov. Code*, §§ 31462 or 31462.1)

(2) **Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.**--Items of "compensation" paid in cash, even if not earned by all employees in the same grade or class, must be included in the "compensation earnable" and "final compensation" on which an employee's pension is based under the County Employees Retirement Law of 1937, *Gov. Code*, § 31450 *et seq.*

(3) **Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.**--The County Employees Retirement Law of 1937 (CERL), *Gov. Code*, § 31450 *et seq.*, mandates that the funds for [*428] the pensions contain both employer and employee contributions and that the level of funding be based on actuarial valuations. Under CERL, an employee's pension is a combination of a retirement annuity based on the employee's accumulated contributions supplemented by a pension established with county contributions sufficient to equal a specified fraction of the employee's "final compensation." Administration of a CERL pension system includes a determination of what payments in addition to base pay must be included when determining an employee's "final compensation."

(4) **Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.**--When determining what payments are to be included in the calculation of pension benefits under the County Employees Retirement Law of 1937 (CERL), *Gov. Code*, § 31450 *et seq.*, courts use the definitions provided in CERL and resolve any ambiguity or uncertainty in favor of the pensioner, mindful that such construction must be consistent with the clear language and purpose of the statute.

[2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency and Employment, § 340.]

(5) Appellate Review § 143--Scope of Review--

Discretion of Trial Court--Authority of Appellate Court.--In a case involving retirement plans under the County Employees Retirement Law of 1937 (*Gov. Code*, § 31450 *et seq.*), the trial court's ruling that neither fairness nor public policy warranted an exception to the retroactivity rule under the abuse of discretion standard was subject to appellate review. The trial court, acting as a court of equity, had discretion to fix a more realistic starting date for the payment of retroactive benefits to class members. To the extent that counties and retirement boards contended the trial court erred in its application of the law, the appellate court applied the *de novo* standard of review. Those findings of fact that supported the trial court's ruling, the appellate court reviewed for substantial evidence.

(6) Limitation of Actions § 27--Period of Limitation--Statutory Liabilities.--*Code Civ. Proc.*, § 338, *subd. (a)*, provides a three-year statute of limitations on actions for liability created by statute. [*429]

(7) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--Limited Retroactivity.--The courts are not compelled to choose simply between a retroactive or prospective application of a judicial decision, but have the discretion to give the decision limited retroactive application.

(8) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.--When retirement allowances have been improperly calculated, courts have held that the pensions should be recalculated and the affected plan participants should receive retroactive relief, assuming the relief is timely. Retirement boards do not have the discretion to exclude items from the calculation that they have determined meet the statutory definition of "compensation earnable" under *Gov. Code*, § 31461.

(9) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--In General.--Judicial decisions do not establish a new rule of law for purposes of exclusion from the rule of retroactivity when the court gives effect to a statutory rule that the courts had theretofore misconstrued or had not definitively addressed. Thus, prior misconstruction of a statute by the courts does not prevent the retroactive application of an authoritative interpretation by the California Supreme Court.

(10) Pensions and Retirement Systems § 6--Generally

--Amount and Computation of Benefits.--Once a retirement board in a county sets contribution rates based upon the recommendation of its actuary, those rates are binding on the county.

(11) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.--Unless one of the exceptions to the retroactivity rule applies, any error in the calculation of a pension results in the retirees receiving a pension based on the corrected mistake and any sums of money due on past payments.

(12) Courts § 36--Decisions and Orders--Prospective and Retroactive Decisions--Judicial Discretion--Factors Considered--Hardship.--Courts which have refused to apply a judicial rule retroactively on the grounds of hardship have generally imposed this exception to the rule of retroactivity when retroactivity jeopardizes a legal right. To preserve people's legal claims, the California Supreme Court has sometimes refused to apply its decision overruling its own earlier opinion to cases already filed. [*430]

(13) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--In General.--Retroactive application of an unforeseeable procedural change is disfavored when such application would deprive a litigant of any remedy whatsoever.

(14) Pensions and Retirement Systems § 3--Generally--Administration.--Where underfunding occurs because a retirement board in a county mistakenly miscalculates pension benefits, the board is authorized to collect both arrears contributions and interest for the period in question.

(15) Pensions and Retirement Systems § 3--Generally--Administration--Actuarial Valuation.--County Employees Retirement Law of 1937, *Gov. Code*, § 31450 *et seq.*, requires that each actuary for a retirement system conduct a formal actuarial valuation within one year after the date on which any system becomes effective, and thereafter at intervals not to exceed three years. (*Gov. Code*, § 31453.) The actuary is therefore required to conduct a new valuation of the retirement system at least every three years and determine the extent to which prior assumptions must be changed.

(16) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--In General.--Federal

decisions have limited relevance to whether a California Supreme Court's decision, which interprets a California statute, should have retroactive application. The determination whether a constitutional decision of the United States Supreme Court is retroactive--that is, whether the decision applies to conduct or events that occurred before the date of the decision--is a matter of federal law. When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions.

[9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 978 et seq.]

(17) Courts § 34--Decisions and Orders--Prospective and Retroactive Decisions--In General.--Even presuming that the narrow exception for retroactivity created by the United States Supreme Court cases in the pension and Title VII context remains good authority, this exception has limited applicability to California law. [*431]

(18) Statutes § 20--Construction--Generally--Judicial Function--De Novo Review.--With regard to a question of statutory construction, the appellate court reviews a trial court's ruling under the de novo standard of review.

(19) Statutes § 27--Construction--Generally--Liberality.--With regard to pension legislation, pension provisions shall be liberally construed, and courts resolve all ambiguities in favor of the pensioner. However, this rule of liberal construction is applied for the purpose of effectuating obvious legislative intent and should not blindly be followed so as to eradicate the clear language and purpose of the statute and allow eligibility for those whom it was obviously not intended.

(20) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.--To be included in the calculation of pension benefits, the court must first determine what items of remuneration fall into the broad definition of "compensation" under *Gov. Code*, § 31460, and then determine whether they fall within the narrower category of "compensation earnable" as defined in *Gov. Code*, § 31461, and thus form the basis for the calculation of "final compensation" on which the pension is based pursuant to *Gov. Code*, §§ 31462 or 31462.1.

(21) Pensions and Retirement Systems § 6--Generally

--Amount and Computation of Benefits.--Whether sick leave or vacation time is included in the calculations for pension benefits does not bear on plan members' vested rights to this time, nor does it in any way compel them to cash-out prior to retirement. Rather, if the members do not or cannot cash out their time prior to retiring, they have received an "in-kind" benefit, not to be calculated as part of their "final compensation."

(22) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.--Termination pay that is received upon retirement is not required under the County Employees Retirement Law of 1937, *Gov. Code*, § 31450 et seq., to be included in the calculation of pension benefits.

(23) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits--Cash Payments.--*Gov. Code*, § 31461, is ambiguous in some respects, but under *Gov. Code*, § 31460, "compensation" must be cash payments, not in-kind advantages. *Gov. Code*, § 31460, includes any remuneration paid in cash and any amount [*432] deducted from the employee's wages for a deferred compensation plan. Contributions not deducted from an employee's wages do not constitute "compensation."

(24) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits--Compensation.--Under *Gov. Code*, § 31460 the definition of "compensation" is limited to cash remuneration provided to the employee for his or her services. An employee who has his or her insurance premiums paid by the employer is receiving an insurance premium, not a cash payment. Thus, it is an in-kind benefit, which is not "compensation" under *Gov. Code*, § 31460.

(25) Pensions and Retirement Systems § 6--Generally--Amount and Computation of Benefits.--The Legislature's express intent not to include employer payments into flexible benefit plans and payments of insurance carrier premiums as "compensation" under County Employees Retirement Law of 1937 (CERL), *Gov. Code*, § 31450 et seq., is consistent with the language of CERL, is in harmony with the statutory framework of CERL as a whole, and is consistent with the interpretation of CERL as set forth in a 1997 decision of the California Supreme Court.

(26) Pensions and Retirement Systems § 6--Generally

--Amount and Computation of Benefits--Pick-Ups.--*Gov. Code, § 31460*, defines "compensation" as "the remuneration paid in cash plus any amount deducted from a member's wages for participation in a deferred compensation plan. Under *Gov. Code, § 31460*, any sum deducted from a member's wages for participation in a deferred compensation plan is "compensation" under the statute, but a county contribution to an employee's deferred compensation plan is not. This reasoning applies to retirement benefit pick-ups as well. When pick-ups are not deducted from the employee's salary, they are not "compensation" under *Gov. Code, § 31460*.

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Thomas F. Casey III, County Counsel (San Mateo) and Brenda B. Carlson, Deputy County Counsel, for Defendants and Appellants (retirement boards).

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Jones, Day, Reavis & Pogue, Elwood Lui, Scott D. Bertzyk and Eugenia Castruccio Salamon for Real Parties in Interest and Appellants (Counties).

Jones, Day, Reavis & Pogue, Elwood Lui, Scott D. Bertzyk, Eugenia Castruccio Salamon; Lloyd W. Pellman, County Counsel (Los Angeles), Raymond G. Fortner and Roger M. Whitby, Deputy County Counsel, for Real Party in Interest and Appellant County of Los Angeles.

JUDGES: LAMBDEN, J.; Haerle, Acting P. J., and Ruvolo, J., concurred.

OPINION BY: Lambden

OPINION

[**796] LAMBDEN, J.--The counties involved in these consolidated appeals maintain employee retirement plans under the County Employees Retirement Law of 1937 (CERL) as codified in 1947. (*Gov. Code, § 31450 et seq.*)¹ (1) The retirement boards in these counties are required to determine whether items of remuneration paid to employees qualify as "compensation" under *section 31460* and " [***3] compensation earnable" pursuant to *section 31461*, and therefore must be included as part of a retiring employee's "final compensation" (§ 31462 or § 31462.1) for purposes of calculating the amount of a pension.

1 All further unspecified code sections refer to the Government Code.

Prior to 1997, many, if not all, of the 20 retirement boards operating under CERL calculated employees' pension benefits according to the holding in *Guelfi v. Marin County Employees' Retirement Assn.* (1983) 145 Cal. App. 3d [*434] 297 [193 Cal. Rptr. 343] (*Guelfi*). The *Guelfi* court held that an item of "compensation" under CERL must be received by all employees in the applicable grade or class of position for it to be a mandatory part of a retiring employee's "compensation earnable" and "final compensation" on which an employee's pension is based. (*Id. at pp. 303-307.*) [***4] (2) Fourteen years later, our Supreme Court, in *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 [66 Cal. Rptr. 2d 304, 940 P.2d 891] (*Ventura*), overruled *Guelfi's* interpretation of "compensation earnable," holding that "items of 'compensation' paid in cash, even if not earned by all employees in the same grade or class, must be included in the 'compensation earnable' and 'final compensation' on which an employee's pension is based." (*Ventura, supra, at p. 487.*)

The *Ventura* court declined to consider whether its decision should have retroactive application, which now is one of the questions before us. After numerous counties and retirement boards refused to apply the *Ventura* holding retroactively, Randall E. Francis, a retired county employee, filed a petition for writ of mandamus (*Code Civ. Proc., § 1085*) on behalf of himself and other members of his class against the Board of Retirement of the Stanislaus County Employees'

Retirement [**797] Association, with the County of Stanislaus as real party in interest, alleging that *Ventura* must be applied [***5] retroactively; that arrears contributions or interest collected cannot, among other things, be from members not benefiting from retroactive relief; and that cash-outs of unused leave upon separation from service, employer's payments for insurance premiums, and employer's payments to the retirement fund must be included in the calculations of "final compensation" for retirement benefits under CERL. Numerous similar petitions were filed across the state; the cases were coordinated pursuant to *Code of Civil Procedure section 404 et seq.* and *California Rules of Court, rule 1500 et seq.*

The trial court ruled that the *Ventura* decision should be applied retroactively; that the retirement boards did have discretion to collect arrears and that their discretion included the ability to collect arrears beyond the three-year statute of limitations period (*Code Civ. Proc.*, § 338, *subd. (d)*); and that CERL did not mandate that various items of remuneration that did not involve cash payments to employees had to be included in the calculations of "final compensation" for retirement benefits. [***6] Three counties² (collectively, counties) appeal from those portions of the judgments applying *Ventura* retroactively and giving the retirement boards discretion to collect arrears. [*435] Two boards of retirement³ (collectively, retirement boards) appeal from those portions of the judgments regarding retroactivity. Numerous individual plan members suing on behalf of themselves and others and associations⁴ (collectively, plan members) appeal from those portions of the judgments regarding collections of arrears and the exclusion of items of remuneration from the calculation of retirement benefits under CERL.

2 Counties appealing are Los Angeles, San Mateo, and Sacramento. Those counties appearing only in response to the appeals filed by their respective plan members are Stanislaus and Tulare.

3 Retirement boards appealing are Board of Retirement of the San Mateo County Employees' Retirement Association and Board of Retirement of the Sacramento County Employees' Retirement System. Those retirement boards appearing only in response to the appeals filed by their respective county and/or plan members are Board of Retirement of the Stanislaus County Employees'

Retirement Association, Board of Retirement of the Los Angeles County Employees' Retirement System (LACERA Board), and Tulare County Employees' Retirement Board.

[***7]

4 Plan members appealing are: Randall E. Francis; Los Angeles County Professional Peace Officers' Association; Los Angeles County Fire Fighters, Local 1014; California Association of Professional Employees; Arthur J. Reddy; William Sieber; Dallas Jones; Lee Stark; James E. Vogts; Milton Cohen; Teamsters Union Local 856, AFL-CIO; William Britschgi; Robert Cassetta; Joseph Martinelli; Nancy Green; Richard Price; Scott Eckert; Ernest Buda; Thomas J. Burns; Michael Dutra; Sacramento County Deputy Sheriff's Association; Robert White; Edward Shaughnessy; Service Employees International Union, Local 535, AFL-CIO; Tulare County Corrections Association, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Tulare County Deputy Sheriff's Association; and Donald Fielding.

We conclude that the trial court's rulings were correct, and affirm.

BACKGROUND

Counties maintain employee retirement plans under CERL. (§ 31450 *et seq.*) CERL requires retirement boards to determine whether the remuneration paid in cash qualifies [***8] as "compensation" under *section 31460* and "compensation earnable" pursuant to *section 31461*, and therefore must be included as part of a retiring employee's "final compensation" (§ 31462 *or 31462.1*) [**798] for purposes of calculating the amount of a pension.

Prior to 1997, many, if not all, of the 20 retirement boards interpreted "compensation earnable" under CERL in accordance with the holding in *Guelfi, supra*, 145 Cal. App. 3d 297. The *Guelfi* court held that payments received for overtime, uniform allowance, and educational incentive pay did not satisfy the requirements for "compensation earnable." (*Id. at p. 307.*) It determined that an item of "compensation" must be received by all employees in the applicable grade or class of position for it to be a mandatory part of a retiring employee's "compensation earnable" and "final

compensation" on which an employee's pension is based. (*Id.* at pp. 303-307.)

Fourteen years after the Court of Appeal had decided *Guelfi*, the California Supreme Court, in *Ventura, supra*, 16 Cal.4th 483, considered the meaning of "compensation" and "compensation earnable" under CERL. It overruled [*436] *Guelfi's* interpretation of "compensation earnable" by holding that "items of 'compensation' paid in cash, even if not earned by all employees in the same grade or class, must be included in the 'compensation earnable' and 'final compensation' on which an employee's pension is based." (*Ventura, supra*, at p. 487.)

Retirement boards began to include a variety of cash payments in their computations for "compensation earnable" that they had not included earlier, but they restricted these modified calculations to "compensation" earned on or after October 1, 1997, the date the Supreme Court declined to rehear *Ventura, supra*, 16 Cal.4th 483. (*Ventura* was filed on August 14, 1997.) They did not modify their calculations to include a variety of cash payments in "compensation earnable" if plan members had earned the "compensation" prior to October 1, 1997.

Plan members throughout the state who did not have their "compensation earnable" modified to comply with *Ventura*, because [***10] their "final compensation" was based on compensation earned prior to October 1, 1997, filed writs of mandate. They contended that certain cash premiums should not have been excluded from their "final compensation" and that the holding of *Ventura* should apply retroactively. The actions by plan members were coordinated under *Code of Civil Procedure section 404 et seq.*⁵ on December 21, 1998. The court recommended that the coordinated proceedings be assigned to the San Francisco County Superior Court because the City and County of San Francisco did not operate under CERL. It also ordered "that the reviewing court having appellate jurisdiction [of the coordinated actions] is the Court of Appeal for the First Appellate District."

⁵ *Code of Civil Procedure section 404* provides in pertinent part: "When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted"

[***11] On January 19, 1999, the Honorable Stuart

R. Pollak, sitting in San Francisco, was assigned as coordination trial judge. Liaison counsel were designated to represent counties, retirement boards, and plan members. Most of the coordinated cases also were converted to class actions.

At the coordinated trial,⁶ the court first considered whether CERL mandates inclusion [***799] of certain employment benefits in the calculation of retirement benefits. Plan members requested that the following items be included: [*437] cash-outs by employees of unused leave upon separation from service, insurance-related payments made by the employer, and employer payments of mandatory employee retirement contributions that are paid by the employer directly to the retirement plan. The court concluded that none of these was required to be included in the formula for calculating pension benefits.

⁶ At different points in time, before and during the coordinated proceedings, various counties and retirement boards settled with their plan members and/or voluntarily resolved to implement *Ventura* retroactively. Although the Board of Retirement of the Orange County Employees' Retirement System voluntarily resolved (in February 1998) to apply *Ventura* retroactively, it appeared and played a unique role in the coordinated trial.

[***12] The superior court next considered the question of retroactivity, determining that the general rule of applying judicial decisions retroactively (*Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 978-979 [258 Cal. Rptr. 592, 772 P.2d 1059] (*Newman*)) should govern here. The superior court explained: "A decision that is disapproved or overruled is considered to have misstated the law, and consequently never was the law. (*Id.* at [p.] 979.) This general rule applies equally to pension cases. Where retirement allowances are calculated improperly based on a good faith misapplication of the law, retroactive recalculations must be made for retirees whose claims are filed within the three-year statute of limitations. (*County of Marin [Assn. of] Firefighters v. Marin County Employees Retirement Assn.* (1994) 30 Cal.App.4th 1638 [36 Cal. Rptr. 2d 736] [(*Marin Firefighters*)]); *Dunham v. City of Berkeley* (1970) 7 Cal. App. 3d 508 [86 Cal. Rptr. 569]; *Terry v. City of Berkeley* (1953) 41 Cal.2d 698 [263 P.2d 833] [(*Terry*)]; *Abbott v. City of Los Angeles* (1960) 178 Cal. App. 2d 204 [3 Cal. Rptr. 127] [***13] (*Abbott II*)). There is no reason why the same rule should not be

applied here, where pensions were miscalculated based on a prior erroneous judicial construction of the law." In the footnote, the trial court noted that the law may be different in federal cases.

The trial court also determined that considerations of fairness and public policy did not justify denial of the retroactive application of *Ventura*. The court stated that retirement boards may have established reasonable reliance on the former interpretation of the statute, but they did not establish "a hardship emanating from such reliance sufficient to invoke a fairness exception." The court also concluded that the retroactive application of *Ventura* did not unconstitutionally impair contractual obligations. It explained that the retroactive application of *Ventura* did not reduce or eliminate any contractual rights of retired plan members and "[retirement boards] have not identified any contractual rights of their own that will be adversely affected by retroactive application of that decision." Finally, the court ruled that retirement boards have the discretion to collect arrears; [***14] full arrears contributions are authorized, but not mandatory.

The trial court entered final judgments, denying those portions of plan members' petitions for writs of mandate requesting to have additional items of remuneration calculated as part of CERL pension benefits. It issued peremptory writs of mandate commanding retirement boards "to recalculate [*438] the final compensation of members whose final compensation measurement period occurred in whole or in part prior to the effective date upon which it implemented the *Ventura* decision in the same manner [they are] calculating 'compensation earnable' and 'final compensation' after that date"

[**800] Following Judge Pollak's decision, several other retirement systems settled. Three counties are challenging (see fn. 2, *ante*) those portions of the judgments that applied *Ventura* retroactively and that gave retirement boards discretion to collect arrears. Two retirement boards are challenging (see fn. 3, *ante*) those portions of the orders applying *Ventura* retroactively. Numerous plan members appeal (see fn. 4, *ante*) from those portions of the judgments regarding the collection of arrears and the [***15] denial of their requests to have certain items included in the calculation of their pensions.

The appeals were consolidated before us for resolution. On March 14, 2002, we granted the parties' stipulated motion to maintain liaison counsel and for a

coordinated briefing schedule.⁷ In addition to receiving briefs from liaison counsel for counties, retirement boards, and plan members, we received briefs from the County of Los Angeles (L.A. County) and the plan members of the Los Angeles County Employees' Retirement Association (LACERA members) and an amicus curiae brief from the Board of Retirement of the Orange County Employees' Retirement System (OCERS).⁸

⁷ We consolidated the San Bernardino appeals, case Nos. A100686 and A100721 (San Bernardino County Super Court Nos. SCV 47008, SCV 55755) with this consolidated action on April 23, 2003. But on June 10, 2003, at the parties' request, we severed the San Bernardino appeals from this consolidated action and remanded the cases to the trial court for further proceedings in contemplation of settlement.

⁸ In a separate opinion, we will address the issues raised by the appeals from the trial court's awards of attorney fees.

[***16] DISCUSSION

In this opinion, we address three questions regarding the implementation of the *Ventura* decision: (1) Should we limit the application of the *Ventura* holding to calculations of "compensation" after October 1, 1997, the effective date of the decision? (2) If we hold that *Ventura* applies retroactively, do the retirement boards have discretion to collect arrears and is that discretion limited? (3) Should items of remuneration that do not involve cash payments to the employee prior to his or her retirement be included in the pension calculation? Prior to our examination of each of these issues, we set forth the relevant law.

I. Relevant Law

(3) The counties involved in these consolidated appeals maintain employee retirement plans under CERL, which mandates that the funds for the [*439] pensions contain both employer and employee contributions and that the level of funding be based on actuarial valuations. (§ 31450 *et seq.*) Under CERL, an employee's pension "is a combination of a retirement annuity based on the employee's accumulated contributions supplemented by a pension established with county [***17] contributions sufficient to equal a specified fraction of the employee's 'final compensation.' (See, e.g., §§ 31664, 31676.1)." (

Ventura, supra, 16 Cal.4th at p. 490.) The proper administration of a CERL pension system includes a determination of what payments in addition to base pay must be included when determining an employee's "final compensation." (*Ibid.*)

(4) When determining what payments are to be included, we use the definitions provided in CERL and resolve any ambiguity or uncertainty in favor of the pensioner, mindful that such construction must be consistent with the clear language [**801] and purpose of the statute. (*Ventura, supra, 16 Cal.4th at p. 490.*)

Section 31460 defines "compensation" as "the remuneration paid in cash out of county or district funds, plus any amount deducted from a member's wages for participation in a deferred compensation plan ..., but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to a member."

Under *section 31461* [***18], "compensation earnable" by a member of the plan "means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by [the member] at the beginning of the absence. Compensation, as defined in *Section 31460*, that has been deferred shall be deemed 'compensation earnable' when earned, rather than when paid."

Section 31462.1 defines "final compensation" as "the average annual compensation earnable by a member during any year elected by a member at or before the time he files an application for retirement, or, if he fails to elect, during the year immediately preceding his retirement." *Section 31462* is substantially the same as *section 31462.1*, and differs only in that it sets the relevant time period as "during any three years elected by a member."

These definitions were first construed [***19] and applied by the Court of Appeal in *Guelfi, supra, 145 Cal. App. 3d 297*. In *Guelfi*, two retired peace officers claimed that their final compensation should have been calculated to include their overtime, educational incentive pay, and uniform allowance. (*Id. at* [**440] pp. 299-300.) The *Guelfi* court concluded that educational incentive pay and overtime fit the definition of "compensation," but these

items were not a mandatory part of a retiring employee's "compensation earnable," and therefore not part of the "final compensation" on which a pension is calculated, because not all employees in the same grade or class of position qualified for this pay. (*Id. at pp. 303-307.*)

Subsequently, the Supreme Court, in *Ventura, supra, 16 Cal.4th 483*, considered these same definitions in CERL when a county deputy sheriffs' association and three retirees challenged the county retirement board's determination of "final compensation." This determination excluded the county's contributions to an employee's deferred compensation plan, overtime pay, cash payments of bilingual premium pay, a uniform maintenance allowance, [***20] educational incentive pay, additional compensation for scheduled meal periods for designated employees, pay in lieu of annual leave accrual, holiday pay, a motorcycle bonus, a longevity incentive, and a field training officer bonus. (*Id. at pp. 488-489.*) The court pointed out that *sections 31460 and 31461* were ambiguous. (*Id. at p. 493.*) The court stated that the method of construction is first to determine what falls into the broad definition of "compensation" under *section 31460*, and then determine whether it falls within the narrower category of "compensation earnable" as defined in *section 31461* "and thus form[s] the basis for the calculation of 'final compensation' on which the pension is based pursuant to *section 31462* or *31462.1*." (*Ventura, supra, at pp. 493-494.*) [**802]

The *Ventura* court explained that, under *section 31460*, "compensation" is remuneration not excluded by that section. (*Ventura, supra, 16 Cal.4th at p. 494* [***21].) The court concluded that the Legislature did not consider county contributions to an employee's deferred compensation plan as "compensation" as defined in *section 31460*. (*Ventura, at p. 495.*) In addition, *section 31460* excludes the monetary value of an advantage provided in kind. However, the *Ventura* court held, when the advantages are paid in cash, and not in kind, they are not excluded. (*Id. at p. 497.*) The court therefore agreed with the *Guelfi* court that a longevity bonus and cashed-out accrued vacation were remuneration under *section 31460*. (*Ventura, supra, at p. 497.*) Further, bilingual premium pay, pay for acting as a field training officer and for motorcycle duty, and educational incentive pay also qualify as "compensation." (*Id. at pp. 497-499.*) This analysis of "compensation" did not differ significantly from the one employed by the Court of Appeal in *Guelfi*.

The *Ventura* court, however, concluded that the Court of Appeal in *Guelfi* erred in its construction of the statute' term " [***22] compensation earnable." It pointed out that the holding in *Guelfi* was not prior precedent of the Supreme Court; the issue was therefore one of first impression for it. (*Ventura, supra*, [*441] 16 Cal.4th at pp. 505-506.) The court examined the predecessor statutes to sections 31460 and 31461 and the use of the terms "compensation" and "compensation earnable" in the Public Employees' Retirement Law (PERL) (§ 20000 et seq.). (*Ventura, at pp.* 495-497, 501-505.) The court concluded that, in the context of CERL and PERL, " 'compensation earnable' is the average pay of the individual retiring employee computed on the basis of the number of hours worked by other employees in the same class and pay rate--that is the average monthly pay, excluding overtime, received by the retiring employee for the average number of days worked in a month by the other employees in the same job classification at the same base pay level." (*Ventura, at p.* 504.) The *Ventura* court concluded that, with the exception of overtime, all of the premiums [***23] that it had determined were remuneration must be included as "compensation earnable" and therefore included in the calculation of the employee's pension. (*Id. at pp.* 504-505.)

