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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 5. PERSONNEL [18000 - 22980] (Division 5 added by Stats. 1945, Ch. 123.)

PART 3. PUBLIC EMPLOYEES' RETIREMENT SYSTEM [20000 - 21716] (Part 3 repealed and added by Stats. 1995, Ch. 379, Sec. 2.)

CHAPTER 16. Deferred Compensation [21670 - 21685] (Chapter 16 added by Stats. 1995, Ch. 379, Sec. 2.)

21670. The board may establish one or more tax-preferred retirement savings programs for California public employees. These programs shall be made available to all employees of a participating employer under procedures established by the board unless participation is subject to the terms of any memorandums of understanding between the employer and the employees.

(Amended by Stats. 2010, Ch. 639, Sec. 7. (SB 1139) Effective January 1, 2011.)

21671. A tax-preferred retirement savings program established pursuant to Section 21670 may grant the maximum tax-preferred retirement savings opportunities available under current federal law, and may provide for employer as well as employee contributions. The program may include, but is not limited to, one or more of the following plans:

- (a) A deferred compensation plan described under Section 457 of Title 26 of the United States Code.
- (b) A program described under Section 403(b) of Title 26 of the United States Code. Section 770.3 of the Insurance Code shall not apply to the board for the purposes of contracting for those annuities.
- (c) Any other form of a tax-preferred retirement savings arrangement authorized by the provisions of Title 26 of the United States Code and approved by the board.

(Amended by Stats. 2010, Ch. 639, Sec. 8. (SB 1139) Effective January 1, 2011.)

21671.5. The design and administration of a tax-preferred retirement savings program established pursuant to Section 21670 shall conform with the applicable provisions of Title 26 of the United States Code.

(Added by Stats. 2010, Ch. 639, Sec. 9. (SB 1139) Effective January 1, 2011.)

21672. A tax-preferred retirement savings program may include one or more of the following components:

- (a) Investment fund options for participants, as part of the deferred compensation program administered for state employees by the Department of Human Resources.
- (b) Investment fund options for other participants.
- (c) Annuity contracts on behalf of all participants.
- (d) Asset management, administrative, or related services.

(Amended by Stats. 2012, Ch. 665, Sec. 146. (SB 1308) Effective January 1, 2013.)

21673. (a) The investment fund options under subdivision (b) of Section 21672 may include, but not be limited to, any or all of the following:

- (1) Mortgage-backed securities funds, including securities backed by California residential real estate mortgages.
- (2) Equity funds.
- (3) Balanced funds.

- (4) Corporate bond funds.
- (5) Government bond funds.
- (6) Stable principal funds, including certificates of deposit and money market accounts.
- (7) Guaranteed investment contracts.

(b) The board shall research any one or combination of investment options for offer to members, including the feasibility of creating an option for investment in the program established under Section 20200.

(Amended by Stats. 1996, Ch. 906, Sec. 199. Effective January 1, 1997.)

21674. (a) Investment fund options under subdivision (a) of Section 21672 shall be provided through a written interagency agreement between the board and the Department of Human Resources.

(b) Except for investments made pursuant to subdivision (a), participating employers shall enter into a written contractual agreement with the board.

(c) Participants shall enter into contractual agreements that are required to effectuate participation in a tax-preferred retirement savings program, including employees participating under a program described in subdivision (a) or (b) of Section 21671, or any other program that provides for the deferral of compensation program or written salary reduction agreements with their employers, for the purpose of making deferrals or for annuity contracts.

(Amended by Stats. 2012, Ch. 665, Sec. 147. (SB 1308) Effective January 1, 2013.)

21675. All development and administration costs of tax-preferred retirement savings programs shall be paid by employers and plan participants.

(Amended by Stats. 2010, Ch. 639, Sec. 12. (SB 1139) Effective January 1, 2011.)

21676. The Public Employees' Deferred Compensation Fund is hereby established. Notwithstanding any other provision of law, the board may:

- (a) Establish one or more accounts, trusts, group trusts, or similar vehicles within the fund.
- (b) Retain a bank, trust company, or similar entity to serve as repository of the fund, or of any account, trust, group trust, or other similar vehicle within the fund.

The board may also retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment of the fund or of any account, trust, group trust, or similar vehicle within the fund.

Notwithstanding Section 13340, all moneys in the fund are continuously appropriated, without regard to fiscal years, to the board to carry out the purposes of this chapter.

(Amended by Stats. 2010, Ch. 639, Sec. 13. (SB 1139) Effective January 1, 2011.)

21677. The Public Employees' Deferred Compensation Fund shall consist of the following sources and receipts, for which disbursements shall be accounted for as set forth below:

(a) Fees determined by the board and paid by employers and plan participants for the cost of administering the tax-preferred retirement savings programs.

(b) Asset management fees as determined by the board assessed against investment earnings of investment options or other investment funds provided by the board to either the state or other public employers. Asset management fees shall be disclosed to participants.