The Supreme Court in *Ventura* refused to decide whether its decision applied retroactively to any other county. (*Ventura, supra*, 16 Cal.4th at p. 507.) As to the county before it, the court concluded: "There may be unanticipated costs to Ventura County if the pensions of the individual plaintiffs and the employees the association represents must be recalculated and adjusted upward. If so, to comply with the financial provisions of CERL (§ 31580 et seq.) and accommodate future increases, the county may have to make a supplemental appropriation and adjust the future annual appropriation for its contribution to the pension fund to cover the increase in future retiree pensions that results from inclusion of additional items of 'compensation' in 'compensation earnable.' Past experience should enable the county to anticipate the number of employees who will receive premium pay, however, and adjustments of this nature are contemplated by CERL. [***24] (See §§ 31453, 31454.) Nothing in this record [**803] suggests that the burden on the county fisc justifies either perpetuation of an erroneous construction of the applicable statutes or denying these plaintiffs the benefit of our decision." (*Ventura, supra*, at p. 507.)

II. Retroactivity

A. The General Rule of Retroactivity and Standard of Review

Retirement boards and counties contend that they had diligently calculated pension benefits under CERL as set forth by the Court of Appeal in *Guelfi, supra*, 145 Cal. App. 3d 297. Once the Supreme Court articulated its interpretation of CERL, they attempted to implement the holding in *Ventura, supra*, 16 Cal.4th 483 for all current employees and for all retirees whose final compensation periods began on or after October 1, 1997 (the date the Supreme Court denied rehearing on *Ventura*). Plan members, however, [*442] contend that *Ventura's* holding should also be applied to those retirees whose final compensation periods fell in whole or in part prior to October 1, 1997. They contend that [***25] they are entitled to corrected calculations of their pension benefits, if not barred by the statute of limitations. (See *Marin Firefighters, supra*, 30 Cal.App.4th 1638; *Dunham v. City of Berkeley, supra*, 7 Cal. App. 3d 508; *Terry, supra*, 41 Cal.2d 698; *Abbott II, supra*, 178 Cal. App. 2d 204.)

Retirement boards claim that "the language of the [*Ventura*] decision shows that the [Supreme] Court both expected and intended that the effects of the decision would be almost entirely prospective even in Ventura County--the one county that was a party in the case." However, contrary to retirement boards' assertions, the Supreme Court expressly declined to address the issue of retroactivity when it stated: "No other county is before us in this matter, however, and we need not decide whether this decision applies retroactively to any other county." (*Ventura, supra*, 16 Cal.4th at p. 507.) Accordingly, we need to consider the application of the rule of retroactivity and judicial decisions to the facts of this case.

It is well settled that the general rule [***26] in California is that "a decision of a court of supreme jurisdiction overruling a former decision is retrospective in its operation and that the effect is not that the former decision was bad law but that it never was the law." (*County of Los Angeles v. Faus (1957) 48 Cal.2d 672, 680-681 [312 P.2d 680] (Faus)*, abrogated on another issue by *Evid. Code*, § 822.) Counties attempt to circumscribe this rule to criminal and tort cases, but this general rule of retroactivity has been applied *without regard* to the area of law at issue (see *Newman, supra*,

48 Cal.3d at p. 995, fn. 3 (dis. opn. of Broussard, J.)). " " "Indeed, a legal system based on precedent has a built-in presumption of retroactivity." [Citation.] " (*McManigal v. City of Seal Beach* (1985) 166 Cal. App. 3d 975, 981 [212 Cal. Rptr. 733] (*McManigal*).)

Our Supreme Court has "recognized exceptions to [the general rule of retroactivity] when considerations of fairness and public policy preclude full retroactivity. [Citation.] For example, where a constitutional provision or statute has received a given construction by a court [***27] of last resort, and contracts have been made or property rights acquired in accordance with the prior decision, neither will the contracts be invalidated nor will vested rights be impaired by applying the new rule retroactively." (*Peterson v. Superior [**804] Court* (1982) 31 Cal.3d 147, 151-152 [181 Cal. Rptr. 784, 642 P.2d 1305] (*Peterson*), citing *Faus, supra*, 48 Cal.2d at p. 681; see also *Moradi-Shalal v. Fireman's Fund Insurance Companies* (1988) 46 Cal.3d 287, 305 [250 Cal. Rptr. 116, 758 P.2d 58] (*Moradi-Shalal*).) Fairness and public policy may also require an exception when "retroactive application of a decision [*443] would raise substantial concerns about the effects of the new rule on the general administration of justice, or would unfairly undermine the reasonable reliance of parties on the previously existing state of the law. In other words, courts have looked to the 'hardships' imposed on parties by full retroactivity, permitting an exception only when the circumstances of a case draw it apart from the usual run of cases." (*Newman, supra*, 48 Cal.3d at p. 983.)

Counties, citing [***28] *Dillon v. Board of Pension Commrs.* (1941) 18 Cal.2d 427, 430 [116 P.2d 37], claim that the trial court erroneously shifted the burden of proof regarding the retroactive application of *Ventura* to them. The *Dillon* court states that, when the board denies the plaintiff's right to a pension, the plaintiff may bring a mandamus action to establish as a matter of law that he or she is entitled to the status of a pensioner. (*Dillon, supra*, at p. 430.) That is clearly not the issue here. No one denies that plan members are entitled to a pension. Rather, the question is whether the decision in *Ventura* has retroactive effect. Since counties and retirement boards are arguing that an *exception* to the general rule of retroactivity applies to them, they have the burden of proof. (See, e.g., *Estate of Propst* (1990) 50 Cal.3d 448, 465 [268 Cal. Rptr. 114, 788 P.2d 628] (*Propst*) [prior to deciding whether judicial decision should be applied retroactively to each person, "the cause must be

remanded to afford respondent an opportunity to present ...proof" of hardship or detrimental reliance].)

[***29] (5) We review the trial court's ruling that neither fairness nor public policy warranted an exception to the retroactivity rule under the abuse of discretion standard. A trial court, "acting as a court of equity, has discretion to fix a more realistic starting date for the payment of retroactive benefits to class members." (*Green v. Obledo* (1981) 29 Cal.3d 126, 142 [172 Cal. Rptr. 206, 624 P.2d 256].) To the extent that counties and retirement boards contend the court erred in its application of the law, we apply the de novo standard of review (see, e.g., *Burden v. Snowden* (1992) 2 Cal.4th 556, 562 [7 Cal. Rptr. 2d 531, 828 P.2d 672]). Those findings of fact that support the trial court's ruling, we review for substantial evidence. (*Scott v. Common Council* (1996) 44 Cal.App.4th 684, 689 [52 Cal. Rptr. 2d 161].)

Preliminarily, we must first consider what is meant by a retroactive application. Counties and retirement boards contend that a prospective application of *Ventura* would permit them not to modify either the future retirement benefits or the back payments to all plan members who had all or part of their " [***30] final compensation" calculated prior to October 1, 1997. OCERS, in its amicus curiae, brief, maintains that, even if *Ventura* is limited to a prospective application, retirement boards must recalculate the future retirement benefits for plan members who had all or part of their "final compensation" calculated prior to October 1, 1997. OCERS asserts that under California law a governmental entity has a mandatory duty to make certain [*444] payments; those payments are deemed "due to the recipient as of the date he first became entitled to them." (*Green v. Obledo, supra*, 29 Cal.3d at p. [**805] 141, 172 Cal.Rptr. 206, 624 P.2d 256.)⁹ When the Supreme Court in *Green v. Obledo* addressed the issue of retroactivity and the payment of welfare benefits, it only considered the back payments that would be paid to welfare recipients as subject to any exception to retroactivity, not the benefit payments to be made in the future. (*Id. at pp. 141-143* .) Further, it explained that when a governmental entity unlawfully withholds pension benefits from its retirees, "each such payment becomes a debt due to the employee as of the date he was entitled to receive [***31] it. It is settled that in such cases each deficient payment constitutes a separate violation triggering the running of a new period of

limitations." (*Id. at p. 141.*) OCERS therefore argues that requiring counties and retirement boards to cease "perpetuation of an erroneous construction of the applicable statutes" (*Ventura, supra, 16 Cal.4th at p. 507*) is a prospective application of the decision.¹⁰

9 Counties maintain that *Green v. Obledo, supra, 29 Cal.3d 126*, is distinguishable because the *Green* court was concerned with the retroactive application of a vested right that was unlawfully denied. Here, they argue, plan members have no vested right to a change in the law. We discuss the issue of an alleged change in the law and vested rights in part II.C.

10 This difference is more than academic. If retroactive application only pertains to the computation of past benefits (and future benefits must be imposed under a prospective application), retroactivity, here, would have minimal fiscal impact. (6) *Code of Civil Procedure section 338, subdivision (a)*, provides a three-year statute of limitations on actions for liability created by statute and therefore benefits would only have to be recalculated for the three years preceding the filing of their lawsuit for those retirees who earned cash premiums. Thus, any argument that an exception to the retroactivity rule should apply on the grounds of fairness and detrimental reliance (see pt. II.D.) would be significantly weakened.

(7) Further, although not addressed by any party, we are not compelled to choose simply between a retroactive or prospective application of the *Ventura* decision, but have the discretion to give the decision *limited* retroactive application. (See, e.g., *Li v. Yellow Cab Co. (1975) 13 Cal.3d 804, 829 [119 Cal. Rptr. 858, 532 P.2d 1226]* [considerations of administration of justice required limited retroactive application of its holding]; see also *Green v. Obledo, supra, 29 Cal.3d at p. 142.*) Since we are concluding that none of the exceptions to the retroactivity rule apply here, we need not consider the option of limited retroactivity. Because of our holding, we also do not need to consider the equal protection issues involved with calculating the benefits for those who retired prior to October 1, 1997, on the basis of an incorrect construction of CERL, while awarding benefits to those who retire after

October 1, 1997, on the basis of a correct interpretation of CERL.

[***32] We are not aware of any California case that has addressed the specific issue of retroactivity and pensions. In the federal context, however, courts have considered the question of pensions and retroactivity when invalidating pension systems based on gender-segregated mortality tables as in violation of title VII of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § 2000e-2(a)(1)). (See, e.g., *Los Angeles Dept. of Water & Power v. Manhart (1978) 435 U.S. 702 [55 L. Ed. 2d 657, 98 S. Ct. 1370]* (*Manhart*); *Florida v. Long (1988) 487 U.S. 223, 237 [101 L. Ed. 2d 206, 108 S. Ct. 2354]* (*Long*); [*445] *Arizona Governing Committee v. Norris (1983) 463 U.S. 1073, 1092 [77 L. Ed. 2d 1236, 103 S. Ct. 3492]* (*Norris*); *Retired Public Employees' Ass'n. v. State of Cal. (9th Cir. 1986) 799 F.2d 511, 515*; *Probe v. State Teachers' Retirement System (9th Cir. 1986) 780 F.2d 776* (*Probe*)). These federal courts have defined retroactivity in the manner advocated by counties and retirement boards (but see our discussion of the relevance of federal cases [***33] in [**806] pt. II.E.). They have concluded that, because these future annuity payments were funded by past contributions, any court judgment affecting these payments "is fundamentally retroactive in nature." (*Probe, supra, 780 F.2d at p. 782.*)

Since we are holding that the *Ventura* decision should be applied retroactively, we need not settle the question whether future benefits to people who retired before October 1, 1997, is a retroactive or prospective application of *Ventura*. In arriving at our holding, we review the following arguments by retirement boards and counties. Retroactive application is inappropriate because: (1) judicial decisions can have no retroactive effect when none of the parties was involved in the *Ventura* decision or had a lawsuit pending at the time; (2) it would unfairly and unconstitutionally impair vested contract rights; (3) it would be unfair as the parties detrimentally relied on the holding in *Guelfi* and it would not promote public policy concerns; and (4) it would contravene federal case law.

B. Considerations of Retroactive Effect and Nonparties to Ventura

[***34] Retirement boards contend that the trial court erred in its retroactive application of the holding in *Ventura* to plan members, counties and retirement boards in this coordinated action because none of them was a

party to the lawsuit or had similar lawsuits pending when *Ventura* became final. Moreover, *Ventura* was not a class action. They assert that the Supreme Court mandated retroactive application of its decision only to the parties before it.

In support of their argument, retirement boards cite *Bartman v. Estate of Bartman* (1978) 83 Cal. App. 3d 780 [148 Cal. Rptr. 207], and *Newman, supra*, 48 Cal.3d 973. They claim that judicial retroactivity "governs events occurring prior to the date of decision, when such events are at issue in timely filed actions." [Citation.]" (*Bartman, supra*, 83 Cal. App. 3d at pp. 785-786.) By quoting this language in *Bartman*, they imply that the *Bartman* court held that judicial decisions only have retroactive effect on those parties who have a pending lawsuit on the same issue. However, a complete reading of the *Bartman* opinion does not support the conclusion urged [***35] by retirement boards. The *Bartman* court was concerned with the effect of a retroactive application of a judicial decision on cases not yet pending when the statute of limitations would make such claims untimely. (*Id.* at p. 786.) Thus, it did not hold that [*446] an action had to be pending for a judicial decision to have retroactive effect but that "[t]he normal "retroactivity" of most civil decisions has never been thought to supersede the operation of the statute of limitations so as to revive old claims which were not pursued because of a previously prevailing contrary rule of law, or to reincarnate dead causes which had fallen to the sword of the statute." [Citation.]" (*Ibid.*)

Retirement boards' citation to *Newman, supra*, 48 Cal.3d 973, is equally unsound. They argue that the Supreme Court in *Newman* determined that its holding in *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654 [254 Cal. Rptr. 211, 765 P.2d 373], was retroactive but, according to retirement boards, "only to 'all cases not yet final on January 30, 1989, the date that decision became final.'" Thus, they [***36] claim that the *Foley* decision had retroactive effect only on those cases pending at the time it became final. The *Newman* court, however, did not so limit the *Foley* holding; rather it was merely pointing out that *Foley* "is fully retroactive, [**807] applying to all cases not yet final as of January 30, 1989, the date our decision in *Foley* became final." (*Newman, supra*, 48 Cal.3d at p. 976.) By inserting the word "only" prior to the quoted language from *Newman*, retirement boards imply that the court was in some manner limiting its retroactive application of *Foley*. Clearly, it was not.

Moreover, retirement boards omitted the language at the beginning of the sentence stating that the decision "is fully retroactive." (*Newman, at p. 976.*) Since *Foley* involved tort claims, the *Newman* court obviously did not have to be concerned about lawsuits filed after *Foley* became final; the prospective application of *Foley* would govern these cases.

Accordingly, retirement boards' attempt to create a new rule that retroactivity does not apply to them simply because none of the parties in this coordinated [***37] action had filed a pleading on this issue at the time the *Ventura* decision became final is wholly without merit.

C. Considerations of Fairness Based on Vested Contract Interests

Both counties and retirement boards contend that retroactivity should not apply because pensions are contract rights. Counties maintain that retroactive application of *Ventura* would unconstitutionally impair contract expectations.¹¹ (See, e.g., *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853 [*447] [179 P.2d 799] (*Kern*) [pension rights involve "obligations which are protected by the contract clause of the Constitution".]) They argue that counties and plan members entered into employment arrangements based on pre-*Ventura* rules of law. A new decision will not be applied "to impair contracts made or property rights acquired in accordance with the prior rule." (*Propst, supra*, 50 Cal.3d at p. 462; see also *Houghton v. City of Long Beach* (1958) 164 Cal. App. 2d 298, 311 [330 P.2d 918]; *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 455 [326 P.2d 484] (*Abbott I.*)) [***38] "[W]here a ... statute has received a given construction by a court of last resort, and contracts have been made or property rights acquired in accordance with the prior decision, neither will the contracts be invalidated nor will vested rights be impaired by applying the new rule retroactively. [Citation.]" [Citation.] [Citation.]" (*Newman, supra*, 48 Cal.3d at p. 982; see also *Faus, supra*, 48 Cal.2d at pp. 680-681.) These vested rights are defined by the benefits and law in place when an employee is rendering services, not by changes that occur after retirement. (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 866 [148 Cal. Rptr. 158, 582 P.2d 614].)

¹¹ This argument of impairment of contract seems somewhat disingenuous in light of retirement boards' and counties' decisions to apply the *Ventura* decision to all compensation earned

after October 1, 1997. There is no evidence or reason to assume that these employees, who will now contribute and receive benefits as mandated under the proper construction of CERL, had any different expectations regarding their pensions than those who retired prior to October 1, 1997. Employees retiring after October 1, 1997, but hired prior to that date, will therefore suffer the precise "impairment" of contract that counties and retirement boards claim should bar any retroactive application of the *Ventura* decision to those employees retiring prior to October 1, 1997.

[***39] It is true that "California is firmly committed to the proposition that [public employees' retirement rights] are contractual; that they are 'vested' in the sense that the lawmakers' power to alter them after they have been earned is quite limited." (*Lyon v. Flournoy* (1969) 271 [**808] Cal. App. 2d 774, 779 [76 Cal. Rptr. 869].) " [T]he right to a pension becomes a vested one upon acceptance of employment by an applicant." (*Kern, supra*, 29 Cal.2d at p. 852.) Although "upon acceptance of public employment [an employee acquires] a vested right to a pension based on the system then in effect" (*Miller v. State of California* (1977) 18 Cal.3d 808, 817 [135 Cal. Rptr. 386, 557 P.2d 970]), the " 'amount, terms and conditions of the benefits may be altered' " (*Lyon v. Flournoy, supra*, at p. 780). "The contractual basis of a pension right is the exchange of an employee's services for the pension right offered by the statute." (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 662 [6 Cal. Rptr. 2d 77].)

Counties maintain that they entered into employment arrangements with plan members and [***40] retirement boards administered their pension plans under pre-*Ventura* rules of law. Indeed, the trial court specifically found that retirement boards and counties relied on the law as stated in *Guelfi*. "The parties are presumed to have had existing law in mind when they executed their agreement" [Citation.] 'Existing law' includes decisions of the appellate courts interpreting statutes. [Citations.]" (*California Assn. of Highway Patrolmen v. Department of Personnel Admin.* (1986) [**448] 185 Cal. App. 3d 352, 364 [229 Cal. Rptr. 729] (CAHP).) They contend that *Allen v. Board of Administration* (1983) 34 Cal.3d 114 [192 Cal. Rptr. 762, 665 P.2d 534] (*Allen*) "cements the point" that retroactive relief is improper.

In *Allen*, retired legislators or their surviving spouses maintained that they were entitled to the benefit of legislation passed after their retirement even though the legislation stated that the increased salaries could not be used as a basis for calculating retirement benefits for any legislators who retired prior to the amendment. (*Allen, supra*, 34 Cal.3d at pp. 117-118 [***41] .) The retirees argued that the subsequent legislation impaired their contractual right to a pension based on a percentage of current comparative salaries. (*Ibid.*) The court held that there was no unconstitutional impairment because this was an unforeseen change in the law and the legislators could not have had a realistic expectation of such increases when they were legislators. (*Id.* at pp. 124-125.) Further, the court reasoned, "a fiscal consideration provides additional support for rejection of [retirees'] claim. ... [¶] It thus becomes apparent that payment to [retirees] of inflated retirement allowances ... not only would give to them a bonanza far outstripping any reasonable expectation for cost-of-living increases ... but also would afford them pensions dwarfing their relatively modest contributions to the [retirement system]." (*Id.* at p. 125.)

Similarly here, counties argue, plan members are seeking to alter their pension contracts and obtain a windfall by claiming an entitlement to an increased pension based upon a change in the law after they retired. Counties maintain that it does not matter that *Allen* considered a statutory [***42] change while the situation here involves a judicial change in the law.

The question in *Allen*, as well as in *United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal. App. 3d 1095 [259 Cal. Rptr. 65], which counties cite in a footnote, was whether the plan members' vested pension rights could be modified. Modifications of vested pension rights, to avoid violating the contract clause, "must be reasonable, must bear a material relation to the theory and successful [**809] operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages." (*Allen, supra*, 34 Cal.3d at p. 120.) Here, there was no modification of plan members' vested pension rights; there was a correction to an erroneous construction of the statute after the plan members retired.

Although counties vigorously argue to the contrary, there was no change in the law and therefore there was no

change to a plan member's vested right. Rather, counties agreed to implement a pension plan under CERL. During the relevant time period, the statutes remained the same, but our Supreme Court [***43] [*449] in 1997 concluded that retirement boards had implemented "an erroneous construction of the applicable statutes" (*Ventura, supra*, 16 Cal.4th at p. 507.) Retirement boards and counties had not relied on the ruling of a court of last resort, but on the construction of a statute by a Court of Appeal. Accordingly, the narrow exception to the general rule of retroactivity based on the making of contracts in reliance of the interpretation of a statute " ' "by a court of last resort" ' " (*Newman, supra*, 48 Cal.3d at p. 982) does not apply.¹²

12 This does not settle the question of contracts made in reliance on the *Guelfi* holding under the detrimental reliance and public policy exception to retroactivity (see pt. II.D.).

Since "[i]t is the general rule that a decision of a court of supreme jurisdiction overruling a former decision is retrospective in its operation and that the effect is not that the former decision was bad law but that it never was the law" [***44] (*Faus, supra*, 48 Cal.2d at pp. 680-681), the effect of the *Ventura* decision was that *Guelfi* never was the law.¹³ Retirement allowances calculated prior to October 1, 1997 were based on "an erroneous construction of the applicable statutes" (*Ventura, supra*, 16 Cal.4th at p. 507) and were not incorrect because of a subsequent change in the law.

13 Counties argue that *Ventura* represented a change of law, because the Supreme Court denied review of *Guelfi*. They quote the following language from a Court of Appeal opinion and cite a number of cases quoting this language: "[W]hen the precise question of law has been decided by a District Court of Appeal and the Supreme Court has denied a hearing, such decision will be followed as settling the law" (*Housing Authority v. Peters* (1953) 120 Cal. App. 2d 615, 616 [261 P.2d 561].) However, they omit critical language at the end of the sentence: "in the absence of a later decision of the Supreme Court overruling or modifying the prior case." (*Ibid.*) Here, there was a Supreme Court decision overruling the prior Court of Appeal opinion. The Supreme Court has expressly stated that, although its denial of review has significance, that is not

the same as having ruled on the issue: "Although this court's denial of a hearing is not to be regarded as expressing approval of the propositions of law set forth in an opinion of the District Court of Appeal or as having the same authoritative effect as an earlier decision of this court [citations], it does not follow that such a denial is without significance as to our views [citations]." (*DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 178 [18 Cal. Rptr. 369, 367 P.2d 865].)

[***45] In their reply brief, counties rely extensively on *CAHP, supra*, 185 Cal. App. 3d 352, but that appellate opinion does not contradict the foregoing rule. Rather, *CAHP* addresses a different situation. In *CAHP*, the highway patrol officers and the state had entered into a written memorandum of understanding (MOU), which stated that only "ordered overtime" was to be compensated. (*Id. at pp.* 356-362.) At the time the MOU was negotiated, a Court of [***810] Appeal had defined the period during lunch as not "ordered overtime." (*Id. at pp.* 362-363, citing *Fowler v. State Personnel Bd.* (1982) 134 Cal. App. 3d 964, 970 [185 Cal. Rptr. 292].) Subsequently, after the execution of the MOU, our Supreme Court held "that rules and regulations of the City of Madera mandated that overtime be paid to police officers for their [*450] mealtimes because of numerous restrictions on the officers' freedom during these times." (*CAHP, supra*, at p. 357, citing *Madera Police Officers Assn. v. City of Madera* (1984) 36 Cal.3d 403, 413 [204 Cal. Rptr. 422, 682 P.2d 1087] (*Madera*).) [***46]

Following the Supreme Court's ruling in *Madera*, the highway patrolmen in *CAHP* sued to have their lunchtime considered as overtime. (*CAHP, supra*, 185 Cal. App. 3d 352.) The reviewing court noted that the officers derived whatever rights they had from the MOU, and their right to overtime "must be located in the MOU." (*Id. at pp.* 358, 361.) The MOU unambiguously denied them compensation for anything other than "ordered overtime" and, at the time of the contract, the parties did not intend or interpret the lunch period as "ordered overtime." (*Id. at pp.* 358-362.) The *CAHP* court held that the Supreme Court's *Madera* decision had no bearing on the interpretation of the MOU and therefore no effect on the officers' claim that they were owed compensation for their work during lunchtime. (*CAHP, at p.* 361.) It also noted that nothing in the Supreme Court decision (in

Madera) indicated that the earlier Court of Appeal decision (in *Fowler*) had interpreted any statute unlawfully or against public policy. (*CAHP*, at p. 364.) Accordingly, the *CAHP* court concluded: " [***47] "A subsequent decision of a higher court, in a different case, giving a different exposition to a point of law from the one declared and known, when a settlement between parties takes place, cannot have a retrospective effect and overturn such settlement." ' [Citations.]" (*Id.* at pp. 364-365.)

The *CAHP* court was concerned with the interpretation of a term in a contract, while we are concerned with the construction of a statute. In discerning the intent of the parties, the *CAHP* court looked to the prevailing definition or interpretation of "ordered overtime" at the time the parties executed the agreement. (*CAHP*, supra, 195 Cal. App. 3d at p. 364 ["The parties are presumed to have had existing law in mind when they executed their agreement"].) In contrast, here our Supreme Court did expressly overrule the earlier Court of Appeal decision and held that the earlier ruling was an *unlawful construction of the statute*; thus, *CAHP* is unhelpful regarding the issue before us.

Rather than being concerned with the interpretation of a term in a contract, we are concerned about the effect of miscalculating a pension because [***48] of an incorrect construction of a statute. (8) When retirement allowances have been improperly calculated, courts have held that the pensions should be recalculated and the affected plan participants should receive retroactive relief, assuming the relief is timely. (See, e.g., *Marin Firefighters*, supra, 30 Cal.App.4th 1638; *Terry*, supra, 41 Cal.2d 698; *Dunham v. City of Berkeley*, supra, 7 Cal. App. 3d 508; *Abbott II*, supra, 178 Cal. App. 2d 204.) [***451] Retirement boards do not have the discretion to exclude items from the calculation that they have determined meet the statutory definition of "compensation earnable." (*Marin Firefighters*, supra, at p. [***811] 1646, 36 Cal.Rptr.2d 736.) In *Marin Firefighters*, the Board of Retirement of the County of Marin adopted the opinion of its attorney that holiday pay was mandatorily includable as "final compensation" in determining pensions. (*Id.* at p. 1644.) After correcting the mistake only for prospective retirees, the firefighters association sued. (*Ibid.*) The Court of Appeal held that the corrected calculation [***49] had to be applied retroactively. (*Id.* at p. 1648 .)

Similarly, our Supreme Court ordered that a mistake in the calculation of a pension be corrected retroactively in *Terry*, supra, 41 Cal.2d 698. In *Terry*, a retired mounted patrolman asserted that he was entitled to a percentage of the actual compensation then being paid to his position's rank (a fluctuating pension), but he had been paid a percentage of the amount he had actually earned during the relevant time period immediately prior to his retirement (a fixed pension). (*Id.* at p. 699.) The court noted that it did not matter that four years after the patrolman retired an amendment to the statute created a right to a fixed pension. "The pension payments are in effect deferred compensation to which the pensioner becomes entitled upon the fulfillment of the terms of the contract which may not be changed to his detriment by subsequent amendment. [Citations.]" (*Id.* at p. 703.) Accordingly, he was entitled to have his pension calculated pursuant to the operative statute at the time of his retirement. (*Ibid.*)

In *Dunham v. City of Berkeley*, supra, 7 Cal. App. 3d 508 [***50] , the court interpreted and applied the same fluctuating pension provision addressed in *Terry*. The court considered whether retired police officers should receive an increased pension based on salary increases associated with a different ranking classification and a new career incentive program that were created after they retired. (*Dunham*, supra, at p. 511.) The Court of Appeal agreed with the lower court's ruling that the new system added salary groupings within each rank rather than creating new ranks (*id.* at p. 513); to deny the plaintiffs these increases would "defeat the purpose of the fluctuating pensions system in maintaining parity between retired and active employees." (*Id.* at p. 516.) The Court of Appeal affirmed the judgment that ordered the city to pay past accrued and unpaid benefits. (*Id.* at p. 517.)

Finally, in *Abbott II*, supra, 178 Cal. App. 2d 204, the court considered, among other things, whether the salary calculated for pensions should include "longevity" or "merit pay." (*Id.* at pp. 211-213.) The court concluded: "We think that longevity and merit pay [***51] constitute a part of the ' salary attached to the rank or position' formerly held by the retired or deceased members and that it was error for the court to disregard them in its computation of the [***452] pensions to be paid and the judgments awarded." (*Id.* at pp. 213-214.) The court determined that the pensions had been calculated incorrectly and that the plaintiffs were entitled

to "pensions and past due pension payments reflecting longevity and merit pay." (*Id. at p. 216.*)

Counties contend that none of the foregoing cases applies because in each of them the retirement board misapplied an existing law that was part of a plan member's pension contract. In contrast, here, they argue that retirement boards did not misapply an existing law; rather, *Ventura* changed the law. They argue that a mistaken application of existing law is significantly different from a judicial change in [**812] the law, and they quote the following from an old Supreme Court case: "Every man is to be charged at his peril with a knowledge of the law. There is no other principle which is safe and practicable in the common intercourse of mankind; and to permit [***52] a subsequent judicial decision in any one given case on a point of law to open or annul everything that has been done in other cases of the like kind for years before under a different understanding of the law, would lead to the most mischievous consequences.'" (*Kenyon v. Welty (1862) 20 Cal. 637, 642.*) They contend that plan members did not have any vested rights to the benefits claimed, and to undo these agreements regarding benefits because of a change in law would result in havoc, especially since these contributions were calculated on the basis of the benefits as defined by *Guelfi*.

As discussed *ante*, no change in the law occurred; CERL was not amended during the relevant time period. When quoting the particular section from *Kenyon v. Welty, supra, 20 Cal. at page 642*, counties fail to divulge that the court was considering whether to undo a contract that had been made according to a judicial law as articulated by the Supreme Court, because the contract was now invalid under a subsequent Supreme Court decision. (*Id. at p. 641.*) Another passage, not cited by the counties, clarifies that the court's decision not to disturb [***53] the contract was on the grounds that the contract had been made on an earlier, overruled, *Supreme Court* decision: "To establish the doctrine that all contracts made under a condition of the law, *as expounded by the Supreme Court of the State*, can be set aside if the Court subsequently changes its opinions or corrects its error, would be attended with very serious evils." (*Id. at p. 642, italics added.*) As already stressed, that is not the situation here. The Supreme Court had not addressed the definition of "compensation earnable" under CERL until its *Ventura* decision and, therefore, once the Supreme Court issued its decision in *Ventura*,

the effect was that *Guelfi* never was the law. (See, e.g., *Faus, supra, 48 Cal.2d at pp. 680-681.*)

(9) Judicial decisions do not establish a new rule of law for purposes of exclusion from the rule of retroactivity when the court " 'gave effect to a [*453] statutory rule that the courts had theretofore misconstrued [citation] or had not definitively addressed [citation]' [Citation.]" (*McManigal, supra, 166 Cal. App. 3d at p. 981.*) Thus, " [***54] prior misconstruction of a statute by the courts does not prevent the retroactive application of the Supreme Court's authoritative interpretation." (*Id. at p. 982.*) At the time plan members accepted employment, they received a vested right to a pension as [**813] mandated by CERL and intended by the Legislature. " '[T]he right to a pension becomes a vested one upon acceptance of employment by an applicant.' " (*Kern, supra, 29 Cal.2d at p. 852.*) Thus, the *Ventura* court concluded that the particular plaintiffs before it should not be denied the benefit of their decision simply because Ventura County had implemented "an erroneous construction of the applicable statutes." (*Ventura, supra, 16 Cal.4th at p. 507.*)

Further, an additional reason exists for rejecting counties' and retirement boards' arguments regarding violation of vested contract rights. The *Ventura* decision affected the determination of what items were to be included in "compensation earnable," and this is *not* subject to a contract right. As already stressed, counties and plan members entered into employment contracts, which included a right to a pension [***55] to be calculated as mandated by CERL. They did not bargain for the amount of "final compensation" or the amount of contributions and earnings that are necessary to fund the retirement allowances required by that formula. ¹⁴ Retirement boards may have set the contribution rates too low because of their miscalculation of "compensation earnable," but the parties did not negotiate contribution rates or final compensation. L.A. County separately argues that its plan members were repeatedly told by LACERA Board how their retirement benefits would be calculated, the interpretation of terms such as "compensation earnable," and their retirement benefits, which were calculated in accordance with *Guelfi*. However, plan members could not bargain regarding their contribution rates or their "final compensation." (10) Once a retirement board sets contribution rates based upon the recommendation of its actuary, those rates are binding on the county. (See §§ 31584-31586; see also

City of Oakland v. Public Employees' Retirement System (2002) 95 Cal.App.4th 29, 49 [115 Cal. Rptr. 2d 151] (*City of Oakland*) ["contribution rates are set [*56] by law"].)

14 The issue of whether the pre-*Ventura* retirees should be entitled to benefits that include cash premiums when their contributions were not based on calculations to include such benefits is a fairness question--not a question of contract. We therefore address this issue in our discussion of fairness (see pt. II.D), which directly follows.

Essential to counties' position, and repeatedly asserted by them in their briefs and at oral argument, is that plan members received pensions calculated in accordance with the law then in effect and they cite *Guelfi*. However, as stressed throughout this opinion, the law in effect at the time the plan members received their pensions was CERL, and plan members agreed to [*454] have their "compensation earnable" and "final compensation" calculated pursuant to CERL. The calculations made for plan members may have complied with the holding in *Guelfi*, but they were calculated incorrectly under CERL. *Guelfi* misstated the law; it did not establish [*57] any law. (See, e.g., *Newman, supra*, 48 Cal.3d at p. 979.) Thus, the contract right is the entitlement to the pension; statutes set the contributions and "final compensation" of plan members.

(11) Accordingly, the law is well settled: Unless one of the exceptions to the retroactivity rule applies, any error in the calculation of a pension results in the retiree's receiving a pension based on the corrected mistake and any sums of money due on past payments. We next consider the fairness exception based on detrimental reliance and public policy.

D. Considerations of Fairness Based on Detrimental Reliance and Public Policy

Retirement boards and counties contend that the fairness exception based on detrimental reliance and public policy requires reversal of the trial court's ruling that *Ventura* applies retroactively. Plan members respond that this is not a situation where the "hardships" of the case "draw it apart from the usual run of cases" (*Newman, supra*, 48 Cal.3d at p. 983) and of the basic rule of retroactivity.

California courts "have long recognized the potential

for allowing narrow exceptions to the general rule of [*58] retroactivity when considerations of fairness and public policy are so compelling in a particular case that, on balance, they outweigh the considerations that underlie the basic rule." (*Newman, supra*, 48 Cal.3d at p. 983; see also *Smith v. Rae-Venter Law Group* (2002) [*814] 29 Cal.4th 345, 372-373 [127 Cal. Rptr. 2d 516, 58 P.3d 367] [reliance on prior construction of fee-shifting statute had only prospective application where party reasonably relied on earlier interpretation in weighing the potential costs of unsuccessfully appealing commissioner's award].) "Considerations of fairness would measure the reliance on the old standards by the parties or others similarly affected, as well as 'the ability of litigants to foresee the coming change in the law' [Citation.]" (*Peterson, supra*, 31 Cal.3d at p. 153.) "Public policy considerations include the purpose to be served by the new rule, and the effect on the administration of justice of retroactive application." (*Ibid.*)

1. Detrimental reliance

The trial court stated that retirement boards established that the contributions into the retirement systems [*59] collected from the employees and the [*455] counties were calculated in reliance on *Guelfi*. The pension plans are funded on an actuarial basis and therefore determinations of contribution rates relate to determinations of those items included in a calculation of the "compensation earnable" and "final compensation."

The trial court also found that retirement boards and counties established that they could not foresee the Supreme Court's ruling in *Ventura*. Plan members dispute this finding and assert that the practice set forth in *Guelfi* was not that widespread. Thus, for example, the declaration of the chief executive officer for the San Mateo County Employees' Retirement Association indicated that San Mateo County, prior to the *Ventura* decision, included in its pension calculations items of pay not automatically provided in a uniform amount to all employees in the same grade or class of positions, such as night shift differential pay, helicopter observer pay, desk duty pay, and investigative work pay. In addition, LACERA members argue that as early as 1993 counties and retirement boards knew that liaison counsel were litigating the validity of *Guelfi*. They [*60] also point out that employees successfully sued the City of Hayward and the State Public Employees Retirement System to

include certain fringe benefits in the salary base from which their retirement pension allowances were computed (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926 [179 Cal. Rptr. 287]), and that the decision has been applied retroactively.

The record, however, supports the trial court's finding that counties and retirement boards reasonably relied on *Guelfi*. No other Court of Appeal decision contradicted its holding and the Supreme Court had not granted review of *Guelfi*. The critical question therefore is whether their reliance on *Guelfi* resulted in substantial detriment or hardship.

Retirement boards and counties must establish that they have "forgone substantial benefits" in reliance (*Propst*, supra, 50 Cal.3d at p. 464) on the rule set forth in *Guelfi*. (See also *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 509 [87 Cal. Rptr. 2d 702, 981 P.2d 543] [must establish "substantial detrimental reliance" for exception to retroactivity rule].) In *Propst*, our Supreme Court reversed a judicially developed rule that had prohibited the unilateral severance of a joint tenancy in personal property. (*Propst*, at pp. 461-462.) The court noted that this rule had been unforeseeable to counsel, since the Supreme Court had earlier applied the former rule (e.g., *In re Kessler* (1932) 217 Cal. 32 [17 P.2d 117]) and had not indicated that it was planning to overturn [***815] it. (*Propst*, at pp. 463-464.) The court, however, doubted that many lay persons had detrimentally relied on the former rule, but it noted "there may be instances of persons who have incurred legal obligations or forgone substantial benefits in reasonable reliance" on the prior rule against unilateral severance. (*Id.* at p. 464.) It therefore remanded to permit individuals to establish detrimental reliance. (*Id.* at pp. 464-465.)

[*456] (12) A review of those California cases that have refused to apply a judicial rule retroactively on the grounds of hardship indicates that this exception is generally imposed when retroactivity jeopardizes a legal right. To preserve people' [***62] s legal claims, our Supreme Court has sometimes refused to apply a decision overruling its own earlier opinion to cases already filed. (E.g., *Camper v. Workers' Comp. Appeals Bd.* (1992) 3 Cal.4th 679 [12 Cal. Rptr. 2d 101, 836 P.2d 888]; *Moradi-Shalal*, supra, 46 Cal.3d 287.) (13) In particular, "[r]etroactive application of an unforeseeable procedural change is disfavored when such application would

deprive a litigant of 'any remedy whatsoever.' [Citations.]" (*Woods v. Young* (1991) 53 Cal.3d 315, 330 [279 Cal. Rptr. 613, 807 P.2d 455] [interpretation of notice provision and effect on statute of limitations applied prospectively because retroactive application would bar plaintiffs' actions regardless of merits]; see also *Camper*, supra, at p. 689; *Smith v. Rae-Venter Law Group*, supra, 29 Cal.4th at pp. 372-373.) Our Supreme Court in *Moradi-Shalal* limited the retroactive application of its decision that reconsidered and overruled its prior holding that an insured or third party claimant had a private cause of action against insurers who engage in unfair claims settlement practices. [***63] (*Moradi-Shalal*, supra, 46 Cal.3d at pp. 294, 305.) The court cautioned that it was not "implying any broad exception to the general rule of retrospectivity," but in "the interest of fairness to the substantial number of plaintiffs who have already initiated their suits in reliance" on its previous opinion, it refused to apply the new decision to those claims filed before its overruling decision became final. (*Id.* at p. 305.) In contrast, here the retroactive application of *Ventura* would not result in the loss of any legal claims by counties or retirement boards.

Our Supreme Court has also considered financial and administrative issues when assessing a claim of hardship. In *Green v. Obledo*, the Supreme Court determined that the class plaintiffs were entitled to welfare benefits, but it remanded for the trial court to consider, upon the proper motion, the appropriate date for payment of retroactive welfare benefits. (*Green v. Obledo*, supra, 29 Cal.3d at p. 143.) The following factors were to be considered by the trial court when making its equity determination: "[A]n action by an entire class to recover past welfare benefits [***64] withheld pursuant to an invalid regulation or statute might impose, in some circumstances, a disproportionate clerical and financial burden on the governmental entity if such benefits were ordered paid for the entire period of limitations. This could occur, for example, if the regulation or statute had been in force for a number of years at the time of the judgment, if the class were particularly large, or if the potential individual recovery of each class member were small." (*Id.* at p. 142; see also *Smith v. Rae-Venter Law Group*, supra, 29 Cal.4th at p. 373 [retroactive [***816] application would affect all pending appeals from commissioner's decisions that relied on different definition of successful [*457] litigant under fee-shifting statute].) Here, there was no showing that the class was

particularly large or that the individual recovery for each class member was small, but see our discussion below (pt. II.D.1.a.) for any alleged fiscal impact.

In the contract context, Division Four of this court considered whether a judicial decision that a contracting party's right to refuse consent to an assignment must be exercised in accordance [***65] with standards of commercial reasonableness and good faith should be applied retroactively. (*Kreisher v. Mobil Oil Corp.* (1988) 198 Cal. App. 3d 389 [243 Cal. Rptr. 662] (*Kreisher*.) At the time the franchisor refused consent, the contract between the franchisee and franchisor gave the franchisor the express right to refuse its consent to a proposed transfer of plaintiff's franchise and the Supreme Court had not yet issued its ruling that the franchisor could not withhold its consent in an arbitrary or unreasonable manner. (*Id.* at p. 395.) As a result of the refusal (and prior to the Supreme Court's holding that the refusal could not be arbitrary or unreasonable), plaintiff filed a lawsuit against the franchisor and the jury awarded the plaintiff both compensatory and punitive damages. (*Id.* at p. 394.) The *Kreisher* court concluded that our Supreme Court's ruling should not have retroactive application in this situation, and it explained: "As regards the fairness factor, we perceive no satisfying basis for making plaintiff the windfall beneficiary of a change he did not foresee or help bring about. Conversely, it is patently [***66] unfair to penalize Mobil for its nonconformity with standards which took effect only after it conscientiously determined the state of the law and relied upon it in reasonable good faith." (*Id.* at p. 404.)

Similarly, here, counties and retirement boards contend that the retroactive application of *Ventura*, while it would not deprive anyone of any legal rights, would be unfair because it would have a negative economic impact on the system, would result in a windfall for retirees who expected their pensions to be based on the rule in *Guelfi*, and would be unfair to current and future taxpayers who would have to pay for the added liabilities. We review each of these complaints.

a. Adverse fiscal impact

Retirement boards and counties assert the trial court found that if *Ventura* were applied retroactively, five counties would incur a total of over \$ 500 million in unfunded liabilities. (Orange County would incur \$ 211 million; L.A. County would incur \$ 190 million; Ventura

County, which is not a party to these appeals, would incur \$ 30 to \$ 40 million; and Stanislaus County would incur \$ 35 million. The fifth county, Kern, is not a party to these [***67] consolidated appeals and the record does not disclose the actual amount of [*458] unfunded liability it would incur.)¹⁵ However, underfunding, in itself, does not establish hardship. The *Ventura* court noted that there "may be unanticipated costs to [the county] if the pensions of the individual [plan members] and the employees the association represents must be recalculated and adjusted upward. If so, to comply with the financial provisions of CERL (§ 31580 et seq.) and accommodate future increases, the county may have to make a supplemental appropriation and adjust the future annual appropriation for its contribution to the pension fund to cover the increase in future retiree pensions that results from [***817] inclusion of additional items of 'compensation' in 'compensation earnable.' Past experience should enable the county to anticipate the number of employees who will receive premium pay, however, and adjustments of this nature are contemplated by CERL. (See §§ 31453, 31454.)" (*Ventura, supra*, 16 Cal.4th at p. 507.)¹⁶ [***68]

15 Of these counties, only L.A. County is challenging the retroactivity issue.

16 Retirement boards argue that the language of "future retiree pensions" and "number of employees who will receive premium pay" in *Ventura* establishes that the court recognized that the financial readjustment was to be prospective. They claim that a person "who has already retired cannot be a 'future retiree' nor can he [or she] be an employee who 'will receive' premium pay." However, the entire passage suggests that the court was referring to the unanticipated costs resulting from granting retroactive relief to the parties before it as well as accommodating future increases. It appears in the context of the entire passage that, when referring to "future retiree pensions," the court was referring to future pensions of retirees and not to future retirees. As to the language referring to "employees who will receive premium pay," the court appears to be referring to future retirees, since it was concerned with future adjustments. Accordingly, this language does not indicate that the court had concluded that the readjustment was to be prospective; indeed, the court expressly declined to reach the question of the retroactive application

of its holding to other plan members in other counties (*Ventura, supra*, 16 Cal.4th at p. 507).

[***69] The trial court pointed out that there was no evidence that the underfunding would in any way jeopardize the financial integrity of any retirement system. It found: "To the contrary, the evidence shows that the retirement systems in these five counties have substantial surpluses available and the unexpected liability created by application of *Ventura* to past retirees will not substantially impact their financial stability." ¹⁷ Indeed, financial difficulties resulting from a judicial decision are not the type of hardship that typically has prevented retroactive application. (See, e.g., *McBrearty v. City of Brawley* (1997) 59 Cal.App.4th 1441, 1448-1449 [69 Cal. Rptr. 2d 862], disapproved on other grounds in *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 816-817 [107 Cal. Rptr. 2d 369, 23 P.3d 601].) In *McBrearty*, the court refused to limit the application of a California Supreme Court decision validating provisions of Proposition 62, which required voter approval of a tax. The *McBrearty* court applied the Supreme [*459] Court's holding retroactively and invalidated a city utility tax [***70] imposed without voter approval despite concluding that the city had reasonably and justifiably relied on a prior Court of Appeal decision finding the proposition unconstitutional and despite acknowledging that retroactive application may impact the city's financial condition. (*McBrearty, at p. 1449.*) The court explained: "In this situation, the existence of prospective financial difficulties resulting from the implementation of the voter approval requirement does not constitute a legally cognizable hardship. [Citation.] Because the City has not established that conditioning the *future* collectibility of the utility tax on voter approval will create substantial inequitable results or cause undue financial hardship apart from those the challenged tax was intended to alleviate, we find that this does not establish a basis on which to conclude that [the Supreme Court case] is inapplicable." (*Ibid.*)

¹⁷ L.A. County argues that LACERA's surplus has now dropped significantly. The amount of its surplus was a factual question weighed and considered by the trial court. We will not reweigh that evidence.

[***71] Similarly, here, the possibility of future financial difficulties was anticipated by the Legislature

when it enacted CERL. (14) [***818] Where underfunding occurs because a retirement board mistakenly miscalculates pension benefits, the board is authorized to collect both arrears contributions and interest for the period in question. (*Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal. App. 3d 1593 [234 Cal. Rptr. 900] (*Barrett*)). As the trial court here found, underfunding can occur for a number of reasons and "[a]ctuarial methodology is designed to address and consider unforeseen events on a regular basis so as to ensure the financial integrity of the retirement system." (15) Indeed, CERL itself *requires* that each actuary for the retirement system conduct a formal actuarial valuation "within one year after the date on which any system ... becomes effective, and thereafter at intervals not to exceed three years." (§ 31453; see also § 31454.) ¹⁸ The actuary is therefore required to conduct a new valuation of the retirement [*460] system at least [***72] every three years and determine the extent to which prior assumptions must be changed.

¹⁸ Section 31453 provides: "An actuarial valuation shall be made within one year after the date on which any system established under this chapter becomes effective, and thereafter at intervals not to exceed three years. The valuation shall be conducted under the supervision of an actuary and shall cover the mortality, service, and compensation experience of the members and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 45 days prior to the beginning of the succeeding fiscal year, recommend to the board of supervisors such changes in the rates of interest, in the rates of contributions of members, and in county and district appropriations as are necessary. With respect to the rates of interest to be credited to members and to the county or district, the board may, in its sound discretion, recommend a rate which is higher or lower than the interest assumption rate established by the actuarial survey. No adjustment shall be included in the new rates for time prior to the effective date of the revision."

Section 31454 reads: "The board of supervisors shall not later than 90 days after the beginning of the immediately succeeding fiscal

year adjust the rates of interest, the rates of contributions of members, and county and district appropriations in accordance with the recommendations of the board, but shall not fix them in such amounts as to reduce the individual benefits provided in this chapter."

[***73] Retirement boards maintain that unforeseen events that must be considered do not include allowing for changes in the law that will result in changes for "thousands of retirees as well as active members." As discussed *ante*, there was no change in CERL; rather, calculations for pensions had been computed incorrectly because of an improper interpretation of the statute. There is no reason why this unforeseen event falls outside the statutes governing adjustments for underfunding.

A county actuary, and retirement boards' designated expert, Ira Summer, admitted that there are "unanticipated ... blips either one way or another," but maintained that "the blips up and the blips down should cancel each other out over the long term for all people in [the retirement] system." Because blips occur, actuaries are equipped to address them. One approach is to actuarially smooth the blips by amortizing changes in contribution rates over a varying number of years. Another approach is to change the interest assumption rates, asset valuation methods, or mortality tables used by the retirement system. Some counties, such as Orange and Alameda Counties, have addressed the blips by issuing pension [***74] obligation bonds to pay off their unfunded actuarial accrued liabilities to the retirement systems. Finally, another method is to hold excess investment earnings of the retirement system as a reserve against future "deficiencies in interest earnings in other years, losses on investments, and other contingencies." [***819] (§ 31592.) There is no reason why underfunding because of a misapplication of the law cannot be addressed by the "actuarial methodology" employed by the pension administrators.

Since we conclude that the trial court did not abuse its discretion in finding no hardship based on fiscal impact on the system, we now consider hardship based on "substantial inequitable results."

b. *Inequitable results*

Counties and retirement boards contend that the retroactive application of the *Ventura* decision will result in some plan members receiving a windfall, which is

unfair to other taxpayers and innocent parties.

As to the claim that retroactive application of the *Ventura* decision will result in a windfall to retirees who never, according to counties and retirement boards, expected their pensions to be calculated in the [***75] manner set forth in *Ventura*, we disagree. Plan members contracted to receive a pension as required by CERL and therefore they are entitled to the amounts *properly* calculated under these statutes. While it may be true that retirement boards [*461] may not be able to collect the full amount owed by all former employees, we agree with the trial court that "the counties have made absolutely no showing that the deficiency will be significant or will have any lasting impact on the finances of the county." In addition, counties and retirement boards are not going to be penalized; rather, as already discussed, CERL provides for flexibility and adjustments (see §§ 31453, 31454).

Counties and retirement boards complain that the retroactive collection of contributions shifts the responsibility for liabilities onto a future generation of taxpayers in violation of the public policy favoring "intergenerational equity"; they cite *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1139-1140 [61 Cal. Rptr. 2d 207] (*Wilson*) as setting forth this policy. They claim that county retirement [***76] systems operating under CERL calculate contributions and earnings to prefund the cost of members' pensions by the members' anticipated retirement dates. The purpose of the prefunding, according to counties and retirement boards, is to ensure benefit security for the employees and to ensure that the costs of providing them are borne by the taxpayers who are receiving the benefit of the public employees' services rather than being shifted to future generations of taxpayers. Counties maintain that retroactively imposing on today's taxpayers a newly created legal liability for service rendered to past generations of taxpayers violates this alleged policy of "intergenerational equity."

Counties' and retirement boards' reliance upon *Wilson*, *supra*, 52 Cal.App.4th 1109, is misplaced. First, counties and retirement boards maintain that *Wilson* holds that a fundamental policy underlying actuary defined pension systems is "intergenerational equity," but all references to this term (or variations of it) in the opinion were quotes from declarations by expert actuaries. (*Id.* at pp. 1139-1142.) The court never stated

that there was a policy of " [***77] intergenerational equity." Second, the *Wilson* court was concerned with whether legislation delaying the employer's payment of required contributions impaired the vested contractual rights of members to an actuarially sound pension system. The case said nothing about the proper methods for imposing retroactive relief and therefore it has little relevance to the issues before us.

Counties and retirement boards also rely on statements by actuary Ira Summer. Summer stated that payment of missed [**820] contributions alone would be insufficient to restore these systems to where they would have been had the contributions been collected on a timely basis because they will not be equal to lost earnings. Since they will receive the contributions later than expected, retirement boards will not have the opportunity to invest these funds. Summer explained that when contributions are invested over the working lifetime of a plan member, between 65 and 80 percent of the [*462] payments made to that member come from investment return. Consequently, counties and retirement boards claim, county contributions by current and future taxpayers will increase unless interest is added to compensate [***78] for the lost earnings.

Further, counties assert, even if interest were collected on the arrears contributions, the systems still would not be fully restored to where they would have been. Although the contributions can be increased and collected with back interest, the opportunity to earn additional funds on the increased contributions has been irretrievably lost.

As to this latter argument, any lost opportunities are offset entirely by the retirement boards' ability to earn excessive investment income from monies they should have paid out in pension benefits had CERL been applied properly. Indeed, in *City of Oakland*, the city complained that the retroactive reclassification of certain employees would cause unexpected liabilities. (*City of Oakland, supra*, 95 Cal.App.4th 29.) The court explained: "[R]eclassifications generally result in increased liability on the part of the employer, who presumably had the use of money that should have been funding the correct retirement benefits all along. While the reclassification decision here will apparently result in an unanticipated financial liability on the City's part, the City has had the use of money it should [***79] have been expending towards the retirement system, and we see nothing in the

applicable legislation which cuts off the City's liability therefor." (*Id at pp. 54-55.*)

Further, retirement boards and counties have received a significant windfall because the three-year statute of limitations (*Code Civ. Proc.*, § 338, *subd. (a)*) will relieve them of the obligation to pay a significant portion of the benefits owed under the statute to some of the retirees. Permitting them to increase their windfall by applying the *Ventura* decision on only a prospective basis would be unfair to those people who retired prior to October 1, 1997, since they also had a vested interest in having their pensions calculated as mandated by CERL.

Finally, retirement boards and counties assert that retroactive application will place an unfair hardship on innocent plan members. The trial court authorized the retirement boards to collect arrears contributions and interest from the counties and the parties bringing this lawsuit. If the retirement boards implemented a full retroactive recalculation of compensation earnable, they could collect arrearages on past [***80] contributions from these retirees' first day of employment. (See §§ 31622, 31639.3.) Even for those retirees who had premium pay items in their final compensation period, the statute of limitations permits payment to them for only the three years prior to the filing [*463] of their lawsuit (*Code Civ. Proc.*, § 338, *subd. (a)*). They would, however, still owe contributions plus interest from their first date of employment. The retirees whose pensions will not increase will also owe back contributions if they received premium cash pay while working but not during the time period of their final average salary.¹⁹

19 We address the question of collecting retroactive contributions from members who will not receive retroactive benefits, as well as other contribution issues, in part III.