(c) (1) Deferrals or contributions to be paid monthly by participating employers or participants for investment by the board pursuant to this chapter. The moneys shall be deposited in the appropriate account, trust, group trust, or similar vehicle within the Public Employees' Deferred Compensation Fund, and invested in accordance with the fund option or fund selected by the participants.

(2) Deferrals or contributions paid by a contracting agency shall be paid through an electronic funds transfer method prescribed by the board. This payment requirement is effective upon declaration by the board.

(3) A contracting agency that is unable, for good cause, to comply with paragraph (2), may apply to the board for a waiver that allows the agency to pay in an alternate manner as prescribed by the board, but not by credit card payment.

(d) Disbursements shall be paid from the appropriate account, trust, group trust, or similar vehicle within the Public Employees' Deferred Compensation Fund, in accordance with the provisions of this chapter, the documents and instruments governing the tax-

preferred retirement savings program, and current federal law pertaining to tax-preferred savings programs.

(e) The board shall offer a savings account equivalent program among those deferred compensation accounts made payable to participants.

(f) Net earnings on the Public Employees' Deferred Compensation Fund shall be credited to the appropriate account, trust, group trust, or similar vehicle. Participant accounts shall be individually posted to reflect net asset value for each fund in which the participant invests.

(g) The board has the exclusive control of the administration and investment of the Public Employees' Deferred Compensation Fund.

(Amended by Stats. 2010, Ch. 639, Sec. 14. (SB 1139) Effective January 1, 2011.)

21678. The board, if authorized by another statute, may make expenditures from the asset management and services account in the Public Employees' Deferred Compensation Fund to conduct studies of other retirement-related benefits for the participants in this system, expend moneys to start up new retirement-related benefit programs for participants, to fund positions, or compensate employees.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21679. The officers and employees of this system shall discharge their duties with respect to the tax-preferred retirement savings program solely in the interest of the participants in the following manner:

(a) For the exclusive purpose of providing tax-preferred retirement savings to participants and defraying reasonable expenses of administering the program.

(b) In the selection of investment options with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(c) By diversifying the investment options available to participants so as to minimize the risk of large losses and by using reasonable diligence to accurately inform all employees and participants as to all options.

(d) In accordance with the documents and instruments governing the programs insofar as those documents and instruments are consistent with this chapter.

(Amended by Stats. 2010, Ch. 639, Sec. 15. (SB 1139) Effective January 1, 2011.)

21680. Except as otherwise provided by law, the officers and employees of this system shall not engage in a transaction with regard to a tax-preferred retirement savings program if they know or should know that the transaction constitutes, directly or indirectly, any of the following:

(a) The sale, exchange, or leasing of any property from the program to a participant for less than adequate consideration, or from a participant to the program for more than adequate consideration.

(b) The lending of money or other extension of credit from the program to a participant without the receipt of adequate security and a reasonable rate of interest, or from a participant to the program with the provision of excessive security or an unreasonably high rate of interest.

(c) The furnishing of goods, services, or facilities from the program to a participant for less than adequate consideration, or from a participant to the program for more than adequate consideration.

(d) The transfer to, or use by or for the benefit of, a participant of any assets of the program for less than adequate consideration.

(Amended by Stats. 2010, Ch. 639, Sec. 16. (SB 1139) Effective January 1, 2011.)

21681. The officers and employees of this system shall not do any of the following:

(a) Deal with the assets of the program in their own interest or for their own account.

(b) In their individual or in any other capacity, act in any transaction involving the program on behalf of a party, or represent a party, whose interests are adverse to the interests of the program or the interests of the participants.

(c) Receive any consideration for their personal account, or any gift, from any party dealing with the program in connection with a transaction involving the assets of the program.

(Amended by Stats. 2010, Ch. 639, Sec. 17. (SB 1139) Effective January 1, 2011.)

21682. This chapter shall not be construed to prohibit officers and employees of this system from participating in a tax-preferred retirement savings program, on the same terms as other state employees or participants.

(Amended by Stats. 2010, Ch. 639, Sec. 18. (SB 1139) Effective January 1, 2011.)

21683. This system may require an investment manager or recordkeeper under contract with, or appointed by, this system be subject to the duties set forth in Section 21679.

(Amended by Stats. 2010, Ch. 639, Sec. 19. (SB 1139) Effective January 1, 2011.)

21684. Nothing in this article is intended to lessen the scope of personal liability of the officers and employees of this system as it pertains to acts or conduct of a criminal nature or acts or conduct constituting gross negligence.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21685. Notwithstanding any other provision of this part, the following definitions govern the construction of this chapter:

(a) "Participating employer" means any California public agency, including, but not limited to, any office of the county superintendent of schools, school district, community college district, or public agency defined by Section 20056 that has elected to contract for a tax-preferred retirement savings program for any or all of its employees.

(b) "Employer" means any city, county, city and county, district, school district, community college district, county superintendent of schools, and other public authority or body within this state.

(c) "Participant" means any person enrolled in a tax-preferred retirement savings program established by this chapter.

(Amended by Stats. 2010, Ch. 639, Sec. 20. (SB 1139) Effective January 1, 2011.)