[**821] In addition, retirement boards assert, those plan members who are still active employees will have to pay arrears [***81] contributions if the new definition of compensation earnable is retroactively recalculated. They argue, however, that they will receive no additional benefit because the retirement systems already changed the method of calculating "compensation earnable" for compensation earned after October 1, 1997, to comply with the *Ventura* decision.

This situation, retirement boards and counties maintain, is the same as the one in *Kreisher*, where the

court concluded that it was "patently unfair to penalize Mobil for its nonconformity with standards which took effect only after it conscientiously determined the state of the law and relied upon it in reasonable good faith." (*Kreisher, supra, 198 Cal. App. 3d at p. 404.*) *Kreisher*, however, is inapplicable. There, Mobil would have owed the plaintiff both compensatory and punitive damages because it had relied on a contract provision that it could withhold its consent in an arbitrary or unreasonable manner to a proposed transfer of the plaintiff's franchise. Thus, the costs to Mobil in compensatory and punitive damages were known and significant. Here, retirement boards provide little more than speculation as to how the [***82] collection of arrearages may be detrimental to innocent people. Further, they do not even attempt to set forth the number of affected people or the actual cost to them.

Accordingly, we conclude that counties and retirement boards have not met their burdens of proving that they will suffer a substantial hardship as a result of applying the *Ventura* decision retroactively. The trial court considered the evidence before it and found that the costs associated with correcting the mistake in calculation would not so dramatically affect the counties or the economy as to require an exception to our general rule of retroactivity, and we agree.

2. Public policy

As set forth earlier, considerations of public policy "include the purpose to be served by the new rule, and the effect on the administration of justice of [*464] retroactive application." (*Peterson, supra, 31 Cal.3d at p. 153.*) Counties assert that applying *Ventura* retroactively will result in more litigation. They claim: "[A]ny decision to apply *Ventura* retroactively threatens to add tens of thousands of retirees to the administrative and judicial system--each with his or her own [***83] unique burden of proof. Moreover, this quagmire only will be thickened by the inevitable fact that the Counties will not have complete records to assist many of these retirees in meeting their burden."

We agree with plan members that the assertion that there will be more litigation is speculative. Further, and more significantly, courts concerned with the administration of justice have focused on the effect of the ruling on pending cases. (See, e.g., *Propst, supra, 50 Cal.3d at p. 463, fn. 4* [reviewing court concluded there was no indication of any substantial number of pending

cases involving issue of unilateral severance of joint tenancy in personal property and therefore "no effect on the administration of justice that might lead us to withhold retroactive application of our present decision"]; *Woods v. Young, supra, 53 Cal.3d at pp. 330-331*; *Moradi-Shalal, supra, 46 Cal.3d at p. 305*; *Newman, supra, 48 Cal.3d at p. 992 258* [***822] *Cal.Rptr. 592, 772 P.2d 1059*, fn. omitted ["we do not believe that the number of retrials required by our decision today will seriously disrupt the administration [***84] of justice"].) Thus, for example, because it was concerned about the "administration of justice," our Supreme Court in *Li v. Yellow Cab Co., supra, 13 Cal.3d 804* limited the retroactive application of its comparative negligence holding and applied this new rule only to cases where the trial had not yet begun. (*Id. at p. 829.*) If it had applied the *Li* holding retroactively to all cases, trial courts would have been compelled to retry essentially *all* the cases that had reached judgment but were not yet final at the time of the decision. This is because juries in these cases would not have been instructed to determine the respective negligence of the parties at trial. In contrast, the retroactive application of *Ventura* will not negatively impact the administration of justice by requiring courts to retry pending cases.

The administrative burden on L.A. County will be particularly acute, it maintains, because, as of 1997, there were 41,873 retired members of LACERA. Other than asserting that this will generate "some administrative burden" and that "many" of the retired members are "potential future litigants," L.A. County provides no evidence [***85] that this will pose a serious burden. Indeed, it is unclear how difficult it is to determine whether any of these individuals are entitled to increased benefits and, if so, how many. Accordingly, L.A. County has failed to meet its burden of establishing the administration of justice exclusion.

[*465] We therefore conclude that counties and retirement boards have failed to establish that retroactive application of *Ventura* will cause a flood of litigation. Retroactive application of the *Ventura* decision "reflects a policy in favor of paying employees what they earned. That is not inherently unfair. [Citation.]" (*City of Oakland, supra, 95 Cal.App.4th at p. 54.*)

E. Federal Cases

Counties and retirement boards contend that retroactivity is inappropriate in the pension context and

cite a number of federal cases. (E.g., *Manhart, supra*, 435 U.S. 702; *Long, supra*, 487 U.S. at p. 237 ["We will not adopt the premise that the appropriateness of a retroactive award turns on a particular pension fund's current financial status, so that financially successful pension funds pay but financially insecure pension [***86] funds do not. To do so imposes a penalty for prudent management"]; *Norris, supra*, 463 U.S. at p. 1092; *Retired Public Employees' Ass'n. v. State of Cal., supra*, 799 F.2d at pp. 514-515; *Probe, supra*, 780 F.2d 776.) (16) Federal decisions, however, have limited relevance to whether our Supreme Court's decision, which interprets a California statute, should have retroactive application. As the United States Supreme Court has explained: "The determination whether a constitutional decision of this Court is retroactive--that is, whether the decision applies to conduct or events that occurred before the date of the decision--is a matter of federal law. When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions." (*American Trucking Assns., Inc. v. Smith* (1990) 496 U.S. 167, 177 [110 L. Ed. 2d 148, 110 S. Ct. 2323].) No federally protected right is involved in this proceeding and the proper interpretation of CERL is purely a question of state law.

[**823] However, counties and retirement boards contend that many California courts [***87] have looked to federal law on the question of retroactivity, as articulated in *Chevron Oil Co. v. Huson* (1971) 404 U.S. 97, 106-107 [30 L. Ed. 2d 296, 92 S. Ct. 349] (*Chevron*). (See, e.g., *Kreisher, supra*, 198 Cal. App. 3d at p. 399, fn. 4 ; *Casas v. Thompson* (1986) 42 Cal.3d 131, 140 [228 Cal. Rptr. 33, 720 P.2d 921], overruled on another issue in *In re Marriage of Mansell* (1989) 217 Cal. App. 3d 219, 226 [265 Cal. Rptr. 227]; *Citicorp North American, Inc. v. Franchise Tax Bd.* (2000) 83 Cal.App.4th 1403, 1423 [100 Cal. Rptr. 2d 509].) In *Chevron*, the United States Supreme Court identified three relevant factors in determining whether to apply an overruling case retroactively: "First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied [citation], or by deciding an issue of first impression whose resolution was not clearly foreshadowed (*Chevron, supra*, at p. 106)." The second factor considers whether in light of [*466] the " 'history ... purpose and effect ' " of the rule in question [***88] its operation will be furthered or retarded by retrospective

application. The third factor weighs "the inequity imposed by retroactive application" and whether it would produce " 'substantial inequitable results,...' injustice or hardship"....' [Citation.]" (*Chevron, supra*, at pp. 106-107.)

Some courts may have been guided by *Chevron* on the issue of retroactivity, but the federal cases upon which counties and retirement boards rely are a special category of cases that have considered retroactivity for federal pension cases and the implementation of Title VII (42 U.S.C. § 2000e-2(a)(1)). Thus, these cases are not simply concerned with retroactivity in the pension context, but the unique circumstances of changes in pension plans as a result of the court's interpretation of the implementation of Title VII. In *Manhart, supra*, 435 U.S. 702, the United States Supreme Court considered whether requiring female employees to make larger contributions than male employees to the pension fund violated Title VII. It determined that it did, but it gave its holding only prospective application. (*Manhart, at pp. 718-723* [***89] .) The court noted that 50 million Americans participate in retirement plans other than Social Security and that "[d]rastic changes in the legal rules governing pension and insurance funds, like other unforeseen events, can have this effect. Consequently, the rules that apply to these funds should not be applied retroactively unless the legislature has plainly commanded that result. ... The [Equal Employment Opportunity Commission (EEOC)] itself has recognized that the administrators of retirement plans must be given time to adjust gradually to Title VII's demands. Courts have also shown sensitivity to the special dangers of retroactive Title VII awards in this field." (*Id. at pp. 721-722*, fn. omitted.) The court explained: "There can be no doubt that the prohibition against sex-differentiated employee contributions represents a marked departure from past practice. Although Title VII was enacted in 1964, this is apparently the first litigation challenging contribution differences based on valid actuarial tables. Retroactive liability could be devastating for a pension fund. The harm would fall in large part on innocent third parties." (*Id. at pp. 722-723* [***90] , fn. omitted.) The court stated that the harms would fall on innocent third parties because, if the contributions were recovered from the pension fund, administrators of the fund would be forced to meet unchanged obligations with diminished assets. Further, if the reserve was inadequate, [**824] "either the expectations of all retired employees will be disappointed or current employees will be forced pay not

only for their own future security but also for the unanticipated reduction in the contributions of past employees." (*Id.* at p. 723.) All of the federal cases cited by counties and retirement boards involved Title VII pension cases and followed the ruling in *Manhart*. (*Long, supra*, 487 U.S. 223, 237; *Norris, supra*, 463 U.S. at p. 1092; *Retired Public Employees' Ass'n. v. State of Cal., supra*, 799 F.2d at p. 515; *Probe, supra*, 780 F.2d 776.) [*467]

The *Manhart* case and its progeny are not especially helpful to counties and retirement boards. The *Manhart* court was confronted with the "[d]rastic changes in the legal rules governing pension and insurance funds" [***91] as a result of Title VII and the "devastating" effect retroactive application would have. (*Manhart, supra*, 435 U.S. at pp. 721-722.) The impact was obvious; the court's ruling affected the contributions and benefits for *all* women. No such drastic result is implicated here. As already noted, counties and retirement boards have failed to establish "hardship" and, without such evidence, it is unclear that very many people will be affected. Not only does the *Ventura* decision impact only those particular employees that received a cash payment not ordinarily given to the class of employees of their rank, but the record does not establish that the resulting increase for these particular employees would be "devastating."

In addition, another clear difference between the federal cases and the ones before us is that the United States Supreme Court stated that the EEOC contemplated the gradual implementation of Title VII by administrators of pension plans (*Manhart, supra*, 435 U.S. at pp. 721-722) and therefore the holding in *Manhart* comported with Title VII objectives. That is not the case here. Indeed, as the *Ventura* court detailed, the intent [***92] of the Legislature, as revealed by the statutory history of CERL and the definitions of "compensation earnable" and "final compensation" in PERL, was to always include advantages paid in cash (excluding overtime) in the calculations of "final compensation" for pensions. (*Ventura, supra*, 16 Cal.4th at p. 504.)

Finally, the federal cases did not consider mistakes in calculations based on an erroneous interpretation of a statute, which is the situation before us. Rather, the federal cases were concerned with correct calculations based on actuarial tables that unlawfully distinguished between men and women.

It is also unclear whether the exception to the retroactive application of judicial decisions set forth in the federal cases cited by counties and retirement boards remains valid after *Harper v. Virginia Dept. of Taxation* (1993) 509 U.S. 86 [125 L. Ed. 2d 74, 113 S. Ct. 2510]. The United States Supreme Court in *Harper* stated that it had previously held in *Davis v. Michigan Dept. of Treasury* (1989) 489 U.S. 803 [103 L. Ed. 2d 891, 109 S. Ct. 1500] that "a State violates the constitutional doctrine of intergovernmental [***93] tax immunity when it taxes retirement benefits paid by the Federal Government but exempts from taxation all retirement benefits paid by the State or its political subdivisions." (*Harper, supra*, at p. 89.) The *Harper* court noted that the Supreme Court of Virginia twice refused to apply the *Davis* holding retroactively, relying on the retroactivity analysis in *Chevron, supra*, 404 U.S. 97. (*Harper, supra*, at pp. 89-90.) Although the Supreme Court [**825] did not specifically address the question of retroactivity in pension cases, it noted [*468] "the fundamental rule of 'retrospective operation' that has governed '<cial">[j]udicial decisions ... for near a thousand years' " and, in the civil context, the exception to the rule set forth in *Chevron* when the court was announcing " 'a new principle of law' " and limiting its application would avoid " 'injustice or hardship' " without unduly undermining the 'purpose and effect' of the new rule." (*Harper, supra*, at pp. 94-95.) The *Harper* court pointed out that it had already held that judicial decisions would always apply retroactively in the criminal [***94] context (*Griffith v. Kentucky* (1987) 479 U.S. 314 [93 L. Ed. 2d 649, 107 S. Ct. 708]), and that it was now making clear that such a rule applied in the civil context. (*Harper, supra*, at pp. 95-96.) "When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule. This rule extends *Griffith's* ban against 'selective application of new rules.' [Citations.] Mindful of the 'basic norms of constitutional adjudication' that animated our view of retroactivity in the criminal context [citation], we now prohibit the erection of selective temporal barriers to the application of federal law in noncriminal cases. In both civil and criminal cases, we can scarcely permit 'the substantive law [to] shift and spring' according to 'the particular equities of [individual parties'] claims' of actual reliance on an old rule and of harm from a retroactive application of the new rule. [Citation.] Our

approach [***95] to retroactivity heeds the admonition that "[t]he Court has no more constitutional authority in civil cases than in criminal cases to disregard current law or to treat similarly situated litigants differently." [Citation.]" (*Harper, supra, at p. 97*; see also *Reynoldsville Casket Co. v. Hyde (1995) 514 U.S. 749, 752 [131 L. Ed. 2d 820, 115 S. Ct. 1745]* [court retroactively applied a prior decision that the state's tolling statute was unconstitutional, even though it resulted in dismissal of a lawsuit; court pointed out that *Harper* overruled *Chevron* "insofar as the case (selectively) permitted the prospective-only application of a new rule of law"]; *Ryder v. United States (1995) 515 U.S. 177, 184-185 [132 L. Ed. 2d 136, 115 S. Ct. 2031]*.)

(17) We therefore conclude that, even presuming that the narrow exception for retroactivity created by the United States Supreme Court cases in the pension and Title VII context remains good authority, this exception has limited applicability to California law. Moreover, the equities in those federal situations differ significantly from those here. We therefore hold that the [***96] retroactive application of the *Ventura* decision is proper. Consequently, we need not address plan members' argument that applying the *Ventura* decision only prospectively would deny them equal protection of the law. [*469]

III. Arrears Contributions

The trial court ruled that retirement boards had the discretion to collect arrears contributions. It stated that this discretion did "not mean that the retirement boards ... must collect arrears beyond the three-year limitations period." The court cautioned: "This decision is within the sound discretion of the retirement boards and presumably each board will exercise its discretion in a manner that is consistent with the best interests of its members. However, it is emphatically not the case, as [retirement boards'] argument at times seems to suggest, that a decision requiring the retirement boards [**826] to recalculate pension benefits correctly, in compliance with *Ventura*, compels the [retirement boards] to seek arrearage contributions beyond the three-year limitations period, or from retirees who receive no benefit from the retroactive application of *Ventura*, or at all. Arrears [***97] contributions may be authorized, but they are not mandatory, and the present record hardly demonstrates that they are necessary in any of the counties involved in this litigation." The court in a

footnote explained that it retained "jurisdiction to resolve any disputes that may arise with respect to the right to collect arrearages or to offset arrearages against other amounts payable to plan members."

Retirement boards claim the trial court's ruling was correct, while counties contend that the court erred in refusing to rule that arrears contributions are mandatory. Plan members argue that the court erred in giving retirement boards discretion to recover arrears contributions or interest from members not benefiting from retroactive relief. They also maintain that the court should have ruled that any claims for excessive arrears contributions are barred by each retirement board's failure to pursue that relief within the three-year limitations period (*Code Civ. Proc. § 338, subd. (d)*). Both counties and plan members assert that the court did not properly apply the holdings in *Barrett, supra, 189 Cal. App. 3d 1593 [***98]* and *Marin Firefighters, supra, 30 Cal.App.4th 1638*. We review these claims of legal error under the de novo standard of review. (See, e.g., *Burden v. Snowden, supra, 2 Cal.4th at p. 562*.)

In *Barrett*, the court ruled that CERL required certain work program supervisors to be reclassified from miscellaneous members to safety members, retroactive to their initial dates of employment as work program supervisors. (*Barrett, supra, 189 Cal. App. 3d at pp. 1597-1599, 1609* .) This reclassification entitled affected employees to earlier retirement eligibility and greater pension benefits. (*Id. at p. 1597, fn. 1*.) The plaintiffs maintained that equitable considerations barred the defendants from demanding arrears contributions, but the Court of Appeal disagreed. The court concluded that the defendant retirement board had the authority under CERL to collect both arrears contributions and interest for the period in question. The court noted that the "retirement system [is] based on contributions by both employer and [*470] employee. (*Gov. Code, §§ 31453, 31453.5 [***99], 31558-31567, 31581*.)" (*Barrett, supra, at p. 1609*.) Thus, the burden of arrears contributions falls upon the plaintiffs and the defendant county. (*Ibid.*) The court explained that the plaintiffs will merely have to "pay their quid pro quo. They will receive the higher pension benefits retroactively but are required, as are all other safety members, to pay retirement contributions commensurate with the formula contributions paid by all other safety members during the entire course of their employment. " (*Id. at p. 1608, fn. omitted*.)

In *Marin Firefighters*, the Court of Appeal held that the inclusion of holiday pay into final compensation had to be applied retroactively. (*Marin Firefighters*, *supra*, 30 Cal.App.4th at p. 1648.) The court stated that *Barrett* established that the retirement board "has the power to seek both arrears contributions and interest." (*Marin Firefighters*, at p. 1650, fn. omitted.) The *Marin Firefighters* court then considered whether the statute of limitations limited this power, an issue not addressed by [***100] *Barrett*, and concluded that it did not. (*Id.* at p. 1650.) [**827]

There is nothing in *Barrett* or *Marin Firefighters* to support counties' argument that the court erred in refusing to require retirement boards to collect arrears contributions. Indeed, in *Barrett*, the reviewing court concluded that the trial court erred when it ordered the defendant retirement board to pay all arrears contributions and applicable interest on behalf of the newly classified safety members. (*Barrett*, *supra*, 189 Cal. App. 3d at pp. 1613-1614.) It stated that the court could not attempt to compel the retirement board " to exercise its discretion in a particular manner." (*Ibid.*) Thus, contrary to counties' assertions, the *Barrett* court did not mandate that retirement boards must collect arrears contributions, but clearly held that they had the discretion to do so.

Counties also argue that it would be unfair to them if retirement boards forego collecting arrears contributions and interest because, among other things, it would saddle counties with additional costs and treat pre-*Ventura* employees more favorably than [***101] active employees. These equitable arguments must fail. We cannot assess the equities of the situation because retirement boards have yet to take any action.

Plan members' equitable arguments must similarly fail. Plan members explain why the equities in this situation differ from those in *Barrett* and in *Marin Firefighters*. We do not disagree that there are significant differences between these cases and the ones before us, but--since retirement boards have not exercised their discretion as to how they are going to fund the shortfall resulting from their mistaken interpretation of CERL--it is premature for us to consider any equitable arguments.

[*471] In addition, plan members insist that CERL does not permit retirement boards to recoup arrears contributions and interest beyond that necessary to finance that portion of retroactive benefits intended to be

funded by the member, but they cite no authority for this proposition. Further, they claim that retirement boards do not have the authority to collect excessive arrears contributions, since they are barred by each retirement board's failure to pursue that relief within the three-year limitations period (*Code Civ. Proc.*, § 338, *subd. (d)* [***102]). Plan members contend that the "most accurate and equitable way to finance the member-funded portion of the enhanced benefits resulting from granting retroactive relief would be to reduce the retroactive recovery (both for arrears pension adjustments and future pension adjustments) accordingly."

Without addressing the details of plan members' argument, we reject it. They are urging us to order retirement boards to act in a specific manner, and to usurp the boards' authority. "When a statute imposes upon an administrative body discretion to act under certain circumstances, mandate will not lie to compel the exercise of such discretion in a particular manner. [Citation.]" (*Barrett*, *supra*, 189 Cal. App. 3d at p. 1613.) Moreover, it is unclear that any of the issues raised by plan members will need to be addressed. Retirement boards may decide to use excess earnings of the pension system, as OCERS did, or to implement other corrective measures such as designating the shortfall as unfunded liability that the county can amortize over 30 years under sections 31453, 31453.5, 31453.6 [***103] , and 31454. Thus, until each retirement board exercises its discretion to correct for its miscalculations under CERL, we cannot determine whether it has abused its discretion.

LACERA members contend that LACERA Board did not collect arrears contributions for its post-*Ventura* retirees and it [**828] therefore exercised its discretion not to collect any arrears contributions. They claim that retirement boards cannot treat pre-*Ventura* retirees disparately as that would constitute an arbitrary, and therefore unlawful, determination. This argument, too, must fail. Without knowing if LACERA Board is going to collect arrears contributions from pre-*Ventura* retirees and, if it does, its reasons for doing so, we cannot assess its actions. Simply because LACERA Board funded the increased benefits to the post-*Ventura* retirees without collecting arrears contributions does not establish that it has the funds to avoid collecting arrears contributions for the pre-*Ventura* retirees. Since LACERA Board has not yet acted, we cannot determine whether it has acted arbitrarily.

We note that, although retirement boards have discretion to manage their [***104] retirement systems, this discretion is not unfettered. *Article XVI, section 17, of the California Constitution* states in relevant part: "[T]he retirement board of a public pension or retirement system shall have plenary authority and [*472] fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following: [¶] (a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system. [¶] (b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely [***105] in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty."

The trial court retained jurisdiction to address any issues that may arise regarding the collection of contributions of arrearages. Rather than trying to anticipate problems that may not even occur, we believe the trial court's approach was sound and correct. Accordingly, we affirm its ruling on the collection of contributions of arrearages.

IV. *Items of Remuneration to be Included in Calculations of "Final Compensation"*

Plan members contend that the trial court erred when it ruled that cash-outs by employees of unused leave upon separation from service (termination pay), insurance-related payments made by the employer, and payments of mandatory employee retirement contributions (pick-ups) that are paid by the employer directly to the retirement plan are not included in the calculations of "final compensation" for retirement

benefits. [***106] (18) Since this is a question of statutory construction, we review the court's ruling under the de novo standard of review.²⁰ (See, e.g., *Burden v. Snowden*, [**829] *supra*, 2 Cal.4th at p. 562, 7 Cal.Rptr.2d 531, 828 P.2d 672.)

20 Because we are considering what must be included under the statute and we conclude that the items requested by plan members do not have to be included under CERL, we need not consider L.A. County's argument that these items cannot be included because they would frustrate the understandings and expectations of L.A. County (see § 3500 *et seq.*).

"[O]ur first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to [*473] the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the [***107] legislative purpose. ... The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med., Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 [241 Cal. Rptr. 67, 743 P.2d 1323].) "Rules of statutory construction require courts to construe a statute to promote its purpose, render it reasonable, and avoid absurd consequences." [Citation.]" (*Ford v. Gouin* (1992) 3 Cal.4th 339, 348 [11 Cal. Rptr. 2d 30, 834 P.2d 724].)

(19) With regard to pension legislation, pension provisions shall be liberally construed and we resolve all ambiguities in favor of the pensioner. (*Barrett, supra*, 189 Cal. App. 3d at p. 1603 .) "However, this rule of liberal construction is applied for the purpose of effectuating obvious legislative intent and should not blindly be followed so as to eradicate the clear language and purpose of the statute and allow eligibility for those for whom it was obviously not intended." (*Ibid.*)

[***108] (20) To be included in the calculation of pension benefits, the court must first determine what items of remuneration fall into the broad definition of "compensation" under *section 31460*, and then determine whether they fall within the narrower category of "compensation earnable" as defined in *section 31461*

"and thus form the basis for the calculation of 'final compensation' on which the pension is based pursuant to *section 31462* or *31462.1*." (*Ventura, supra, 16 Cal.4th at pp. 493-494.*) As noted earlier, *section 31461* defines "[c]ompensation earnable" as "the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay."

A. Termination Pay

Plan members contend that termination pay should be included in the final calculation of their benefits. By termination pay, they are referring to the one-time cash [***109] payments made to plan members upon retirement for accrued but unused compensatory time, sick leave time, and vacation or holiday time. Plan members contend that there is no significant difference between annual in-service cash payments, which *Ventura* held to be included in pension computations, and termination payments.

The *Ventura* court considered the question of annual leave and concluded: "When annual leave is taken as time off, the employee simply continues to receive regular salary or wages without the necessity of performing services. [*474] Receipt of that pay is part of the employee's 'remuneration' for past services and is 'compensation.' When an employee elects to receive cash in lieu of accrued vacation and the wages or salary the employee would receive during the vacation period, the cash, like the vacation pay the employee would otherwise receive, is part of the employee's 'remuneration' for past services. The same analysis applies to the county's 'longevity incentive' since that item simply grants additional vacation [**830] hours to be accrued or cashed out to those employees with five years or more service who are covered by the resolution. Payment [***110] to longtime employees, whether in salary for vacation days on which no work is performed or in additional cash, is equivalent to increased pay that often accompanies seniority. It, too, is 'remuneration' and 'compensation.'" (*Ventura, supra, 16 Cal.4th at pp. 497-498, fn. omitted.*)

Interpreting *Ventura*, the trial court ruled that termination pay is not "compensation" or "compensation earnable" when the employee cannot or does not elect to receive cash in lieu of the accrued time off prior to

retirement. Further, "[s]ection *31462.1* defines 'final compensation' as 'the average annual compensation earnable by a member during any year elected by a member at or before the time he files an application for retirement, or, if he fails to elect, during the year *immediately preceding* his retirement.'" (Italics added; see also § *31462.*)" The court explained: "The phrase 'any year elected by a member' can refer only to a year of employment, as the default provision upon a failure to elect makes explicit. The plain language of *Section 31462.1* thus makes clear that the [***111] final compensation period extends up to, but does not include retirement. The one time cash-out of accrued leave becomes payable 'upon separation' from services. (§ *19839.*) Separation and retirement occur when employment has terminated, and not during the period of employment itself. For this reason, termination pay need not be included in final compensation."

Plan members contend that prior to their retirement they earn the ability to take the time off without loss of pay and the right to cash out unused paid leave benefits at retirement. These benefits are vested fundamental rights earned by plan members for services rendered, and protected from forfeiture. (See *Lab. Code, § 227.3.*) Employees, according to plan members, cannot be forced to use their leave benefits prior to retirement. They contend that since the "benefits not used before retirement are automatically cashed out at separation, it logically follows that the decision to 'cash out' was made before retirement by virtue of the election not to use the benefits during that time frame."

This argument is, however, unpersuasive. [***112] (21) Whether sick leave or vacation time is included in the calculations for benefits does not bear on plan members' vested rights to this time, nor does it in anyway compel them to [*475] cash-out prior to retirement. Rather, if they do not or cannot cash out their time prior to retiring, they have received an "in-kind" benefit, not to be calculated as part of their "final compensation."

Plan members contend that it does not make sense to have a gap between the measurement of "final compensation" and retirement. However, the language of the statute is that "final compensation" is "the average annual compensation earnable by a member during any year elected by a member at or before the time he files an application for retirement, or, if he fails to elect, during the year *immediately preceding* his retirement." (§

31462.1, italics added.) This language is not ambiguous; it plainly excludes retirement and we will not rewrite the statute.

Plan members also cite the following language of *section 31461*: "Compensation, as defined in *Section 31460*, that has been deferred shall [***113] be deemed 'compensation earnable' when earned, rather than when paid." According to this language, plan members assert, termination payments became "compensation earnable" when the right to this compensation was earned, not [**831] when it was paid. Thus, their right to termination payments vested prior to their retirement from service. We, however, agree with the following comments of the trial court: "On its face, the sentence appears to apply to payments made to a deferred compensation plan. Moreover, as termination pay is not required to be included in compensation as defined in *section 31460*, the sentence in *section 31461* has no further application to the issue." As already made clear by the *Ventura* court, only cash payments are compensation. (*Ventura, supra, 16 Cal.App.4th at p. 497.*) The reason for expressing by statute that amounts deducted from an employee's wages for participating in a deferred compensation plan are "compensation" when earned was "[to] make it clear that the deferred funds, which clearly would have been 'compensation' if paid in the normal course, do not lose that [***114] status for pension purposes even though they had not been received by the employee at the time the pension was calculated." (*Id. at p. 495.*) However, as the trial court explained: "Where an employee cannot or does not elect to receive cash in lieu of the accrued time off prior to retirement, the benefit remains one of time rather than cash." The right to a termination pay cash-out arises only upon retirement (§ 19839),²¹ that is *separated* from service; the right does not arise prior to retirement or during service.

21 *Section 19839* provides in relevant part: "(a) Upon separation from service without fault on his or her part, a person is entitled to a lump-sum payment as of the time of separation for any unused or accumulated vacation or annual leave or for any time off to which he or she is entitled by reason of previous overtime work where compensating time off for overtime work is provided for by the appointing power or by rules of the department. ... [¶] (b) Persons separated from service through fault of their own are entitled to a lump-sum payment for compensating

time off for overtime work, and in addition, the portion, if any, of unused vacation or annual leave as the department may determine. ..."

[***115] [*476] Not including termination pay in the calculation of pension benefits finds further support under PERL. As recognized in *Ventura*, the language used to define "compensation" and "compensation earnable" under CERL and PERL was originally essentially the same, and only later was CERL's definition amended to exclude in-kind advantages while PERL was not so amended. (*Ventura, supra, 16 Cal.4th at p. 497.*) "[W]hen words used in a statute have acquired a settled meaning through judicial interpretation, the words should be given the same meaning when used in another statute dealing with an analogous subject matter; this is particularly true, where ... both statutes were enacted for the welfare of employees and are in harmony with each other." [Citation.] (*Id. at p. 496, fn. 16, quoting Kuntz v. Kern County Employees' Retirement Assn. (1976) 64 Cal. App. 3d 414, 422 [134 Cal. Rptr. 501].*)

When PERL's "compensation" and "compensation earnable" statutes were essentially the same as those in CERL, termination pay was excluded from calculating retirement benefits. [***116]²² (*Santa Monica Police Officers Assn. v. Board of Administration (1977) 69 Cal. App. 3d 96, 100 [137 [**832] Cal. Rptr. 771].*) The court in *Santa Monica Police* reasoned that lump sums for termination pay were like overtime pay in that they both were accrued when the employee works more than expected, and the Legislature expressly excluded overtime pay from the compensation to be included in computing a pension. (*Ibid.*) Thus, "viewing the State Retirement System as an entity," the court concluded that "the Legislature intended to exclude lump-sum payments for unused sick leave and vacation time from pension computations." (*Id. at p. 101, fn. omitted; see also Hudson v. Board of Administration (1997) 59 Cal.App.4th 1310, 1323 [69 Cal. Rptr. 2d 737] [including termination pay would permit "spiking" of pension benefits].*)

22 The PERL provision defining "compensation earnable" excludes "final settlement pay," which is defined to mean "any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in

anticipation of a separation from employment." (§ 20636, *subds. (f), (g)(4)(G).*) It also excludes "[p]ayments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise." (§ 20636, *subd. (g)(4)(F).*)

[***117] Termination payments have never been included in the definition of "compensation earnable" under PERL, and plan members have presented no compelling reason as to why this construction under PERL should not apply to "compensation earnable" under CERL. (22) Accordingly, we hold that termination pay that is received upon retirement is not required under CERL to be included in the calculation of pension benefits.²³

23 We need not address counties' argument that *section 31641.03* establishes that the Legislature has evinced its intent not to treat accrued leave cashed out upon termination as "compensation." *Section 31641.03* provides in relevant part: "In any county the board of supervisors may provide by ordinance that members specified in the ordinance shall be credited, for up to 100 percent of sick leave accumulated as of the date of their retirement, and that sick leave credit shall be in addition to service credit. The additional cost to the retirement system shall be borne by the county or district."

[***118]

[*477] B. *Employer's Payment of Insurance-related Premiums*

Plan members assert that an employer's (1) cash payments into members' flexible benefit plans that were used to pay insurance premiums for the member (and/or cash payments to purchase benefits for the members) and (2) cash payments to insurers to satisfy the member's obligation to pay premiums for insurance provided to the member should be included in the calculations of their pension benefits. They claim that neither the statute nor *Ventura* imposes a requirement that the cash payment must be made directly to the employee in order to qualify as "compensation" under CERL. They maintain that insurance premiums paid by employers are paid in cash to third parties and are, therefore, remuneration paid in cash, not in-kind advantages.²⁴

24 Plan members also claim that these payments are really "cash payments to a creditor of the member to satisfy debts the member otherwise would have to pay himself." These attempts to characterize these payments as cash payments to the employee only underscore the need for a bright-line rule that requires the employee to receive a cash payment from the employer.

[***119] *Section 31460* defines "compensation" as "the remuneration paid in cash out of county or district funds, plus any amount deducted from a member's wages for participation in a deferred compensation plan..., but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to a member." Plan members contend that this statute does not specify that the cash payment has to be made to the employee, but merely requires that the remuneration paid by the county be in cash.

(23) The *Ventura* court has already noted that *section 31461* is ambiguous in some respects, but the court made it clear that [***833] "compensation" under *section 31460* must be cash payments, not in-kind advantages. (*Ventura, supra, 16 Cal.4th at p. 493.*) It held that *section 31460* includes any remuneration paid in cash and any amount deducted from the employee's wages for a deferred compensation plan. (*Ventura, supra, at p. 494.*) Contributions not deducted from an employee's wages do not constitute " [***120] compensation." (*Id. at pp. 494-495.*)

The language of the *Ventura* opinion indicates that it was focusing on *what the employee was receiving* to determine whether the remuneration was being paid in cash or was an in-kind advantage. The *Ventura* court explained that, prior to 1951, *section 31460* allowed in-kind advantages to be "compensation" if they "were provided to an employee in payment or partial payment for the employee's services." (*Ventura, supra, 16 Cal.4th at p. 495.*) In 1951, the statute was amended to provide "that the monetary value of those items and other advantages was not to be included in 'compensation' for this [*478] purpose." (*Ibid.*) The court explained: "CERL differs from the PERL legislation under consideration in that it excludes, rather than includes, the monetary value of an advantage provided in kind. It does not follow, however, that when the advantage *is one received by the employee in cash*, the *section 31460* exclusion for the 'monetary value' of the advantage is

applicable. Under the distinction the statute makes for in-kind advantages, [***121] even though a noncash 'advantage' may be 'remuneration' for the employee's services, the Legislature has relieved CERL counties of the obligation to assign a cash value to in-kind advantages provided to employees and of including that amount in 'compensation' for pension purposes. The Legislature has recognized that some *employees receive remuneration other than wages or salary* but has concluded that if those 'advantages' are not paid in cash, their value need not be included in 'compensation' for purposes of computing a pension. It has not done so for cash payments made in lieu of providing the same advantages in kind." (*Id.* at p. 497, italics added.)

(24) Thus, although the exact question before us was not directly addressed by *Ventura*, the language of the opinion indicates that it considered the statute to limit the definition of "compensation" to cash remuneration *provided* to the employee for his or her services. Here, the employee is receiving an insurance premium, not a cash payment. Thus, it is an in-kind benefit, which is not "compensation" under *section 31460*. [***122] ²⁵

25 Plan members contend that this payment is no different than a payroll authorization directing the employer to divert a portion of a member's salary to make cash payments directly to a charitable institution, to the union for dues, or to the retirement system. However, when the employer makes the payment to the insurance company, the employee never receives any payment or income to be directly transferred. Indeed, if the employee did receive the money, the employee would have to pay tax. Thus, these tax savings devices, as plan members label them, permit the employee to avoid paying taxes, but they are also excluded from the definition of "compensation" under CERL.

Plan members contend that counties pay cash to a third party and therefore, unlike the in-kind advantages excluded as "compensation" in *Ventura*, a precise monetary value can be ascertained. However, we do not agree that whether a precise monetary value can be determined is critical to the definition of "compensation" under CERL. Rather, [***123] the *Ventura* court was simply noting [***834] that the Legislature had "relieved CERL counties of the obligation to assign a cash value to in-kind advantages provided to employees" (*Ventura*,

supra, 16 Cal.4th at p. 497.) It did not suggest that in-kind advantages qualified as "compensation" if a cash value could easily be assigned. (*Ibid.*) Moreover, we agree with the trial court that all in-kind benefits require, at some point, "a cash payment or transfer of funds to either a third party or a separate county department. A rule that differentiated between in-kind benefits based on the ease of determining their monetary value would be unworkable and contrary to the bright line drawn by *Ventura*, [***479] which must be understood to be between those benefits paid in cash to the employee and those that are not." Indeed, a definite sum could be expended for board or lodging, but *section 31460* expressly disallows such sums to be considered as "compensation" if the money is not paid directly to the employee. We see no reason why the payment of insurance premiums should be any different. The employee receives insurance [***124] coverage, not cash, and therefore it is not "compensation" under CERL.

Further, in making its ruling, the trial court properly relied on CERL statutes and legislative history relating to the treatment of flexible benefits to conclude that payments to third parties for insurance benefits are not required to be included in pension calculations. On June 15, 1990, the Legislature enacted *section 31460.1*, which read: " 'Compensation' shall not include employer payments, including cash payments, made to, or on behalf of, their employees who have elected to participate in a flexible benefits program, where those payments reflect amounts that exceeds [so in chaptered copy] their employees' salaries." (Stats. 1990, ch. 142, § 1, p. 1191.) The Legislature, however, on May 11, 1992, repealed this statute by Senate Bill No. 193 (1991-1992 Reg. Sess.). (Stats. 1992, ch. 45, § 1, p. 158.)

Senate Bill No. 193 (1991-1992 Reg. Sess.) provided in part: "Sec. 3. The Legislature hereby finds and declares that: [¶] ... [¶] (3) *Section 31460.1* has been erroneously construed as implicitly requiring counties maintaining retirement [***125] systems under the 1937 act to include in 'compensation' those flexible benefits payments until the board of supervisors elect pursuant to that section to exclude those flexible benefits payments from 'compensation.' [¶] (4) That interpretation was not intended by the Legislature when it enacted that section. Had that been the intent of the Legislature when it enacted Assembly Bill [No.] 3146, it would have been a substantial departure from the long-standing practice of the Legislature of not intruding into the county

decisionmaking process regarding compensation determinations with respect to those county retirement systems (see *Sections 31460* and following, Government Code). [¶] ... [¶] (8) Any reversal or termination, on or after the effective date of this act, of county actions taken on the basis of misconstruction of the intent and meaning of *Section 31460.1 of the Government Code* would merely restrict county employees to those gains reasonably to be expected from their county retirement contracts and withhold unforeseen and windfall advantages which bear no relation to the fundamental theory and objective [***126] of the county retirement systems maintained pursuant to the *County Employees Retirement Law of 1937* and would, therefore, not constitute an unconstitutional impairment of the county retirement contract [citation]." (Stats. 1992, ch. 45, § 3, pp. 158-159.)

[*480] Plan members contend that Senate Bill No. 193 (1991-1992 Reg. Sess.) did not change the language of the definitions in *section 31460 and 31461*; it [**835] simply repealed *section 31460.1*. However, contrary to plan members' assertions, the Legislature expressed its intent that it *never* considered inclusion of flexible benefits to be mandatory under CERL.

Plan members also argue that subsequent legislative interpretations have very little or no effect upon the construction of laws promulgated by a different Legislature. (See, e.g., *Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal. App. 3d 1122, 1137 [203 Cal. Rptr. 886] (*Honey Springs*); *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 52 [276 Cal. Rptr. 114, 801 P.2d 357] [***127] ["The declaration of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law. [Citations.] This is especially true when, as here, such declared intent is without objective support in either the language or history of the legislation and (until recently) is contrary as well to the practice of the affected agency" (fn. omitted)]; see also *People v. Martinez* (1987) 188 Cal. App. 3d 1254, 1259 [233 Cal. Rptr. 877].) However, "[a]lthough a legislative expression of the intent of an earlier act is not binding upon the courts in their construction of the prior act, that expression may properly be considered together with other factors in arriving at the true legislative intent existing when the prior act was passed." [Citations.]" (*Honey Springs, supra, at p. 1137.*)

We agree that "[t]he Legislature has no authority to interpret a statute. That is a judicial task. [However], [t]he Legislature may define the meaning of statutory language by a present legislative enactment which, subject to constitutional restraints, it may deem retroactive. But it has no legislative authority simply [***128] to say what it *did* mean. Courts do take cognizance of such declarations where they are consistent with the original intent. "[A] subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act. [Citations.]" [Citation.]" (*Honey Springs, supra, 157 Cal. App. 3d at p. 1137.*)

"Our task is to discern the intent of the statute from its applicable language and context." (*Honey Springs, supra, 157 Cal. App. 3d at p. 1137.*) Although the Legislature's comment regarding why it repealed *section 31460.1* is not binding upon us, it still aids in our understanding of the legislative intent. Thus, "[w]e assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [*481] [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning.' [Citation.] 'One such circumstance is when the Legislature promptly reacts [***129] to the emergence of a novel question of statutory interpretation: "An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute'" [Citation.]" (*Hudson v. Board of Administration, supra, 59 Cal.App.4th at p. 1322.*) Because Senate Bill No. 193 (1991-1992 Reg. Sess.), which clarified the Legislature's intention regarding former *section 31460.1* (an amendment to CERL), was set forth just two years after enacting this statute, it "must be accepted as the legislative declaration" (*Hudson, supra, at p. 1322*) of the meaning of *section 31460.1* and its interpretation [**836] of the requirements under CERL.²⁶

26 Plan members argue that the later adoption of *sections 31461.1 and 31461.4* in 1993 and 1999, respectively, which gave L.A. County the option to exclude flexible benefits for newly hired employees and to exclude any increase in flexible benefit contributions, establishes that flexible

benefits were required to be included in "compensation" and "compensation earnable." Otherwise, they argue, there was no reason to provide L.A. County with special authorization to remove these payments from the definition. However, in 1992, LACERA had included certain flexible benefit contributions in compensation earnable to the extent that the employee could elect to receive such contributions in cash. These later statutes were therefore necessary to permit L.A. County to limit the inclusion of flexible benefits. (See *Howard Jarvis Taxpayers' Assn. v. Board of Supervisors* (1996) 41 Cal.App.4th 1363, 1373-1374 [49 Cal. Rptr. 2d 157].)

[***130] (25) We conclude that the Legislature has expressed its intent not to include employer payments into flexible benefit plans and payments of insurance carrier premiums as "compensation" under CERL, which is consistent with the language of CERL, in harmony with the statutory framework of CERL as a whole, and consistent with the interpretation of CERL as set forth in *Ventura*.²⁷ Accordingly, we conclude the trial court properly found that CERL did not require these payments to be included in the calculation of retirement benefits.

27 We note that PERL expressly excludes payments to third parties to procure insurance coverage (§ 20636, *subd. (g)(4)(A) & (K)*). Unlike CERL, PERL also expressly excludes cash payments made to an employee in lieu of health services (*ibid.*).

C. Employer Pick-ups of Employee's Retirement Contributions

Under *sections 31581.1, 31630* [***131], or 31639.85, county employers may make employee contributions to the retirement system, and plan members contend the trial court erred in refusing to include these contributions in the [*482] calculation of "compensation earnable" for pension benefits. The specific pick-ups at issue are those where the employer pays portions of the member contribution directly to the retirement fund, and nothing is deducted from the member's salary. It is undisputed that contributions deducted from a member's salary are included in the calculation of retirement benefits under CERL.

(26) *Section 31460* defines "compensation" as "the

remuneration paid in cash ...plus any amount deducted from a member's wages for participation in a deferred compensation plan" The *Ventura* court held that under *section 31460* any sum deducted from a member's wages for participation in a deferred compensation plan was "compensation" under the statute, but that "cannot be said of a county contribution to an employee's deferred compensation plan." (*Ventura, supra, 16 Cal.4th at p. 494* [***132].) We agree with the trial court that this reasoning applies to retirement benefit pick-ups. When pick-ups are not deducted from the employee's salary, they are not "compensation" under *section 31460*.

We also agree with the trial court that plan members' attempt to characterize these pick-ups as essentially salary substitutes and therefore compensation must fail. Employer contributions to deferred compensation plans are not considered salary substitutes, and there is no more compelling reason to consider employer pick-ups as salary substitutes. As the trial court explained, "there is no language in the statute or reason in principle why the pick-up of retirement plan contributions should be treated differently." In addition, pick-ups not deducted from a member's salary are excluded under PERL. (§ 20636, *subd. (g)(4)(E)*); [***837] see also *Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 209 [28 Cal. Rptr. 2d 388] ["Employer-paid member contributions were authorized to reduce employees' income tax liability; they were not meant to increase retirement awards"].)

Furthermore, since the [***133] pick-ups do not involve any deduction in the employee's salary and the *employee does not receive any cash payment*, an employer paid pick-up is not "compensation" under CERL. (See pt. IV.B, and our discussion of the employer's payment of insurance-related benefits.)

[*483] DISPOSITION

The judgments are affirmed. No party is awarded costs.

Haerle, Acting P. J., and Ruvolo, J., concurred.

A petition for a rehearing was denied August 11, 2003, and the petitions of all appellants for review by the Supreme Court were denied October 15, 2003. Kennard, J., and Baxter, J., did not participate therein.

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SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfire.ca.gov

1500 Bollinger Canyon Road
San Ramon, California 94583

Fire Prevention
Phone: 925-838-6680
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Richard Price, Fire Chief
Subject: Reclassification of Fire Marshal Position to Assistant Chief

Background:

The Fire Chief has four direct reports – a civilian Administrative Services Director and three Chief Officers. The Chief Officers include two Assistant Chiefs (Support Services and Operations) and one Division Chief (Fire Marshal). The District has one other Division Chief (Training) that reports to an Assistant Chief (Operations).

Present Situation:

It is proposed that the three Chief Officers reporting directly to the Fire Chief be the same rank. This would require the Fire Marshal be reclassified from Division Chief to Assistant Chief. The base salary adjustment for this change would cost \$13,023 in Fiscal Year 09/10. The preliminary budget presented to the Board on May 12, 2009 included the funding for the change.

Recommendation:

It is recommended that the Board approved the reclassification of the Fire Marshal position from Division Chief to Assistant Chief effective 7/1/09.

NEW BUSINESS

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration

Phone: 925-838-6600
Fax: 925-838-6629
www.srvfire.ca.gov

**1500 Bollinger Canyon Road
San Ramon, California 94583**

Fire Prevention

Phone: 925-838-6680
Fax: 925-838-6609

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Robert Leete, Administrative Services Director
Subject: Local Agency Investment Fund
Authorizing District Officials to Deposit/Withdraw

Background:

Pursuant to Section 16429.1 of the Government Code, the State of California created the Local Agency Investment Fund (LAIF) as a trust fund for the use of local agencies to invest funds not required for the immediate needs of the local agency. San Ramon Valley Fire Protection District has participated in the Local Agency Investment Fund for many years.

One of the requirements of participation in LAIF is for the governing body to confirm the authority of District officers to order the deposit or withdrawal of funds from LAIF. With the appointment of Gloriann Sasser as Finance Supervisor, a resolution has been prepared to authorize the appropriate District officers to conduct transactions with LAIF.

Recommended Board Action:

Adopt Resolution No. 2009-02 appointing District officials to order the deposit and withdrawal of funds from the Local Agency Investment Fund.

Attachment

RESOLUTION NO. 2009-02

**A RESOLUTION OF THE SAN RAMON VALLEY FIRE
PROTECTION DISTRICT BOARD OF DIRECTORS,
1500 BOLLINGER CANYON ROAD, SAN RAMON, CA 94583 (925) 838-6600,
AUTHORIZING INVESTMENT OF MONIES IN THE
LOCAL AGENCY INVESTMENT FUND**

WHEREAS, Pursuant to Chapter 730, of the statutes of 1976, Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for the purposes of investment by the State Treasurer; and,

WHEREAS, The Board of Directors of the San Ramon Valley Fire Protection District (“District”) does hereby find that the deposit and withdrawal of District monies in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated herein is in the best interests of the District;

NOW, THEREFORE, BE IT RESOLVED, that the District Board of Directors does hereby authorize the deposit and withdrawal of District monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein, and verification by the State Treasurer’s Office of all banking information provided in that regard.

BE IT FURTHER RESOLVED, that the following District officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund:

Richard Price, District Fire Chief

Gloriann Sasser, Finance Supervisor

Robert Leete, Administrative Services Director

Debbie Wakaluk, Accounting Technician

PASSED, APPROVED and ADOPTED this 27th day of May, 2009, at the regular meeting of the Board of Directors held at 1500 Bollinger Canyon Road, San Ramon, CA, on a motion made by Director _____, seconded by Director _____ and duly carried with the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Nick Dickson, Board President

ATTESTED:

Susan F. Brooks, District Clerk

APPROVED AS TO FORM:

William D. Ross, District Counsel

APPROVED AS TO CONTENT:

Richard Price, Fire Chief

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration

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MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Bob Leete, Administrative Services Director
Subject: FY 2008-09 Budget Amendment

Background:

Appropriations are requested for the land purchase of 2100 Stone Valley Road, Alamo. At a special meeting in November, the Board of Directors approved the land purchase for Fire Station #32. The land was purchased with 2006 COP funds and a budget amendment is requested at this time to reflect the purchase.

Recommendation:

Staff recommends the adoption of Resolution No. 2009-03, approving the budget amendment to the Fiscal Year 2008-09 Budget.

Attachment:

Budget Amendment

**San Ramon Valley Fire Protection District
Budget Amendment
Fiscal Year 2008-09**

Capital Projects Fund

Total current budget Capital Projects Fund expenditures	\$5,007,154
Additional appropriations for land purchase account 6103	<u>1,200,000</u>
Total amended budget Capital Projects Fund expenditures	<u><u>\$6,207,154</u></u>

RESOLUTION NO. 2009-03

RESOLUTION OF THE SAN RAMON VALLEY FIRE PROTECTION DISTRICT CONFIRMING THE TRANSFER OF CERTIFICATES OF PARTICIPATION FUNDING IN THE AMOUNT OF \$1.2 MILLION TO THE FY 2008-09 BUDGET FOR THE PURCHASE OF REAL PROPERTY DESIGNATED AS APN 193-130-025

WHEREAS, the San Ramon Valley Fire Protection District (“DISTRICT”) purchased real property at 2100 Stone Valley Road, Alamo, CA also designated as APN 193-130-025 (“subject property”); and,

WHEREAS, the DISTRICT possesses funds sufficient for the purchase of the subject property in Certificates of Participation (“COPs”) issued in 2006; and,

WHEREAS, the operating budget for Fiscal Year 2008-09 Capital Projects Fund requires amendment to reflect the transfer of funds from the described COPs in the amount of \$1.2 million for the purchase of the subject property.

NOW, THEREFORE BE IT RESOLVED, that the DISTRICT Board of Directors approves the transfer of described COP funds in the amount of \$1.2 million to the FY 2008-09 District Capital Project Fund Account No. 6103 for the purchase of the subject property.

PASSED, APPROVED and ADOPTED this 27th day of May 2009, at a regular meeting of the District Board of Directors at San Ramon, State of California, on motion made by Director _____, seconded by Director _____ and duly carried with the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Nick Dickson, Board President

ATTEST:

Susan F. Brooks, District Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

William D. Ross, District Counsel

Richard Price, Fire Chief

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration

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MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Robert Leete, Administrative Services Director
Subject: OPEB Trust Fund

Background:

In 2004, the Government Accounting Standards Board (GASB) issued Statement No. 45, *Accounting and Financial Reporting by Employers for Post-Employment Benefits Other Than Pension*, otherwise known as "GASB 45." GASB 45 requires public agencies, including the District, to report costs and obligations for post-employment healthcare and other post-employment benefits (OPEB) much like the current accounting requirements to report pension obligations. The philosophy behind the rule is that costs of OPEB should be recognized as a current cost during the working years of an employee rather than after the employee retires. Statement 45 does not *require* funding to a trust, but unpaid liabilities on the financial statements affect the financial statement ratios and may adversely impact credit worthiness over time. GASB 45 requires that this District identify and disclose OPEB as an expense and liability on the financial statement for the first time beginning July 1, 2009.

GASB 45 requires the determination of an Annual Required Contribution (ARC) and an Annual OPEB Cost calculated in accordance with the statement. Bartel & Associates prepared such a study for the District. The report was presented to the Board of Directors on April 25, 2007. The District will be required to update the actuarial analysis every two years.

The District has several options for meeting the requirements of GASB 45. The District can continue its past practice of paying the cost of OPEB on an annual basis and not set aside funds for past and/or future liabilities. This is commonly referred to as the “pay go” option. This option would continue the District’s practice of paying premiums for active and retired employees on a monthly basis. The unfunded liability would be reported on the District’s annual financial statement.

Another option is to partially fund the liability on an annual basis. Under this option, the District would continue to pay current monthly benefits expense payments as well as make contributions to the OPEB trust to pay off the unfunded liabilities over time.

The third option is to fully fund the OPEB liability. This option would require the District to fully fund its OPEB obligation in a single payment.

The District has informally set aside funds in the past two budgets to provide an initial contribution to the OPEB trust. This set-aside now totals \$3.5 million.

Recommended Board Action:

A committee of Union and management representatives has interviewed two potential trustees who offer GASB 45 compliant OPEB trust funds. The committee heard presentations from CalPERS and PARS. After considering the presentations, the committee reached a consensus to recommend that the District proceed with a contract with CalPERS for establishment of a San Ramon Valley OPEB trust program.

The CalPERS implementation documentation is attached for your information.

Staff recommends that the Board:

1. Adopt, by resolution, the “Agreement and Election of San Ramon Valley Fire Protection District to Prefund Other Post Employment Benefits Through CalPERS.”
2. Adopt, by resolution, the “Delegation of Authority to Request Disbursement.”
3. Authorize the Administrative Services Director to execute all other related implementation and administration documents related to the San Ramon Valley Fire Protection District’s participation in the CalPERS OPEB Trust.
4. Authorize the Administrative Services Director to deposit \$3,500,000 of District funds into the OPEB trust no later than June 30, 2009.

Attachments:

Agreement and Election Resolution

Delegation of Authority to Request Disbursements Resolution



**DELEGATION OF AUTHORITY
TO REQUEST DISBURSEMENTS**

**RESOLUTION
OF THE**

Board of Directors

(GOVERNING BODY)

OF THE

San Ramon Valley Fire Protection District

(NAME OF EMPLOYER)

The Board of Directors delegates to the incumbents in
(GOVERNING BODY)

the positions of Fire Chief and
(TITLE)

Administrative Services Director authority to request on behalf
(TITLE)

of the Employer disbursements from the Other Post Employment Prefunding

Plan and to certify as to the purpose for which the disbursed funds will be used.

By _____

Title President, Board of Directors

Witness _____

Date _____

CALIFORNIA EMPLOYER'S RETIREE BENEFIT TRUST PROGRAM ("CERBT")

**AGREEMENT AND ELECTION
OF**

San Ramon Valley Fire Protection District

(NAME OF EMPLOYER)

**TO PREFUND OTHER POST EMPLOYMENT
BENEFITS THROUGH CalPERS**

WHEREAS (1) Government Code Section 22940 establishes in the State Treasury the Annuitants' Health Care Coverage Fund for the prefunding of health care coverage for annuitants (Prefunding Plan); and

WHEREAS (2) The California Public Employees' Retirement System (CalPERS) Board of Administration (Board) has sole and exclusive control and power over the administration and investment of the Prefunding Plan (sometimes also referred to as CERBT), the purposes of which include, but are not limited to (i) receiving contributions from participating employers and establishing separate Employer Prefunding Accounts in the Prefunding Plan for the performance of an essential governmental function (ii) investing contributed amounts and income thereon, if any, in order to receive yield on the funds and (iii) disbursing contributed amounts and income thereon, if any, to pay for costs of administration of the Prefunding Plan and to pay for health care costs or other post employment benefits in accordance with the terms of participating employers' plans; and

WHEREAS (3) San Ramon Valley Fire Protection District
(NAME OF EMPLOYER)

(Employer) desires to participate in the Prefunding Plan upon the terms and conditions set by the Board and as set forth herein; and

WHEREAS (4) Employer may participate in the Prefunding Plan upon (i) approval by the Board and (ii) filing a duly adopted and executed Agreement and Election to Prefund Other Post Employment Benefits (Agreement) as provided in the terms and conditions of the Agreement; and

WHEREAS (5) The Prefunding Plan is a trust fund that is intended to perform an essential governmental function within the meaning of Section 115 of the Internal Revenue Code as an agent multiple-employer plan as defined in Governmental Accounting Standards Board (GASB) Statement No. 43 consisting of an aggregation of single-employer plans, with pooled administrative and investment functions;

NOW, THEREFORE, BE IT RESOLVED THAT EMPLOYER HEREBY MAKES THE FOLLOWING REPRESENTATION AND WARRANTY AND THAT THE BOARD AND EMPLOYER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

A. Representation and Warranty

Employer represents and warrants that it is a political subdivision of the State of California or an entity whose income is excluded from gross income under Section 115 (1) of the Internal Revenue Code.

B. Adoption and Approval of the Agreement; Effective Date; Amendment

(1) Employer's governing body shall elect to participate in the Prefunding Plan by adopting this Agreement and filing with the CalPERS Board a true and correct original or certified copy of this Agreement as follows:

Filing by mail, send to: CalPERS
 Constituent Relations Office
 CERBT (OPEB)
 P.O. Box 942709
 Sacramento, CA 94229-2709

Filing in person, deliver to:
 CalPERS Mailroom
 Attn: Employer Services Division
 400 Q Street
 Sacramento, CA 95814

(2) Upon receipt of the executed Agreement, and after approval by the Board, the Board shall fix an effective date and shall promptly notify Employer of the effective date of the Agreement.

(3) The terms of this Agreement may be amended only in writing upon the agreement of both CalPERS and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement. Upon receipt of the executed amendment or modification, the Board shall fix the effective date of the amendment or modification.

(4) The Board shall institute such procedures and processes as it deems necessary to administer the Prefunding Plan, to carry out the purposes of this Agreement, and to maintain the tax exempt status of the Prefunding Plan. Employer agrees to follow such procedures and processes.

C. Actuarial Valuation and Employer Contributions

(1) Employer shall provide to the Board an actuarial valuation report on the basis of the actuarial assumptions and methods prescribed by the Board. Such report shall be for the Board's use in financial reporting, shall be prepared at least as often as the minimum frequency required by GASB Statement No. 43, and shall be:

- (a) prepared and signed by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board;
- (b) prepared in accordance with generally accepted actuarial practice and GASB Statement Nos. 43 and 45; and,
- (c) provided to the Board prior to the Board's acceptance of contributions for the valuation period or as otherwise required by the Board.

(2) The Board may reject any actuarial valuation report submitted to it, but shall not unreasonably do so. In the event that the Board determines, in its sole discretion, that the actuarial valuation report is not suitable for use in the Board's financial statements or if Employer fails to provide a required actuarial valuation, the Board may obtain, at Employer's expense, an actuarial valuation that meets the Board's financial reporting needs. The Board may recover from Employer the cost of obtaining such actuarial valuation by billing and collecting from Employer or by deducting the amount from Employer's account in the Prefunding Plan.

(3) Employer shall notify the Board of the amount and time of contributions which contributions shall be made in the manner established by the Board.

(4) Employer contributions to the Prefunding Plan may be limited to the amount necessary to fully fund Employer's actuarial present value of total projected benefits, as supported by the actuarial valuation acceptable to the Board. As used throughout this document, the meaning of the term "actuarial present value of total projected benefits" is as defined in GASB Statement No. 45. If Employer's contribution causes its assets in the Prefunding Plan to exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board may refuse to accept the contribution.

(5) The minimum Employer contribution will be at least \$5000 or be equal to Employer's Annual Required Contribution, whichever is less, as that term is defined in GASB Statement No. 45. Contributions can be made at any time following the seventh day after the effective date of the Agreement provided that Employer has first complied with the requirements of Paragraph C.

D. Administration of Accounts, Investments, Allocation of Income

- (1) The Board has established the Prefunding Plan as an agent plan consisting of an aggregation of single-employer plans, with pooled administrative and investment functions, under the terms of which separate accounts will be maintained for each employer so that Employer's assets will provide benefits only under employer's plan.
- (2) All Employer contributions and assets attributable to Employer contributions shall be separately accounted for in the Prefunding Plan (Employer's Prefunding Account).
- (3) Employer's Prefunding Account assets may be aggregated with prefunding account assets of other employers and may be co-invested by the Board in any asset classes appropriate for a Section 115 Trust.
- (4) The Board may deduct the costs of administration of the Prefunding Plan from the investment income or Employer's Prefunding Account in a manner determined by the Board.
- (5) Investment income shall be allocated among employers and posted to Employer's Prefunding Account as determined by the Board but no less frequently than annually.
- (6) If Employer's assets in the Prefunding Plan exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board, in compliance with applicable accounting and legal requirements, may return such excess to Employer.

E. Reports and Statements

- (1) Employer shall submit with each contribution a contribution report in the form and containing the information prescribed by the Board.
- (2) The Board shall prepare and provide a statement of Employer's Prefunding Account at least annually reflecting the balance in Employer's Prefunding Account, contributions made during the period and income allocated during the period, and such other information as the Board determines.

F. Disbursements

- (1) Employer may receive disbursements not to exceed the annual premium and other costs of post employment healthcare benefits and other post employment benefits as defined in GASB 43.
- (2) Employer shall notify CalPERS in writing in the manner specified by CalPERS of the persons authorized to request disbursements from the Prefunding Plan on behalf of Employer.

(3) Employer's request for disbursement shall be in writing signed by Employer's authorized representative, in accordance with procedures established by the Board. The Board may require that Employer certify or otherwise establish that the monies will be used for the purposes of the Prefunding Plan.

(4) Requests for disbursements that satisfy the requirements of paragraphs (2) and (3) that are received on or after the first of a month will be processed by the 15th of the following month. (For example, a disbursement request received on or between March 1st and March 31st will be processed by April 15th; and a disbursement request received on or between April 1st and April 30th will be processed by May 15th.)

(5) CalPERS shall not be liable for amounts disbursed in error if it has acted upon the written instruction of an individual authorized by Employer to request disbursements. In the event of any other erroneous disbursement, the extent of CalPERS' liability shall be the actual dollar amount of the disbursement, plus interest at the actual earnings rate but not less than zero.

(6) No disbursement shall be made from the Prefunding Plan which exceeds the balance in Employer's Prefunding Account.

G. Costs of Administration

Employer shall pay its share of the costs of administration of the Prefunding Plan, as determined by the Board.

H. Termination of Employer Participation in Prefunding Plan

(1) The Board may terminate Employer's participation in the Prefunding Plan if:

- (a) Employer gives written notice to the Board of its election to terminate;
- (b) The Board finds that Employer fails to satisfy the terms and conditions of this Agreement or of the Board's rules or regulations.

(2) If Employer's participation in the Prefunding Plan terminates for any of the foregoing reasons, all assets in Employer's Prefunding Account shall remain in the Prefunding Plan, except as otherwise provided below, and shall continue to be invested and accrue income as provided in Paragraph D.

(3) After Employer's participation in the Prefunding Plan terminates, Employer may not make contributions to the Prefunding Plan.

(4) After Employer's participation in the Prefunding Plan terminates, disbursements from Employer's Prefunding Account may continue upon Employer's instruction or otherwise in accordance with the terms of this Agreement.

(5) After thirty-six (36) months have elapsed from the effective date of this Agreement or at such earlier date as may be approved by the Board in its sole discretion:

- (a) Employer may request a trustee to trustee transfer of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that the transfer will satisfy applicable requirements of the Internal Revenue Code and the Board's fiduciary duties, then the Board shall effect the transfer within one hundred twenty (120) days. The amount to be transferred shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the transfer by more than 120 days.
- (b) Employer may request a disbursement of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that all of Employer's obligations for payment of post employment health care benefits and other post employment benefits and reasonable administrative costs of the Board have been satisfied, then the Board shall effect the disbursement within one hundred twenty (120) days. The amount to be disbursed shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the disbursement by more than 120 days.

(6) After Employer's participation in the Prefunding Plan terminates and at such time that no assets remain in Employer's Prefunding Account, this Agreement shall terminate.

(7) If, for any reason, the Board terminates the Prefunding Plan, the assets in Employer's Prefunding Account shall be paid to Employer after retention of (i) amounts sufficient to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants described by the employer's current substantive plan (as defined in GASB 43), and (ii) amounts sufficient to pay reasonable administrative costs of the Board.

(8) If Employer ceases to exist but Employer's Prefunding Plan continues to exist and if no provision has been made by Employer for ongoing payments to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, the Board is authorized to and shall appoint a third party

administrator to carry out Employer's Prefunding Plan. Any and all costs associated with such appointment shall be paid from the assets attributable to contributions by Employer.

(9) If Employer should breach the representation and warranty set forth in Paragraph A., the Board shall take whatever action it deems necessary to preserve the tax-exempt status of the Prefunding Plan.

I. General Provisions

(1) Books and Records.

Employer shall keep accurate books and records connected with the performance of this Agreement. Employer shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at the Employer's office(s) and shall be available for inspection and copying by CalPERS and its representatives.

(2) Audit.

- (a) During and for three years after the term of this Agreement, Employer shall permit the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of CalPERS, books and records of Employer relating to its performance of this Agreement.
- (b) Employer shall be subject to examination and audit by the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, during the term of this Agreement and for three years after final payment under this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement. Employer shall cooperate fully with the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly by the appropriate party.

(3) Notice.

- (a) Any notice, approval, or other communication required or permitted under this Agreement will be given in the English language and will be deemed received as follows:

1. Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.
2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three delivery days after deposit in a United States Postal Service office or mailbox.
3. Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, Notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Telex or Facsimile Transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.
6. E-mail transmission. When sent by e-mail using software that provides unmodifiable proof (i) that the message was sent, (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient along with a verifiable electronic record of the exact content of the message sent.

Addresses for the purpose of giving notice are as shown in Paragraph B.(1) of this Agreement.

- (b) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- (c) Any party may change its address, telex, fax number, or e-mail address by giving the other party notice of the change in any manner permitted by this Agreement.

- (d) All notices, requests, demands, amendments, modifications or other communications under this Agreement shall be in writing. Notice shall be sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of delivery, facsimile transmission with written confirmation of receipt by recipient, or e-mail delivery with verifiable and unmodifiable proof of content and time and date of sending by sender and delivery to recipient. Notice is effective on confirmed receipt by recipient or 3 business days after sending, whichever is sooner.

(4) Modification

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by the party to be charged.

(5) Survival

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement shall survive the termination of this Agreement until such time as all amounts in Employer's Prefunding Account have been disbursed.

(6) Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(7) Necessary Acts, Further Assurances

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

A majority vote of Employer's Governing Body at a public meeting held on the 27th day of the month of May in the year 2009, authorized entering into this Agreement.

Signature of the Presiding Officer: _____

Printed Name of the Presiding Officer: Nick Dickson

Name of Governing Body: Board of Directors

Name of Employer: San Ramon Valley Fire Protection District

Date: May 27, 2009

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
KENNETH W. MARZION
ACTUARIAL AND EMPLOYER SERVICES BRANCH
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

To be completed by CalPERS The effective date of this Agreement is: _____
--

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfire.ca.gov

1500 Bollinger Canyon Road
San Ramon, California 94583

Fire Prevention
Phone: 925-838-6680
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Battalion Chief John Viera
Subject: Ambulance Bids

Background:

On April 24, 2009, the District went out to competitive bid for two ambulances. The District distributed the specifications to three prospective bidders known to build this type of vehicle. The three bidders were; Emergency Vehicle Group, Golden State Fire Apparatus and Leader Industries. The legal notice required the sealed bids to be delivered to the District by 0900hrs on May 15th, 2009.

The bid opening was at 0900 on May 15th, 2009. The District received responses from the three bidders named above. There were two bid packets and one letter. The letter was from Golden State Fire Apparatus stating that they will not be able to provide an ambulance that will meet the District's specifications. The Bids were from Leader Industries and the Emergency Vehicle Group. The bids were opened, recorded and reviewed for specification compliance. The bid from Leader Industries met the District's specifications without exception at a buildup price of \$163,925 each plus tax. The total delivered price for two ambulances is \$361,936. The bid submitted by Emergency Vehicle Group was with total exception to the District's specifications. Their bid was for two used demo ambulances at a buildup price of \$135,400 and \$137,650 plus tax. The total price for the two units delivered was \$298,407.

The amount of the Emergency Vehicle Group bid is approximately \$64,000.00 less than the Leader Industries bid. However the ambulances offered by Emergency Vehicle Group do not meet the crash test safety standards, the chassis type, the build-up design and the paint standard in the specifications. Furthermore the ambulances are used 2008 and 2009 demo units. The staff expects that the costs associated with the Emergency Vehicle Group bid will increase dramatically when attempts are made to modify their specifications to meet the District's requirements.

Recommendation:

Staff recommends that the Board award the Bid to Leader Industries based on Leader meeting the District's specifications and qualifications without exception. Staff believes Leader will provide a product that will better serve the needs of the District than that of the other bidder.

CORRESPONDENCE

From: Colin Wood [mailto:cwood@dgdesignnetwork.com.au]
Sent: Monday, May 18, 2009 1:28 AM
To: Price, Richard
Subject: Enquiry from Australia

Dear Mr Price,

I am contacting you as I have recently made a written submission to the Victorian Bushfire Royal Commission (copy attached) in which I have included some items from your website. No doubt you are aware of the devastating fires we had in February in Victoria in which 173 people died.

I live some 30 miles from the worst affected areas, in the Dandenong Ranges on the eastern fringe of Melbourne.

To see exactly where, type in the following to Google Earth:

8 Hill Street, Ferny Creek, Victoria, Australia

I thank you for the items I have used from your website. I'm sorry but I didn't have time to check with you beforehand.

I find that the Australian authorities lag behind when it comes to utilising new technology and I am mightily impressed with your website and the operation as it is portrayed on the site. Congratulations.

I am particularly interested in the use of video cameras and webcams for fire spotting and for community information during a bushfire. If you have any information you could send me (or any other technology-based solutions) it would be appreciated.

But, and probably most importantly, I hope you are able to help me with some information.

The Victorian management of bushfire prevention and firefighting seems very top heavy. There is a multiplicity of committees, councils and other authorities and no clear chain of command that I can discern. In fact, we have two different fire brigades (the CFA and the DSE) that attend fires out of the metropolitan area, and the first to reach a fire claims it as their responsibility. And their databases can't even talk to each other. That's just a small example, but nonetheless frustrating.

I would interested if you have any material on how your fire fighting organisations are structured. A simple organisation chart might suffice.

I hope you don't mind my contacting you.

Many thanks for your time.

Incidentally, my small publishing business is run from the hills. There is no connection between my bushfire submission and my publishing, except that it may have a few pictures than most submissions (in Australia at least). I have been to the Bay Area on many occasions, although I haven't yet made it to San Ramon.

Kind regards

Colin Wood

--

Colin Wood

DG International Media Pty Ltd
A.B.N. 93 088 896 155
PO Box 10
Ferry Creek VIC 3786
Australia

Phone: 03 9760 1200
Fax: 03 9755 1155

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www.dgdesignnetwork.com.au

cwood@dgdesignnetwork.com.au

This message may contain confidential and privileged information. Unless you are the intended recipient (or authorised to receive this message for the intended recipient), you may not use, copy, disseminate or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender of its incorrect delivery, and then delete the message. Thank you.

Current and future technology options - 1

Better communication between fire fighting authorities during operations and timely, information-rich communication for the community are required. Recent announcements and trials show that avenues are being explored. But if the internet and telephones are to be successful, we must have reliable power and telephone lines; they should be underground. Mobile phone tests have shown that reception is patchy (especially in treed and hilly country). Battery powered options should be combined with more sophisticated solutions.

San Ramon Valley example

The San Ramon Valley Fire Department (San Francisco Bay Area, California) uses several new technologies. Significant is the use of two video cameras for surveillance. The cameras can be controlled by visitors to their website until there a 'significant event' when the fire officers take control. They also offer streaming audio, live incident dispatch and Twitter messaging.

Melbourne locations

A series of video cameras that the community could view on the internet would be a great advantage. They could be situated at Bayswater, Mount Dandenong, One Tree Hill, Upwey and other places that have panoramic or uninterrupted views of the hills. Not all of the cameras need be expensive. Many webcams are inexpensive but do an adequate job.



Current and future technology options - 2

Much has been made of the use of ABC local radio. A continuous stream of information or packaged information available on demand (such as Podcasts or phone-in recordings) is what is required. The ideal messaging system should be rapid to deploy, quick to update, able to be used by battery operated equipment, should not require very specialised equipment, should be 'permanent' (can be reviewed if original broadcast is missed), and should be receivable in most places, most of the time. The most glaring omission at the moment is the availability of current, local public information.

Emergency systems' capacity

We have heard many times that current emergency systems have been overloaded. This is offered as an acceptable excuse for their not working. We do not accept this. Emergency systems should be constructed to work in a very big emergency and not get overloaded. Emergency systems should work in emergencies.

Power sources

The internet and phones both require power and phone lines to be working. The first things to go down in an emergency are water, power and phone lines. Thus it is critical that cables be put underground, at least in key areas. It is essential that battery-powered equipment is included in the mix of options.

AM/FM radio

The use of ABC 774 as a bushfire information centre has been a very useful development. But it can only broadcast 'macro' information. It takes time to get information to air and cannot hope to cover every incident in a timely and informative way.

Television

To date, television has been used only for occasional news bulletins. It has the potential to broadcast additional coverage but the nature of television and the time taken to prepare items for broadcast works against it being used as an emergency tool.

Mobile phones

While mobile phone messaging should be included in any group of technologies being used, they have serious drawbacks.

Mobile phone reception in the hills and wooded areas is sometimes patchy and in many places non-existent. Mobile phones can't be relied upon. With heavy use, mobile phone batteries can easily fail, and if the mains power is off, cannot be recharged. Phone messages are spasmodic, aren't easy to retrieve for some people, and the system trials have not been very good.

Scanners

One of the most useful pieces of equipment for many years has been a scanner, and we have been encouraged to obtain them. The CFA reception has never been as good as the (now out-of-use) police broadcasts. But it has been an essential piece of equipment all the same. Now we hear that the CFA, like other emergency services, are changing to digital scanners and that we will longer be able to listen to the operational chatter. This will be a significant step backwards. If they are changing to another system, the public should be able to listen in.

Scanners for local public information

It may be impractical to use AM/FM radio to broadcast urgent information on local fires to small areas. Many channels would be required to cover the whole State. There are many scanner channels that could be used to broadcast emergency updates. These could be broadcast from local areas instead of relying on a central control to receive, sort and sift, a large number of items.

CB radio

Similarly, CB radio could be used. This would have the added facility for members of the public to transmit calls for help and send updates on particular locations.

Internet - websites

The CFA and DSE websites should be combined or replaced by another. They should included more detailed information than they currently do. Their inception is welcome, but they could be improved and money should be spent making them highly professional. There is so much more that a website can do.

Websites - blogs & Twitter

It is now well-practiced to post information on a minute by minute basis. Different blogs could cater for very specific emergencies and it is easy to add more links as required. Individuals "on the ground" could instantly exchange vital information. The technology exists and should be used.

Internet - Audio streaming

This is much like a personalised radio. People can log on at any time and it is easy to have as many streams as you need. The main limitation would be to ensure that the network could cope. This is an ideal application of broadband technology.

Internet - Video streaming

See above.

Current and future technology options - 2

Internet - Webcams

Webcams are probably the most useful, as webcams can be used for fire spotting, fire monitoring and public information. Others are using this. We should too.

Satellite images

Is it possible to use real-time satellite images that can produce infra-red imaging to get a better appreciation of the current state of fires?

Sharing information with the public

The authorities such as the CFA, the DSE, the Police and other emergency services have much more information than is usually made available to the public, particularly while an event is in progress. It would assist many people if they could access more current information.

Road blocks

There have been many examples of the police preventing residents from accessing their area where they live, or even returning after a brief reconnoiter to ascertain current conditions. Such prevention has occurred even when there is no immediate danger in the area, or the fire has passed. The rules should be made more flexible to take account of those who had chosen to stay and defend.

5-13-09

ccnletters@
bayareanewsgroup.com

The Valley Times

P.O. Box 607
Pleasanton, CA 94566
Fax: 925-847-2189

* no attachments, please

Letters can be seen at
www.contracostatimes.com/
letters

Must support Obama's vital agenda

I've never written a letter to the editor before, but I wanted to stress the importance of supporting Barack Obama's agenda, which makes such crucial investments in health care, energy and education. My gentle, brilliant brother recently died in a tragic accident and his widow, my sister-in-law, no longer has health insurance through his employer.

All that is offered is COBRA, which charges \$1,200 a month to insure her and her two children. How wonderful it would be, if, while she is grieving the loss of her beloved husband, she did not have to worry about how she was going to afford to insure her children's health.

This is an outrage and unheard of in most developed countries where health care is considered a right of all people. Please join me in the grass-roots movement for change right here in Pleasanton. We finally have a voice in our government and our politics.

Please visit www.barack-obama.com and see how you can help.

**Lisa Ransdall
Pleasanton**

Keep good schools

Once again our community faces a shortfall of money for education. This is not unusual and we should be very proud that our citizenry has constantly supported high

quality education.

It's difficult for me to understand why people in our city, would not support our children and their education. Not supporting our kids is like punishing them for something they had nothing to do with.

Our economic situation was not caused by our children or grandchildren yet some people in the community want to punish them because of our situation.

The amount that is being requested is a nominal amount to continue our high level of education. Not approving the parcel tax will send a signal to all future home buyers that we don't really care about education in Pleasanton, and so why would I want to buy a house here. Our property values will diminish by more than the parcel tax.

I have lived here for 40 years and I have seen the school system do nothing but get better. Now we have a group of people who think they know better and want to bring about changes and fool with a system that has been recognized as one of the highest ranking systems in the state.

I, for one, will vote to continue my grandchildren's education and I ask you to do the same.

**Ken Mercer
Pleasanton
Former Mayor**

Great care

Thank you, 911 and Kaiser Permanente in Walnut Creek.

All of my life I have been fortunate to enjoy the sunshine of good health with only a few cloudy days. Then, all of the sudden, out of the blue, a tornado visited on

March 26. High temperature visited and persisted.

On my Kaiser doctor's advice, my wife called 911 on March 28 (Saturday morning) to take me to Kaiser emergency in Walnut Creek. Within a few minutes, 911 responded with an ambulance at my door. Their well-trained staff transported me to the emergency department. Their smooth handling minimized inconveniences to me in the process of transportation and delivery to the emergency department. They did a good job. They deserve my compliments and thanks.

Once inside the hospital, doctors gave me immediate attention. They looked after me very well all the six day of my stay there. I was released on April 2 after making sure that the temperature was normal for at least 24 hours. Nursing services and the quality of food were excellent. They deserve my compliment and thanks.

I am especially grateful to the two doctors, Dr. N.K. Sidhu and Dr. Tsao-yu Liang, for their attention and how well they connected with me during my illness. After many tests no infection was detected. The real cause of illness remained unknown just as precise cause for many tornadoes is unknown.

**T. S. Khanna
Alamo**

Set the example

Imam Araim (Your Turn, May 2) says President Barack Obama should empower the U.N. Security Council to act against so-called Israeli occupation of Palestinian lands. I assume by "empower" the Imam

Brooks, Sue

From: Price, Richard
Sent: Wednesday, May 13, 2009 4:59 PM
To: *DIRECTORS
Cc: Brooks, Sue
Subject: FW: New Website -- Thanks.

Nice note.

From: Shannel.Glaspy@gmail.com [mailto:Shannel.Glaspy@gmail.com]
Sent: Wednesday, May 13, 2009 11:01 AM
To: Hart, Steve; Price, Richard
Subject: New Website -- Thanks.

Hello Mr. Hart & Mr. Price,

I hope I am sending this to the correct people, if not I'd greatly appreciate it if you could please pass along to the correct recipients.

I would like to express my gratitude for the new "FireDepartment.Org" website that has been put together. Just now, I drove by the fire that is taking place on Alcosta Blvd, and I was especially concerned because my parents own a home in an adjacent neighborhood. I couldn't tell if the fire was taking place in their neighborhood or on another street.

Since the road was blocked off, and stopping to ask questions did not seem like the right thing to do in light of the emergency situation, I came home and Googled "San Ramon Fire" hoping to find some timely information. To my surprise the first thing that came up was "FireDepartment.Org" and I was able to find out the fire's location from the "Live Dispatch" portion of the website. How helpful and perfect to have this website with live information.

Thank you for prioritizing communication to the community. I hope more people are made aware of the website and find it as useful as I did today.

With gratitude,
Shannel Glaspy
Resident of San Ramon since 1989

5/13/2009

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfire.ca.gov

**1500 Bollinger Canyon Road
San Ramon, California 94583**

Fire Prevention
Phone: 925-838-6600
Fax: 925-838-6696
Inspections: 925-838-6680

May 14, 2009

Chief Richard Price
San Ramon Valley Fire Protection District
1500 Bollinger Canyon Road
San Ramon, CA 94583

Re: Commendation: Supervising Dispatcher Mary Camacho, Dispatcher Stacy Rowan

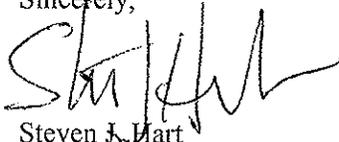
Dear Chief Price:

I was at Station 31 when the call for the fire at the Countybrook Apartments was received on Wednesday, May 13, 2009, Response # 1593. I would like to bring to your attention the exemplary work conducted by Supervising Dispatcher Mary Camacho and Dispatcher Stacy Rowan during this incident.

As you are aware, the fire quickly went from a 2nd alarm to a 3rd alarm fire. Units were dispatched efficiently and all station areas in the District were covered. There were many calls from citizens and the press through 911 and the business line, either reporting the fire or attempting to obtain information about the fire. All of these calls were handled in a composed and professional manner. Communications from the fire ground and the Communications Center were handled quickly and effectively. Dispatchers Camacho and Rowan expeditiously coordinated recall of personnel and assembled them into crews to appropriately cover the District.

I was thoroughly impressed with the skill and professionalism Dispatcher Camacho and Rowan displayed during this response, as well as additional calls for service that stressed the District to its limits. Their ability to "multi-task" and remain in control of the situation was exceptional. Supervising Dispatcher Mary Camacho and Dispatcher Stacy Rowan demonstrated the high level of commitment and standards the District promotes.

Sincerely,



Steven J. Hart
Assistant Fire Chief

cc: Battalion Chief Brown
Bob Leete, Administrative Services Director (Personnel File)

I would like to thank the team that answered a call on April 11th at 1529 Peters Ranch Road in Danville. They were there before my wife could hang up the phone and that was quick. They were friendly and very professional. They also took the time to see how I was doing when they brought other patients to the Emergency Room at San Ramon Regional Hospital shows me lots of class. Once again thank you guys. Nice to know that there are guys like you around. God Bless

Joe and Sandra Paiva

07 MAY '09 08:15

OPERATIONS

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
Fax: 925-838-6629
www.srvfire.ca.gov

1500 Bollinger Canyon Road
San Ramon, California 94583

Fire Prevention
Inspections: 925-838-6680
Phone: 925-838-6600
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Bryan Collins – Assistant Chief
Subject: Monthly Activity Report

Attached is the Operations Report for the month of April, 2009.

Response Time Report - Incident Summary by Incident Type

Date Range: 04/01/2009 to 04/30/2009

Incident Type	# of Incidents	# of Responses	# Responses Used	Avg Response Time	Total Loss	Total Value
Fire	18	70	10	6:30	\$143,000.00	\$6,202,000.00
Rupture/Explosion	2	3	1	3:28		
EMS/Rescue	408	770	348	5:00		
Hazardous Condition	15	30	9	5:36		
Service Call	66	94	11	5:37		
Good Intent	42	96	9	5:38		
False Call	60	76	24	5:15		
Totals	611	1139	412		\$143,000.00	\$6,202,000.00

Note: 412 responses from 611 total incidents were used in determining this response time summary. This report does not include the following: mutual aid given, auto aid given, other aid given, cancelled en route, non-emergency responses, responses outside the urban limit line and incomplete incident reports.

SUPPORT SERVICES

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
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1500 Bollinger Canyon Road
San Ramon, California 94583

Fire Prevention
Inspections: 925-838-6680
Phone: 925-838-6600
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Steven J. Hart – Assistant Chief
Subject: Monthly Activity Report

Attached is the Support Services Report for the month of April, 2009.

Support Services
April, 2009

Facilities

1. Station 36: Storage Building. Working through CCC Plan Check Process.
2. Station 32: Schematic Design and Entitlement in Development.
3. Dispatch: New Air Conditioning Unit.
4. Station 35: New Air Conditioning Unit.
5. Station 36: Demolition of living quarters completed. Re-Use America picked up salvage items.

Fleet

1. Routine maintenance and repairs in progress.
2. Conducting for Annual Pump Testing.
3. Annual Engine / Truck Services in Progress.
4. Coordinated Fire Safety Trailer improvements.
5. Commencement of annual smog certificates.
6. Modular Ambulances Project – Legal Notice posted. Pre Bid conference in May.
7. Public Surplus – 1992 Ford Aerostar sold.
8. Public Surplus – Argo & Trailer posted for auction.

Current Projects

1. Coordinated bids for various budgeted projects.
2. Working through Fiscal Year 08/09 budgeted projects.
3. Continuing to work with EBMUD on coordination of fire hydrant service.
4. Preparing for Dispatcher and Communications Center Manager appointment.
5. Preparing for FY 09/10.
6. Flag Etiquette Policy, 12-Day Review

**TRAINING
DIVISION**

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
Phone: 925-838-6600
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Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Derek Krause -- Division Chief Training
Subject: Monthly Activity Report

Attached is the Training Division Report for the month of April, 2009.

Probationary Training

Progress Meeting April 1

Hubbard
Probationary Testing April 30

Special Operations Training

CA Task Force-4 Drill April 8, 17

Hazmat CRHMRO/PMAO Meeting April 25

SORD II-09 April 20

Volunteer Training

Reserve Firefighter Drill April 14, 28

Station 37 Volunteer Drills April 1, 15

Communications Reserves Meeting April 7, 21

**FIRE PREVENTION
DIVISION**

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
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**1500 Bollinger Canyon Road
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Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Christina Jamison – Fire Marshal
Subject: Monthly Activity Report

Attached are the Fire Prevention reports for the month of April, 2009.

Fire Prevention Summary of Monthly Activities

April 2009

What Went Well

Sunny Glen Smoke Detector Program

On Saturday, April 25 crews at Station 39 and the San Ramon Rotary Club participated in the annual smoke detector replacement program for seniors residing in the Sunny Glen Retirement Community. According to Dennis Harvey, Rotary Club representative, they visited 122 homes, replaced 39 smoke detectors, changed 225 batteries, and distributed 25 new File of Life packets.

Baskin-Robbins 31 Cent Scoop Night

On Wednesday, April 29 San Ramon Valley Firefighters and Prevention staff joined forces to support this annual community event. Hundreds of community members attended; they enjoyed ice cream for 31 cents, interacted with District members and helped support children living with Muscular Dystrophy. The Fill the Boot Fundraiser, raised over \$5,900 to help support the East Bay Chapter of the Muscular Dystrophy Association.

Public Information Office

Information Officer French attended the California Association of Public Information Officers annual conference in San Diego and the Joint Information Center Workshop in San Ramon. A considerable amount of time and effort is being directed to the development of the District's Public Information Office including developing the following program components; roles and responsibilities, a communication plan and a reporting format to include performance measures. Some notable work this month includes the Country Brook Apartment Fire and the Channel 7 News report on Station 32.

Fire Investigation

April 2, 2009, 191 Plaza Circle, Danville; Fire Investigator Kurtz responded to a second alarm residential structure fire at approximately 02:10 hours. Structure is a single-family dwelling, damage was contained to the garage and one interior room beyond the garage door. The point of origin was determined to be in the garage. Investigator Kurtz coordinated with ATF agent Brian Parker, as well as the Town of Danville Building Department, and determined the cause to be electrical.

Ready, Set, Go

Along with the opening of fire season, the District will be updating our Wildfire Preparedness class curriculum and community education material to include the **Ready, Set, Go** program. This program has been under development for the past couple years and has recently been finalized with support from across the nation. **Ready, Set, Go** is an "action plan" that teaches preparedness and emphasizes the critical need for partnerships between fire agencies and residents living in wildland-urban interface areas.

Senior Assistance

Staff members Castro, Wendel and Stevens assisted two senior residents and replaced six smoke detectors and educated the homeowners on fire safety and fall prevention.

Fire Prevention Summary of Monthly Activities

April 2009

CERT Class #25

On April 30, 2009, there were 22 graduates of the 25th CERT class, there are now a total of 575 graduates in the San Ramon Valley area.

Potential Issues

No issues at this time.

Informational Notice

May 24 & 25: San Ramon Art and Wind Festival - Staff from Prevention along with crews from Station 34 will be participating in this regional event. Truck 34, USAR, the fire safety house and an extrication demo will all be part of the District's Display.

May 27: The Fire Prevention Division held a day long staff meeting to develop a Division "Action Plan" which will provide clear project priorities, timeframes and resources.

June 2: Assessment Process for Deputy Fire Marshal will be held June 2.

Committee Meetings and Training Attended

- Division Uniform Committee
- Evitt, Nor Cal FPO Meeting and Building Standards Committee Meeting
- Hardage, Nor Cal FPO Meeting and Fire Code Committee Meeting
- Castro, Nor Cal Public Education Committee
- French, Diablo Fire Safe Council
- French, California Association of Public Information Officers Annual Conference
- French, Joint Information Center training
- Kurtz, San Ramon Leadership Training

Upcoming Public Education Classes and Events Scheduled

CERT #24 – Thursdays	6 classes	April 28 – June 9	
San Ramon Art & Wind Festival		Sunday & Monday May 24 & 25	
New Parent/Grandparent Class	1 class	Saturday, June 13	
Bowling Event – Union Fundraiser for Roman Family	1 day	Saturday, June 13 Danville Bowl	
Fire Extinguisher Training (Whole Foods employees)	1 class	Tuesday, May 26	
Fire Extinguisher Training (San Ramon Regional)	2 classes	Wednesday, June 3	
Fire Extinguisher Training (Diablo Lodge Staff)	1 class	Tuesday, June 16	
Danville Fine Arts Fair	2 days	Saturday & Sunday June 20 & 21	
Senior Resource Fair	1 day	Tuesday, June 23	

Fire Prevention Summary of Monthly Activities

April 2009

Plan Review

- 125 La Sonoma – SFD AFES – Approved
- 1120 S Wedgewood, #B – AGT – Approved
- 2701 Crow Canyon Rd, #B1 – TI – Approved
- 152 Sunset Dr – TI – Approved
- 222 W El Pintado Rd – TI – Approved
- 6001 Norris Canyon Rd – New Bldg – Approved
- 1500 Bollinger Canyon Rd – TI – Approved
- 103 Sycamore Valley Rd – TI – Approved
- 3400 Crow Canyon Rd – TI – Approved
- 6001 Bollinger Canyon Rd, Bldg D – Battery System – Approved
- 408 Hartz Ave – TI – Approved
- 270 El Pinto – SFD – Approved
- 6001 Bollinger Canyon Rd, Bldg K – Fire Alarm TI – Approved
- 3104 Crow Canyon Rd, #A – TI – Approved
- 1443 Danville Blvd – TI – Approved
- 6001 Bollinger Canyon Rd, Bldg J – TI – Approved
- 2600 Camino Ramon – TI – Approved
- 1505 St. Alphonsus Way – AFES TI – Approved
- 103 Sycamore Valley Rd – Med-gas – Approved
- Morgan Territory Rd – Improvement Plans – Approved
- 3500 Camino Tassajara – EVR Upgrades – Approved
- 25 Meadow Lake Dr – SFD – Approved
- 155 Railroad Ave, #E – AFES TI – Deficient
- 126 London Cir – RCFE – Approved
- 57 Diablo Creek Pl – SFD – Approved
- 155 Railroad Ave #E – AFES TI – Approved
- 3198 Lunada Ln – SFD – Approved
- 3402 Fostoria Way – Fire Alarm – Approved
- 3404 Fostoria Way – Fire Alarm - Approved
- 3406 Fostoria Way – Fire Alarm - Approved
- 3408 Fostoria Way – Fire Alarm - Approved
- 2000 Crow Canyon Pl, #430 – Fire Alarm TI – Approved
- 2000 Crow Canyon Pl, #210 – Fire Alarm TI - Approved
- 152 Sunset Dr – AFES TI – Approved
- 3169 Roundhill Rd – TI – Approved
- Damani Ct – New Bldg – Approved
- 480 Diablo rd – AFES Commercial – Deficient
- 3426 Blackhawk Plaza Cir – Fire Alarm TI – Approved
- 3211 Crow Canyon Pl - #J – TI - Approved

ADMINISTRATIVE SERVICES

SAN RAMON VALLEY FIRE PROTECTION DISTRICT

Administration
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**1500 Bollinger Canyon Road
San Ramon, California 94583**

Fire Prevention
Inspections: 925-838-6680
Phone: 925-838-6600
Fax: 925-838-6696

MEMORANDUM

Date: May 27, 2009
To: Board of Directors
From: Robert Leete – Administrative Services Director
Subject: Monthly Activity Report

Attached are the Administrative Services Department reports for the month of April, 2009.

Administrative Services Department
April, 2009

Finance:

Financials

- Balance Sheet (April 30, 2009)
- Revenue/Expense History
- Statement of Expenditures
- Revenues: Budget v Actual
- Expenses: Budget v Actual
- General Fund Expenditures
- General Fund Revenues
- Capital & Equipment/Vehicle Fund
- Total Overtime
- Staffing/Overtime Analysis

Meetings/Activities:

- Update Investment Policy/Quarterly Reports
- Assemble FY 2009-10 Operating Budget

Human Resources:

Employee Illness/Injury Report for April 2009

Reportable Injuries – April 2009:

1. April 3, 2009. A Captain strained an injury to their right hip and knee. Lost Time: 240 hours. (Original injury date: April 12, 2008.)
2. April 3, 2009. A Captain strained their back while lifting EMS equipment. Lost Time: 240 hours
3. April 20, 2009. A Firefighter felt a sharp pain exiting the ambulance. Lost Time: 42.5 hours.

Note: As of April 30, 2009, there were six (6) employees absent from their regular work assignment. Lost time related to prior month/year injuries totaled 994 hours (6) employees.

Recruitment/Selection:

Information Systems Technician (Candidate Selected – 5/1 Start Date)
Finance Supervisor (Candidate Selected – 5/1 Start Date)
Communications Center Manager (Assessment Center – 4/23/09)
Dispatcher (Assessment Center – 4/16/09)
Prepare Announcement – Temporary Dispatcher Assignments
Continuing Recruitment for Deputy Fire Marshal and Dispatch Supervisor

Meetings/Activities:

GASB 45/OPEB: Interview Potential Trustees (4/14/09 and 4/20/09)
Provide content for new internet website.
Attended workers' compensation workshop – Innovative Claim Solutions.
Assemble data for excess workers' compensation insurance renewal.

SAN RAMON VALLEY FIRE PROTECTION DISTRICT
REVENUES (ALL FUNDS)
Fiscal Year 2008/2009
JULY 1, 2008 - APRIL 30, 2009

GL CODE	DESCRIPTION	2005/2006 REVENUE ACTUAL	2006/2007 REVENUE ACTUAL	2007/2008 AUDITED REVENUE	2008/2009 ESTIMATED REVENUE	2008/2009 REALIZED REVENUE
4100	TAXES					
4110	PROPERTY TAXES - CURRENT SECURED	\$39,450,792	\$44,440,740	\$48,301,244	\$50,380,918	\$45,812,612
4120	PROPERTY TAXES - SUPPLEMENTAL	\$1,592,902	\$3,135,904	\$1,277,576	\$500,000	\$181,042
4130	PROPERTY TAXES - UTILITIES (Unitary)	\$611,221	\$608,146	\$679,868	\$670,481	\$675,636
4140	PROPERTY TAXES - CURRENT UNSECURED	\$1,412,276	\$1,388,523	\$1,483,621	\$1,460,090	\$1,501,302
4145	HOMEOWNERS PROPERTY TAX RELIEF	\$511,520	\$503,469	\$502,776	\$526,968	\$255,779
4150	LESS TAXES RETURNED TO COUNTY	(\$1,115,827)	(\$1,232,437)	(\$1,475,145)	(\$1,475,145)	\$0
4160	LESS COUNTY TAX ADMINISTRATION	(\$401,514)	(\$346,184)	(\$462,517)	(\$485,374)	(\$558,968)
4170	PROPERTY TAXES - PRIOR SECURED	\$12,784	-\$13,609	(\$411,770)	(\$10,000)	(\$6,573)
4180	PROPERTY TAXES - PRIOR SUPPLEMENTAL	(\$1,719)	(\$6,744)	(\$117,662)	(\$6,745)	(\$53,553)
4190	PROPERTY TAXES - PRIOR UNSECURED	\$21,593	\$43,743	\$34,656	\$25,000	\$17,247
		\$42,094,028	\$48,521,551	\$49,729,206	\$51,586,193	\$47,824,524
4200	INTERGOVERNMENTAL REVENUE					
4220	MEASURE "H"	\$31,882	\$182,227	\$19,787	\$104,175	\$0
4230	SB-90 MANDATED COSTS	\$112,206	\$59,251	\$0	\$10,000	\$0
4240	MISCELLANEOUS STATE AID/GRANTS	\$810,616	\$487,320	\$759,633	\$0	\$1,084,620
4250	OTHER INTERGOVERNMENTAL REVENUE	\$2,509	\$2,734	\$28,354	\$60,000	\$166,048
		\$957,213	\$731,532	\$807,774	\$174,175	\$1,250,668
4300	CHARGES FOR SERVICE					
4310	INSPECTION FEES	\$30,068	\$24,674	\$35,492	\$21,300	\$29,066
4315	PLAN REVIEW	\$177,536	\$193,564	\$186,762	\$157,500	\$117,206
4320	WEED ABATEMENT CHARGES	\$7,722	\$5,893	\$6,682	\$4,500	\$8,093
4330	AMBULANCE SERVICES	\$1,853,619	\$1,896,017	\$1,924,268	\$1,836,000	\$1,908,165
4340	CPR CLASSES	\$2,375	\$2,625	\$1,450	\$2,500	\$1,619
4350	REPORTS/PHOTOCOPIES	\$2,259	\$1,618	\$1,426	\$1,500	\$1,551
4360	MISCELLANEOUS CURRENT SERVICES	\$0	\$4,250	\$1,373	\$0	\$0
		\$2,073,577	\$2,128,641	\$2,157,453	\$2,023,300	\$2,065,700
4400	USE OF MONEY & PROPERTY					
4410	INTEREST ON LOANS & RECEIVABLE	\$859,412	\$1,789,343	\$1,723,007	\$1,124,000	\$506,093
		\$859,412	\$1,789,343	\$1,723,007	\$1,124,000	\$506,093
4500	RENTS, ROYALTIES AND COMMISSIONS					
4510	RENT ON REAL ESTATE	\$142,317	\$132,366	\$139,557	\$134,500	\$122,092
		\$142,317	\$132,366	\$139,557	\$134,500	\$122,092
4600	OTHER REVENUE					
4610	DONATIONS/CONTRIBUTIONS	\$9,960	\$2,095	\$726	\$0	\$950
4620	SALE OF PROPERTY	\$3	\$460	\$0	\$0	\$0
4630	INDEMNIFYING PROCEEDS	\$0	\$19,425	\$0	\$0	\$0
4640	MISCELLANEOUS REVENUE	\$4,359	\$0	\$43,922	\$0	\$15,970
		\$14,322	\$21,980	\$44,648	\$0	\$16,920
4900	OTHER FINANCING SOURCES					
4910	LEASE PROCEEDS - OTHER FINANCING SOURCES	\$4,600,000	\$0	\$0	\$0	\$0
4910	COP 2006-OTHER FINANCING SOURCES	\$9,669,897	\$0	\$0	\$0	\$0
		\$14,269,897	\$0	\$0	\$0	\$0
	REVENUE TOTAL	\$60,410,766	\$63,325,414	\$54,601,645	\$55,042,168	\$51,785,997
		47.40%	-11.73%	2.39%		

**SAN RAMON VALLEY FIRE PROTECTION DISTRICT
GENERAL FUND EXPENDITURES
FISCAL YEAR 2008/2009**

JULY 1, 2008 - APRIL 30, 2009

FISCAL YEAR COMPLETED - 83%								
DESCRIPTION	GL CODE	2005-2006 ACTUALS	2006-2007 ACTUALS	2007-2008 ACTUAL(audited)	2008-2009 BUDGET	EXPENDITURES TO DATE	REMAINING BAL. TO DATE	PERCENT EXPENDED
PERMANENT SALARIES	5110	\$18,472,525	\$19,566,915	\$20,695,453	\$21,736,249	\$18,300,341	\$3,435,908	84.19%
TEMPORARY SALARIES	5115	\$64,296	\$146,100	\$331,684	\$252,629	\$232,895	\$19,734	92.19%
PERMANENT OVERTIME	5120	\$3,039,318	\$2,748,451	\$5,011,294	\$4,581,400	\$4,161,586	\$419,814	90.84%
FEDERAL INSURANCE COMPENSATION	5140	\$279,960	\$303,468	\$367,385	\$315,857	\$319,524	(\$3,667)	101.16%
RETIREMENT CONTRIBUTIONS	5150	\$9,086,152	\$10,846,542	\$11,992,084	\$12,746,439	\$10,520,836	\$2,225,603	82.54%
EMPLOYEE GROUP INSURANCE	5160	\$2,849,840	\$3,208,278	\$3,309,643	\$3,991,991	\$3,236,878	\$755,113	81.08%
RETIREE HEALTH INSURANCE	5170	\$965,729	\$1,108,056	\$1,214,235	\$1,420,000	\$1,089,028	\$330,972	76.69%
UNEMPLOYMENT INSURANCE	5180	\$0	\$0	\$10,350	\$5,000	\$1,212	\$3,788	24.24%
WORKERS' COMPENSATION INS.	5190	\$418,528	\$299,980	\$427,860	\$600,000	\$451,896	\$148,104	75.32%
TOTAL SALARIES AND BENEFITS	5100	\$35,176,347	\$38,227,789	\$43,359,988	\$45,649,565	\$38,314,196	\$7,335,369	83.93%
OFFICE SUPPLIES	5202	\$35,012	\$52,883	\$42,987	\$52,333	\$38,183	\$14,150	72.96%
POSTAGE	5204	\$10,599	\$11,686	\$15,134	\$18,000	\$7,971	\$10,029	44.28%
TELECOMMUNICATIONS	5206	\$226,763	\$204,034	\$212,153	\$233,650	\$167,531	\$66,119	71.70%
UTILITIES	5208	\$225,800	\$252,334	\$246,082	\$251,500	\$247,498	\$4,002	98.41%
SMALL TOOLS/EQUIPMENT	5210	\$202,257	\$257,018	\$269,106	\$186,750	\$133,043	\$53,707	71.24%
MINOR EQUIPMENT	5212	\$84,814	\$121,700	\$156,182	\$138,450	\$95,288	\$43,162	68.82%
MEDICAL SUPPLIES	5213	\$128,728	\$147,583	\$131,141	\$135,000	\$97,518	\$37,482	72.24%
FIREFIGHTING SUPPLIES	5214	\$230,583	\$173,075	\$155,547	\$102,200	\$86,905	\$15,295	85.03%
PHARMACEUTICAL SUPPLIES	5216	\$22,218	\$39,335	\$29,890	\$48,000	\$14,305	\$33,695	29.80%
COMPUTER SUPPLIES	5218	\$81,955	\$133,249	\$118,144	\$53,700	\$44,725	\$8,975	83.29%
RADIO EQUIPMENT & SUPPLIES	5219	\$60,877	\$104,414	\$121,670	\$92,500	\$69,912	\$22,588	75.58%
FILM PROCESSING/SUPPLIES	5220	\$0	\$1,168	\$1,697	\$7,100	\$5,277	\$1,823	74.32%
FOOD SUPPLIES	5222	\$16,858	\$15,786	\$22,182	\$26,950	\$18,229	\$8,721	67.64%
SAFETY CLOTHING/SUPPLIES	5224	\$193,014	\$115,508	\$267,904	\$169,900	\$154,711	\$15,189	91.06%
NON-SAFETY CLOTHING/SUPPLIES	5226	\$66,322	\$59,040	\$61,562	\$92,780	\$47,492	\$45,288	51.19%
HOUSEHOLD SUPPLIES	5228	\$44,685	\$46,328	\$48,555	\$40,000	\$50,830	(\$10,830)	127.08%
CENTRAL GARAGE - REPAIRS	5230	\$169,569	\$112,758	\$133,351	\$120,000	\$81,283	\$38,717	67.74%
CENTRAL GARAGE - MAINTENANCE	5231	\$29,978	\$12,717	\$17,004	\$30,000	\$12,429	\$17,571	41.43%
CENTRAL GARAGE - GAS, DIESEL & OIL	5232	\$152,778	\$162,458	\$178,570	\$198,500	\$133,076	\$65,424	67.04%
CENTRAL GARAGE - T IRES	5234	\$20,846	\$20,340	\$21,220	\$15,000	\$13,565	\$1,435	90.43%
CENTRAL GARAGE - MANDATED INSP.	5235	\$7,023	\$9,800	\$5,857	\$15,000	\$3,650	\$11,350	24.33%
MAINT./REPAIRS - EQUIPMENT	5236	\$129,913	\$102,011	\$142,399	\$185,627	\$108,707	\$76,920	58.56%
MAINT./REPAIRS - RADIO & ELECTRONIC	5238	\$232,646	\$329,920	\$551,378	\$364,770	\$221,822	\$142,948	60.81%
MAINT./REPAIRS - BUILDINGS	5240	\$158,558	\$221,347	\$413,688	\$335,850	\$199,848	\$136,002	59.51%
MAINT./REPAIRS - GROUNDS	5242	\$51,296	\$51,561	\$58,335	\$48,000	\$41,278	\$6,722	86.00%
RENTS & LEASES-EQUIP./PROPERTY	5246	\$52,703	\$77,118	\$92,234	\$74,100	\$55,364	\$18,736	74.72%
PROFESSIONAL/SPECIALIZED SERVICES	5250	\$774,368	\$675,430	\$809,091	\$920,080	\$688,957	\$231,123	74.88%
RECRUITING COSTS	5251	\$72,388	\$60,281	\$78,806	\$167,085	\$87,936	\$79,149	52.63%
LEGAL SERVICES	5252	\$193,390	\$118,100	\$163,378	\$175,000	\$176,879	(\$1,879)	101.07%
MEDICAL SERVICES	5254	\$72,267	\$70,549	\$73,941	\$104,350	\$47,258	\$57,092	45.29%
DATA PROCESSING SERVICES	5256	\$128	\$258	\$221	\$500	\$50	\$450	10.00%
COMMUNICATIONS SERVICES	5258	\$1,463	\$1,669	\$3,399	\$8,500	\$3,006	\$5,494	35.36%
DOCUMENT MANAGEMENT SERVICES	5260	\$6,184	\$2,177	\$1,477	\$20,000	\$7,922	\$12,078	39.61%
ELECTION SERVICES	5262	\$0	\$49,267	\$0	\$108,338	\$119,616	(\$11,278)	110.41%
INSURANCE SERVICES	5264	\$513,991	\$574,876	\$536,487	\$677,000	\$501,803	\$175,197	74.12%
PUBLICATION OF LEGAL NOTICES	5270	\$246	\$964	\$1,349	\$3,250	\$982	\$2,268	30.22%
SPECIALIZED PRINTING	5272	\$10,046	\$20,263	\$66,752	\$92,897	\$77,373	\$15,524	83.29%
MEMBERSHIPS	5274	\$21,927	\$35,734	\$44,639	\$62,210	\$51,467	\$10,743	82.73%
EDUCATIONAL COURSES/SUPPLIES	5276	\$73,868	\$119,452	\$151,734	\$194,950	\$113,614	\$81,336	58.28%
EDUCATIONAL ASSISTANCE PROGRAM	5277	\$18,627	\$25,326	\$27,515	\$35,000	\$22,591	\$12,409	64.55%
PUBLIC EDUCATIONAL SUPPLIES	5278	\$8,819	\$17,502	\$24,931	\$18,340	\$18,056	\$284	98.45%
BOOKS & PERIODICALS	5280	\$18,436	\$17,740	\$27,333	\$35,481	\$13,459	\$22,022	37.93%
RECOGNITION SUPPLIES	5282	\$22,021	\$28,844	\$26,545	\$19,000	\$7,982	\$11,018	42.01%
MEETINGS/TRAVEL EXPENSES	5284	\$85,214	\$74,517	\$109,492	\$131,800	\$87,146	\$44,654	66.12%
DISCOUNTS	5299	(\$329)	(\$191)	(\$77)	\$0	(\$64)	\$64	0.00%
GRANT PASS-THROUGH	5920	\$318,227	\$56,677	\$0	\$0	\$0	\$0	0.00%
PRIOR PERIOD ADJUSTMENT	5990	\$0	\$0	\$0	\$0	\$0	\$0	0.00%
TOTAL SERVICES AND SUPPLIES	5200	\$4,847,076	\$4,784,606	\$5,660,984	\$5,809,441	\$4,176,473	\$1,632,968	71.89%
TOTAL G/F OPERATING EXPENDITURES		\$40,023,422	\$43,012,396	\$49,020,972	\$51,459,006	\$42,490,669	\$8,968,337	82.57%

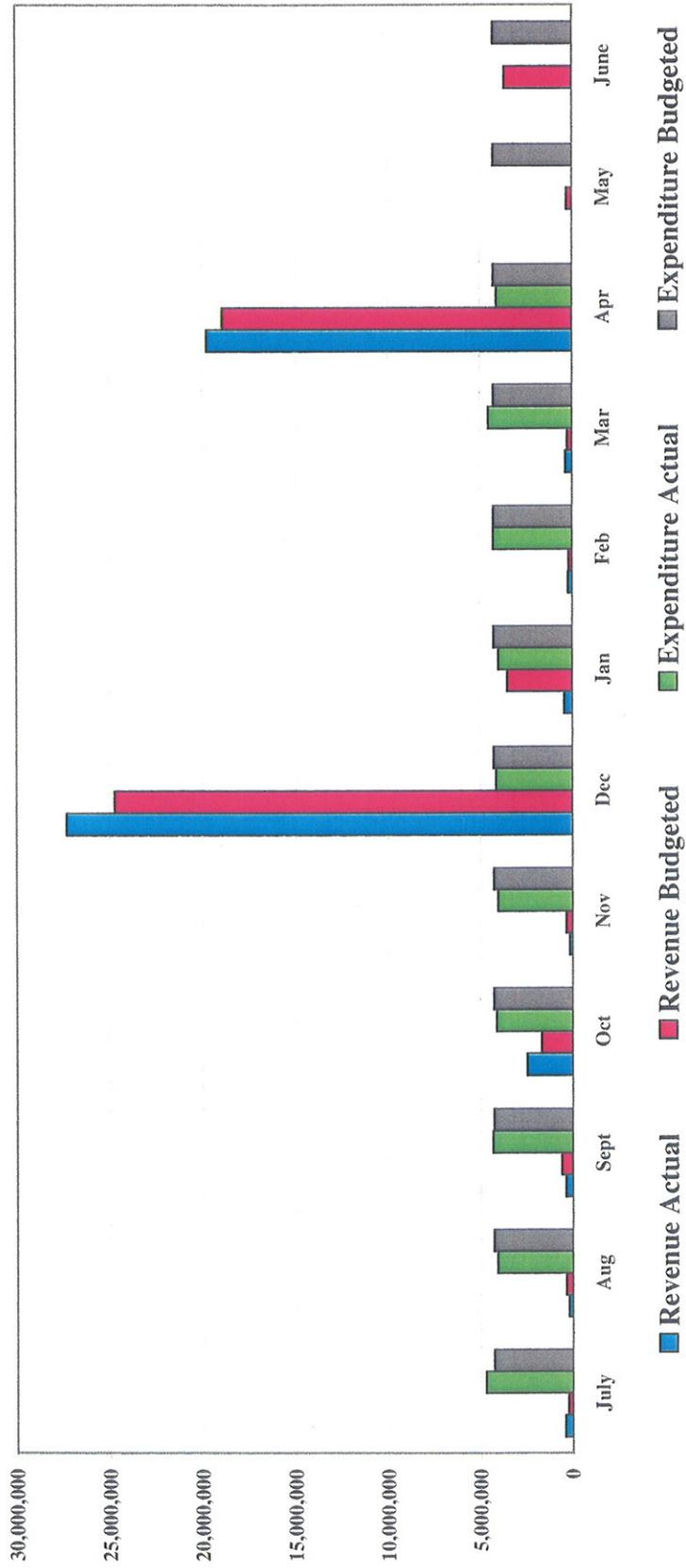
SAN RAMON VALLEY FIRE PROTECTION DISTRICT
 CAPITAL PROJECTS FUND AND EQUIPMENT/VEHICLES FUND EXPENDITURES
 FISCAL YEAR 2008 - 2009
 JULY 1, 2008 - APRIL 30, 2009

FISCAL YEAR COMPLETED - 83%								
DESCRIPTION	GL CODE	2005/2006 ACTUAL	2006/2007 ACTUAL	2007/2008 ACTUAL (AUDITED)	2008/2009 BUDGET	EXPENDITURES TO DATE	REMAINING BAL. TO DATE	PERCENT EXPENDED
DESIGN/CONSTRUCTION	6105/6110	\$930,676	\$243,154	\$3,650,874	\$4,967,154	\$5,065,912	-\$98,758	102%
VARIOUS IMPROVEMENTS	6120	\$166,007	\$188,784	\$44,994	\$40,000	\$68,154	-\$28,154	170%
TOTAL CAPITAL PROJECTS (FUND 300)		\$1,096,684	\$431,948	\$3,695,868	\$5,007,154	\$5,134,066	-\$126,912	103%
OFFICE EQUIP. & FURNISHINGS	6210	\$21,477	\$6,096	\$52,571	\$20,000	\$12,710	\$7,290	64%
MEDICAL/LAB EQUIPMENT	6220	\$75,980	\$91,490	\$148,962	\$0	\$0	\$0	0
RADIO/ELECTRONIC EQUIPMENT	6230	\$132,348	\$87,768	\$0	\$317,500	\$183,729	\$133,771	58%
TELEPHONE EQUIPMENT	6235	\$0	\$0	\$0	\$0	\$0	\$0	0%
TOOLS & SUNDRY EQUIPMENT	6240	\$45,880	\$255,016	\$226,541	\$83,245	\$29,533	\$33,712	47%
AUTO & TRUCKS	6250	\$2,758,273	\$3,296,551	\$1,129	\$385,000	\$46,305	\$338,695	12%
TOTAL EQUIPMENT/VEHICLES (FUND 600)		\$3,033,958	\$3,736,920	\$426,945	\$785,745	\$272,277	\$513,468	35%
BOND REDEMPTION - 2003 Refunding COP & 2006 COP	5310	\$735,608	\$1,098,808	\$1,329,961	\$1,328,704	\$1,328,704	\$0	100%
VEHICLE LEASE #1	5310	\$75,921	\$75,921	\$75,921	\$0	\$0	\$0	0
VEHICLE LEASE #2	5310	\$329,497	\$329,497	\$329,498	\$329,497	\$329,497	\$0	100%
VEHICLE LEASE #3	5310	\$756,033	\$756,033	\$756,033	\$756,033	\$0	\$756,033	0%
COST OF ISSUANCE (Move budget in June, 2006 to Fund 300)	5910	\$0			\$0	\$0	\$0	0%
TOTAL DEBT SERVICE (FUND 200)		\$1,897,059	\$2,260,259	\$2,491,413	\$2,414,234	\$1,658,201	\$756,033	69%
SERVICES & SUPPLIES	5000		\$15,329	\$30,641	\$52,850	\$19,758	\$33,092	37%
TOTAL AGENCY FUND (FUND 700)		\$0	\$15,329	\$30,641	\$52,850	\$19,758	\$33,092	37%
TOTAL - CAPITAL, EQUIP, DEBT & AGENCY		\$6,027,701	\$6,444,456	\$6,644,867	\$8,259,983	\$7,084,302	\$1,175,681	85.6%

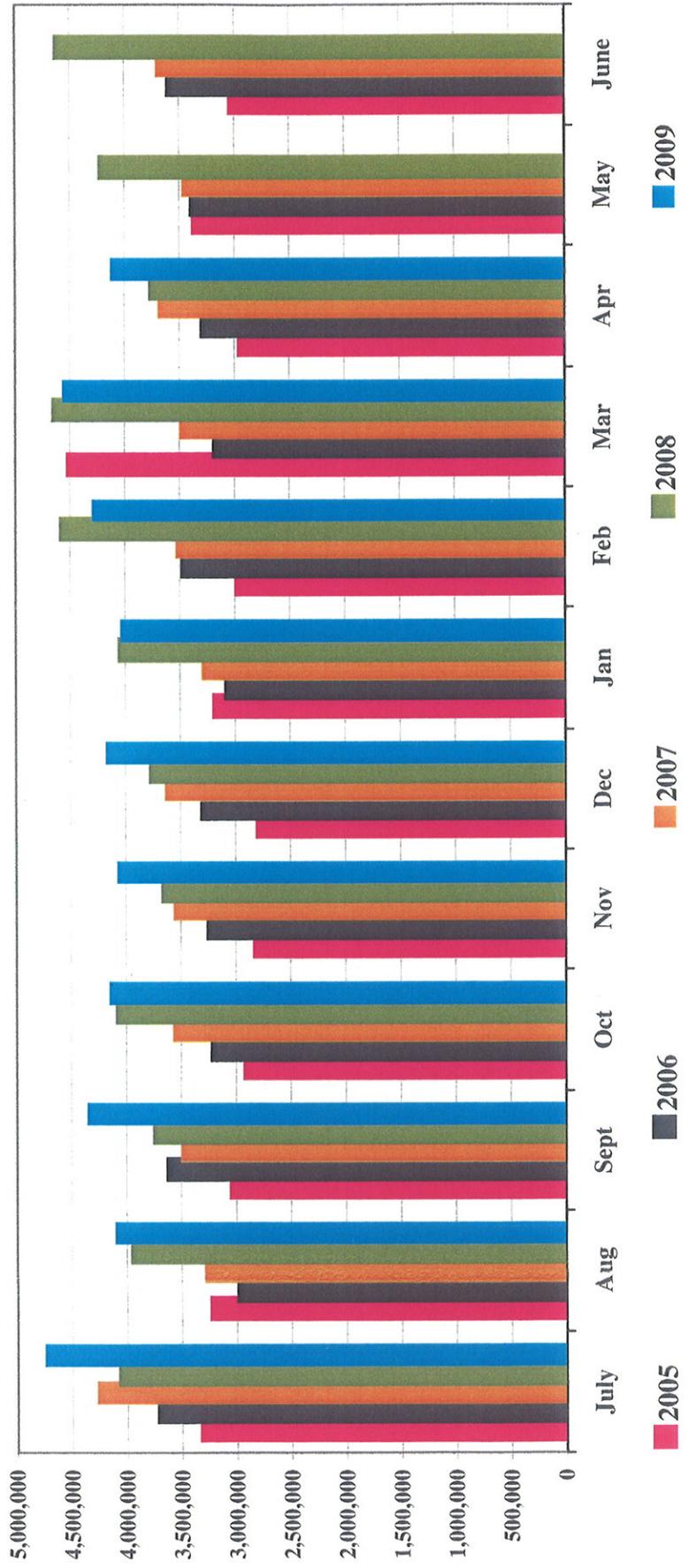
SAN RAMON VALLEY FIRE PROTECTION DISTRICT
REVENUE/EXPENDITURE HISTORY

Month	2004-05		2005-06		2006-07		2007-08		2008-09	
	Revenue	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue	Expenditures	Revenue	Expenditures
July	128,272	3,308,427	198,493	3,700,845	220,615	4,259,268	206,857	4,051,393	409,494	4,731,355
August	186,067	3,218,599	201,004	2,970,815	296,654	3,274,027	309,023	3,934,582	215,934	4,086,942
September	239,239	3,035,980	4,859,809	3,607,619	486,663	3,487,349	561,478	3,731,470	367,546	4,339,978
October	1,468,049	2,906,466	1,558,737	3,202,398	542,471	3,557,605	1,640,500	4,066,860	2,483,697	4,137,431
November	312,171	2,816,970	176,335	3,236,093	1,689,992	3,549,374	312,547	3,648,147	165,281	4,058,659
December	19,426,967	2,788,398	22,459,669	3,290,276	24,981,792	3,622,509	24,595,524	3,757,596	27,327,550	4,162,810
January	2,409,273	3,179,974	180,566	3,069,591	408,114	3,286,521	3,484,808	4,039,456	437,643	4,026,715
February	329,259	2,976,079	190,286	3,464,287	272,420	3,519,689	154,599	4,573,322	234,858	4,284,220
March	551,618	4,511,320	9,890,976	3,173,650	619,867	3,487,574	219,862	4,638,451	358,150	4,551,611
April	14,177,438	2,948,109	16,133,414	3,283,125	18,178,615	3,680,317	18,767,904	3,751,889	19,725,844	4,110,947
May	279,527	3,364,129	399,640	3,379,036	232,490	3,457,733	197,558	4,210,272		
June	3,663,008	3,029,985	4,152,484	3,589,770	5,437,965	3,697,713	3,677,543	4,615,870		

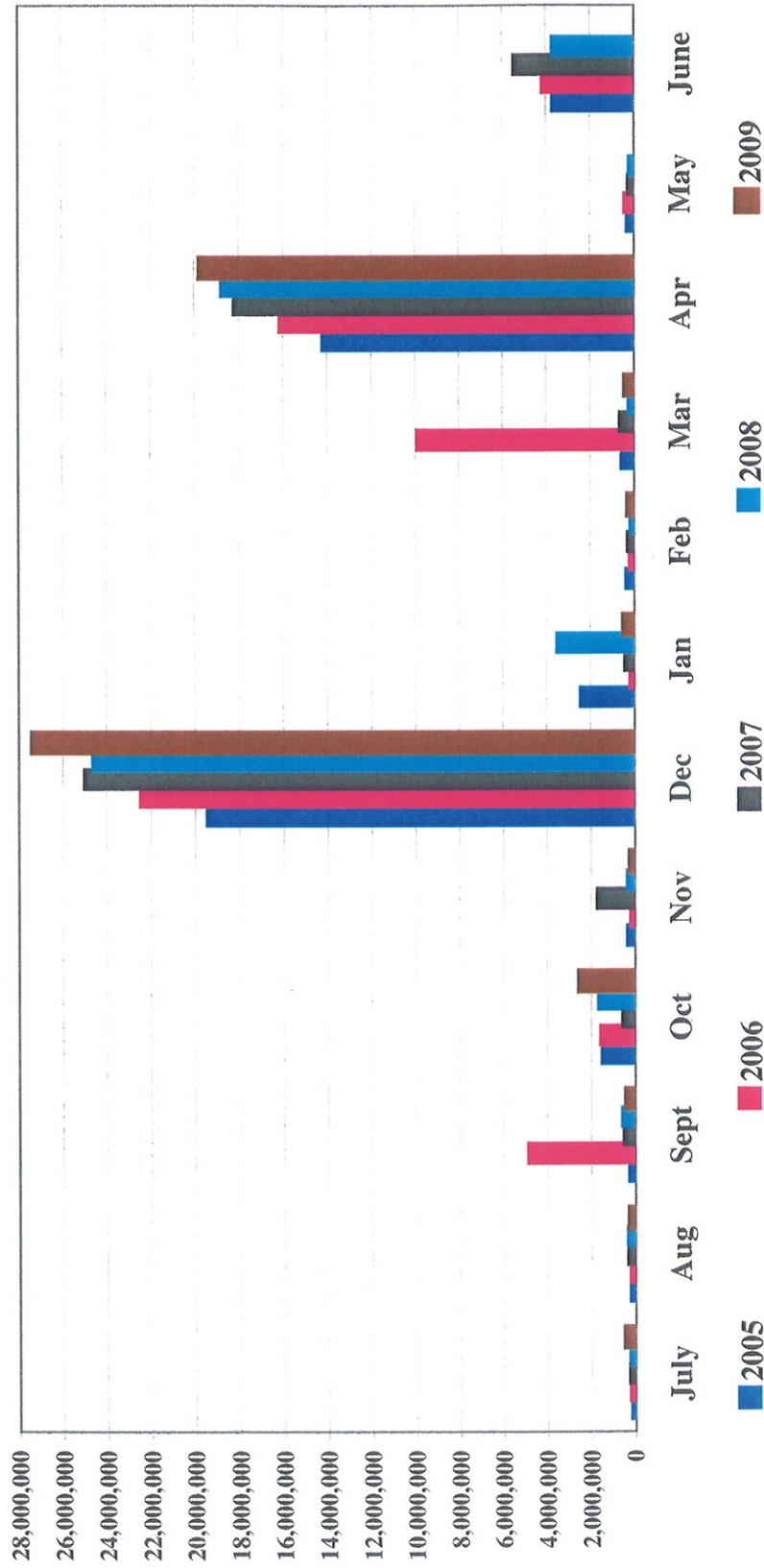
GENERAL FUND
 COMPARISON OF ACTUAL TO BUDGETED
 FISCAL YEAR 2008-09



**GENERAL FUND EXPENDITURES
FISCAL YEARS 2005 - 2009**



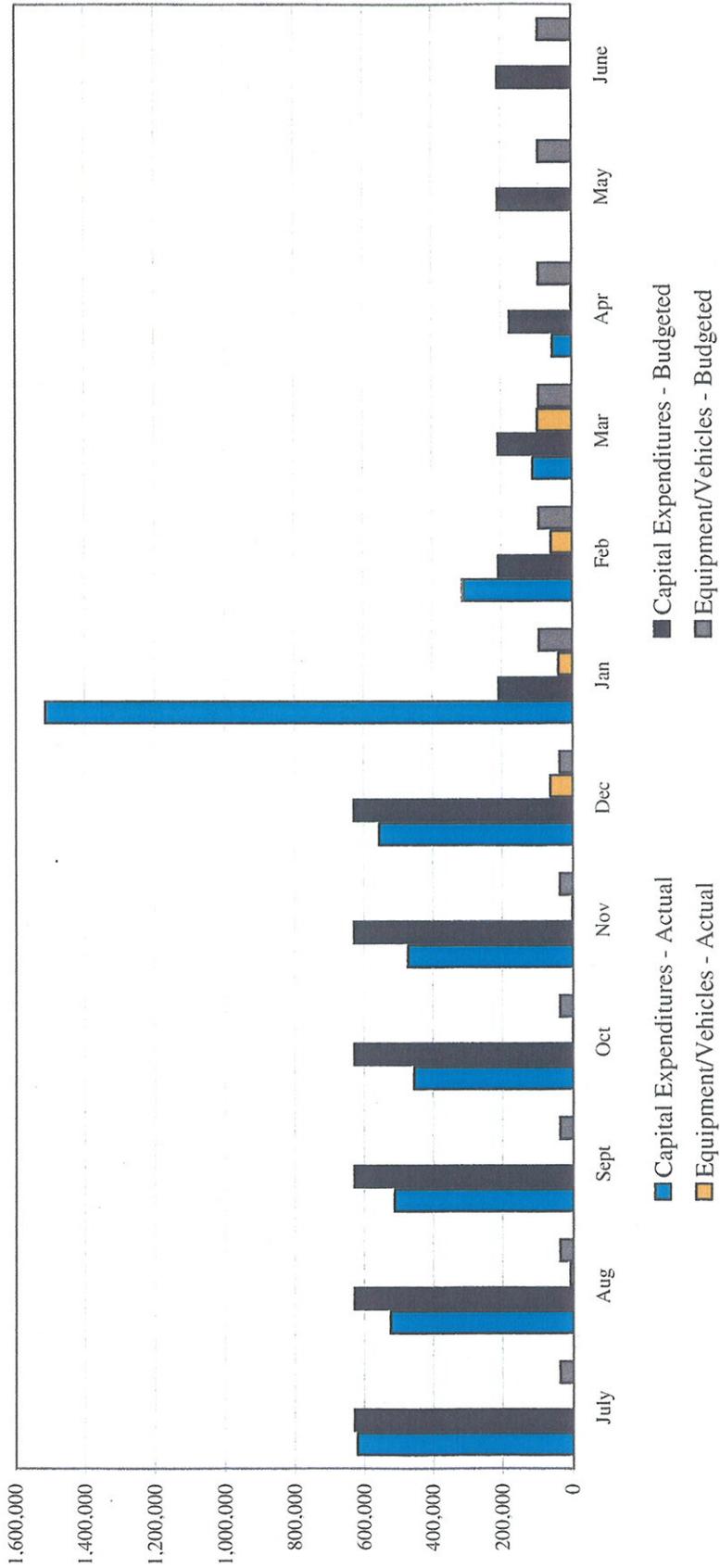
**GENERAL FUND REVENUE
FISCAL YEARS 2005 - 2009**



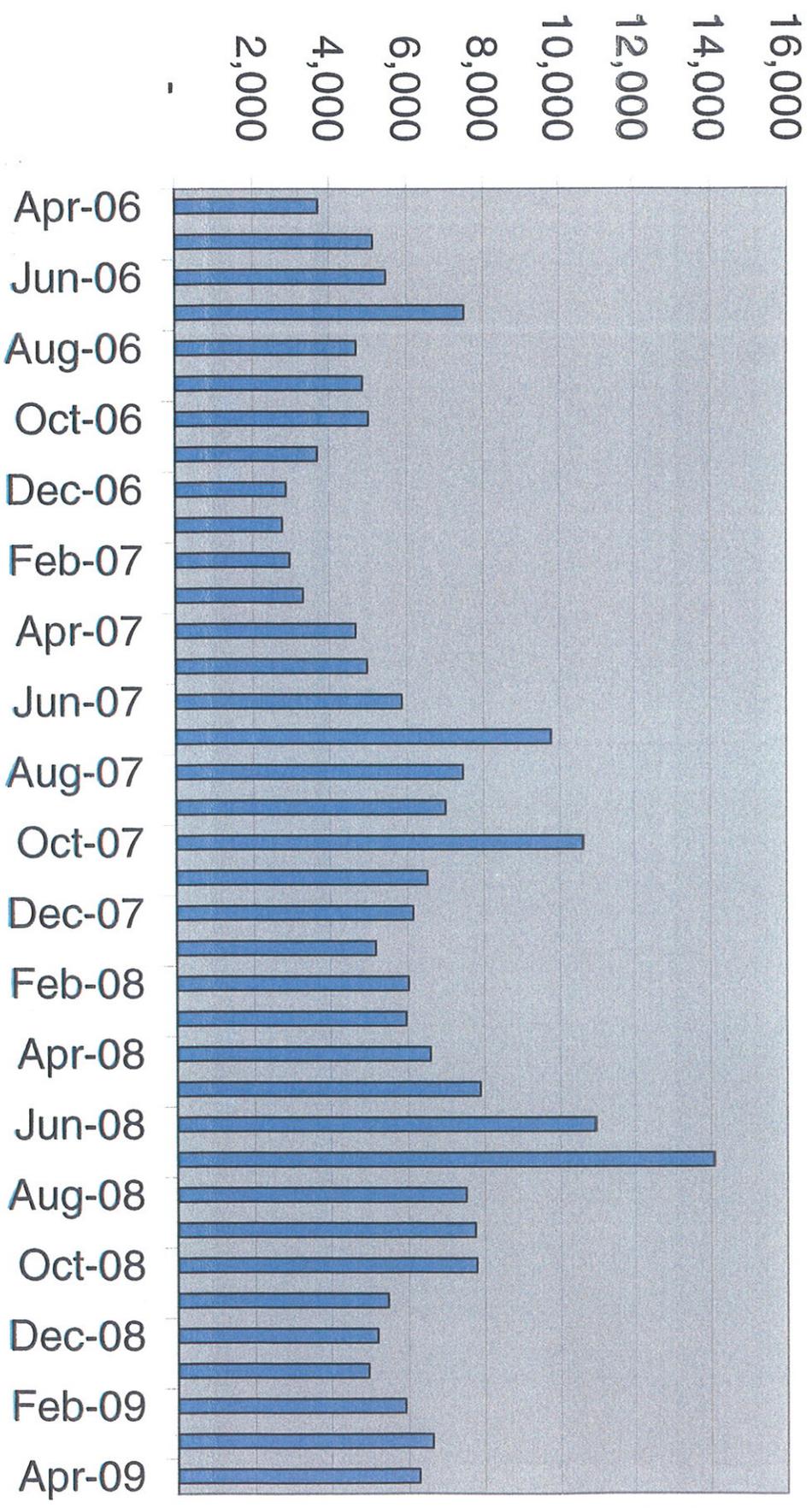
CAPITAL & EQUIPMENT/VEHICLES FUNDS

COMPARISON OF ACTUAL TO BUDGETED

FISCAL YEAR 2008-2009



Total Overtime Hours by Month April 2006 - April 2009



Overtime Summary Report

4/1/2009 Through 4/30/2009

WORK CODE:		Time Paid
1	STAFFING	5,273.50
2	TRAINING	681.75
3	ASSIGNMENTS	311.75
7	EMERGENCY	16.00
	Report Grand Total:	<hr/> 6,283.00

Overtime Assignment Summary Report

4/1/2009 Through 4/30/2009

WORK CODE: 1 STAFFING

ASSIGNMENT		Time Worked	Time Paid
101	HOLD OVER FOR CALL	6.00	7.50
103	MISC. STAFFING COVE	5229.15	5230.50
107	LATE/STA. MOVE COVE	5.66	9.25
199	MID SHIFT RECALL	26.25	26.25
Total All Assignments This Work Type:		5,267.06	5,273.50

WORK CODE: 2 TRAINING

ASSIGNMENT		Time Worked	Time Paid
201	OPERATIONS TRAINING	503.41	504.25
202	ADMIN SKILLS TRAINI	13.50	13.50
204	EMS TRNG/INSTRUCTIO	3.00	3.00
209	RESCUE TRAINING	109.00	109.00
214	PARAMEDIC - CONT ED	22.50	22.50
216	EMD/DISPATCH TRAINI	29.50	29.50
Total All Assignments This Work Type:		680.91	681.75

Overtime Assignment Summary Report

4/1/2009 Through 4/30/2009

WORK CODE: 3**ASSIGNMENTS**

ASSIGNMENT	Time Worked	Time Paid
301 MEETINGS/PROJECT DE	54.25	54.50
302 OFC WORK/REPORT WR	2.25	2.25
306 WELLNESS PROGRAM	42.25	43.25
310 MISC. MAINTENANCE	13.42	13.50
313 HONOR GUARD	6.00	6.00
317 RECRUITMENT EXTER	26.08	26.25
340 PROJECT WORK	166.00	166.00
Total All Assignments This Work Type:	310.25	311.75

WORK CODE: 7**EMERGENCY**

ASSIGNMENT	Time Worked	Time Paid
700 EMERGENCY RECALL	10.25	10.50
720 FIRE INVESTIGATION	5.33	5.50
Total All Assignments This Work Type:	15.58	16.00

Report Grand Total:

6,273.80	6,283.00
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April 2009 Staffing/Overtime Analysis

	<u>Staffing OT \$</u>	<u>Staffing OT Hrs</u>	<u>Staffing OT FTE</u>	<u>Paid FTE</u>	<u>Total Effective FTE</u>	<u>See Note 1</u>
ACTUAL APRIL RESULTS	\$ 264,627	4,515.25	18.61	130.00	148.61	15.20%
PROJECTED APRIL						
HIRING IN PLACE OF OVERTIME	\$ 334,499	4,515.25				
NET SAVINGS						
OVERTIME IN PLACE OF HIRING	\$ 69,872					

Note 1: This figure represents the percentage of time necessary to backfill regularly staffed positions for the month. This amount will routinely include the following components:

- The variance of regular, full-time paid employees either above or below the optimal 129 FTEs based upon the 10% hiring model
- Vacation Leave
- Sick Leave
- Disability Leave
- Various (jury duty, station moves, medic coverage, etc.)