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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 3.4. INTERNAL REVENUE CODE COMPLIANCE AND REPLACEMENT BENEFIT PLAN [21750 - 21765] (Heading of Part 3.4 amended by Stats. 2003, Ch. 10, Sec. 32.)

21750. The purpose of this part is to ensure the federal tax-exempt status of the Public Employees' Retirement System, and any other retirement system administered by the board, 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 actuarial value of the benefits that would have been received but for the limitations imposed by Section 415 of Title 26 of the United States Code.

To achieve this purpose, this part incorporates certain pension payment limitations and elects the "grandfather" option in Section 415(b)(10) of Title 26 of the United States Code. Also, this part contains certain payment provisions and replacement benefits.

(Amended by Stats. 2010, Ch. 639, Sec. 21. (SB 1139) Effective January 1, 2011. Conditionally inoperative as prescribed in Section 21763.)

21751. The definitions in Part 3 (commencing with Section 20000) shall apply to this part. The following definition shall also govern the interpretation of this part:

"Participating agency" means any public agency that meets the criteria for becoming a contracting agency in this system pursuant to Chapter 5 (commencing with Section 20460) of Part 3, but that has not elected to participate in this system as a contracting agency, and that elects to contract with the board to participate in the replacement benefit plan administered pursuant to this part by the board.

(Amended by Stats. 2001, Ch. 793, Sec. 32. Effective January 1, 2002. Conditionally inoperative as prescribed in Section 21763.)

21752. (a) (1) In accordance with Section 21756, a member's annual retirement benefits, adjusted to the actuarial equivalent of a straight-life annuity if payable in a form other than a straight-life annuity or a qualified joint and survivor annuity as provided under Section 21460 or 21478 and determined without regard to any employee contributions or rollover contributions, as defined in Sections 402(a)(5), 403(a)(4), and 408(d)(3) of Title 26 of the United States Code, otherwise payable to the member under Part 3 (commencing with Section 20000) and under any other defined benefit plan maintained by the employer that is subject to Section 415 of Title 26 of the United States Code, shall not exceed, in the aggregate, the dollar limit applicable pursuant to Section 415(b)(1)(A) of Title 26 of the United States Code, as appropriately modified by Section 415(b)(2)(F) and (G) of Title 26 of the United States Code.

(2) A member who receives benefits based on credited service with multiple employers shall not exceed the limitations set forth in this subdivision with regard to his or her annual retirement benefits.

(3) However, the annual retirement benefit payable to a member shall be deemed not to exceed the limitations prescribed in paragraph (1) if the benefit does not exceed ten thousand dollars (\$10,000) and the member has at no time participated in a tax qualified defined contribution plan maintained by the employer.

(b) These limitations shall be applied pursuant to Section 415(b)(10) of Title 26 of the United States Code.

(c) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

(Amended by Stats. 2016, Ch. 199, Sec. 39. (AB 2404) Effective January 1, 2017. Conditionally inoperative as prescribed in Section 21763.)

21752.5. The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of this 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.

(Added by renumbering Section 21752.3 by Stats. 1996, Ch. 906, Sec. 200. Effective January 1, 1997. Conditionally inoperative as prescribed in Section 21763.)

21753. Notwithstanding any other provision of law, and except as provided in Section 21310.5, the retirement allowance of a member shall be increased to reflect cost-of-living adjustments to the limits contained in Section 415 of Title 26 of the United States Code as provided in Section 415(d) of that code, provided that the member's allowance determined without regard to Section 415 equals or exceeds the applicable limit as indexed. Nothing in this section is intended to, nor shall be construed to, entitle a retired member to a cost-of-living adjustment to his or her allowance in excess of that provided pursuant to Part 3 (commencing with Section 20000).

(Amended by Stats. 2009, Ch. 130, Sec. 32. (AB 966) Effective January 1, 2010. Conditionally inoperative as prescribed in Section 21763.)

21754. In addition to the benefit limitations specified in this part, if a member participates in other defined benefit plans maintained by the employer, to the extent the aggregation of benefits payable under those plans and pursuant to Part 3 (commencing with Section 20000) are subject to and exceed the limits prescribed by Section 415 of Title 26 of the United States Code, the benefits payable pursuant to the other defined benefit plans maintained by the employer shall be reduced, but not below zero, to the extent necessary to satisfy Section 415, before adjustments to the benefits provided under Part 3 are made. Nothing in this section shall limit a member's entitlement to replacement benefits as provided by Section 21757.

(Amended by Stats. 1999, Ch. 474, Sec. 5. Effective January 1, 2000. Conditionally inoperative as prescribed in Section 21763.)

21755. Internal Revenue Service Procedure 92-42 shall apply to all changes in benefit structure adopted by any employer regardless of whether the change was adopted before August 3, 1992, or on or after August 3, 1992. Internal Revenue Service Notice 89-45 shall not be applied to any changes in benefit structure adopted by any employer.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 4. Effective January 1, 1996. Conditionally inoperative as prescribed in Section 21763.)

21756. (a) Notwithstanding any other provision of law, the retirement rights conferred by this part upon any person who for the first time becomes a member on or after January 1, 1990, shall be subject to, and that person shall not have any retirement right or benefit that exceeds, and no retirement right or benefit under this part shall accrue to or vest in that person, that exceeds, the limitations in the Internal Revenue Code upon public retirement systems.

(b) The 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) Part 3 (commencing with Section 20000) shall be construed as if it included this section.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 4. Effective January 1, 1996. Conditionally inoperative as prescribed in Section 21763.)

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries payable pursuant to Part 3 (commencing with Section 20000) would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of those benefits, including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof, in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 and cannot be fully maximized pursuant to Part 3 (commencing with Section 20000). The benefits provided by that plan may consist of deferred compensation, cash payments, health benefits, or supplemental disability benefits, as shall be determined by the board to give effect to the purpose of this part. The factors the board may take into consideration in making its determination shall include, but not be limited to, the following: legal constraints, administrative feasibility, and cost effectiveness. The board may periodically modify the replacement benefits plan and may add or eliminate any type of replacement benefits, as necessary, to carry out the purpose of this part. The administrative costs of the replacement benefits plan shall be satisfied out of funds credited to the accounts of the participant members, and shall not be paid from the retirement fund or the retirement trust fund of a participating agency.

(c) The application of Section 415 to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit plan result in increased benefit costs to an employer, member, or annuitant.

(Amended by Stats. 2001, Ch. 793, Sec. 33. Effective January 1, 2002. Conditionally inoperative as prescribed in Section 21763.)

21758. (a) There is in the State Treasury a Replacement Benefit Custodial Fund, that shall be administered exclusively by the board, that is separate and apart from the retirement fund or any other retirement trust fund and that is, notwithstanding Section 13340, continuously appropriated, without regard to fiscal years, to the board to carry out the purposes of this part.

(b) The earnings on the assets of the Replacement Benefit Custodial Fund are continuously appropriated to the board for expenditure solely to pay the costs of administering this part.

(c) The Replacement Benefit Custodial Fund shall also consist of employer contributions, in amounts equivalent to the benefits that are not paid from either the retirement fund or the retirement trust fund of a participating agency to annuitants because of the application of the payment limitations under Section 415 of Title 26 of the United States Code; and administrative costs assessed to and paid by members enrolled in the replacement benefit plan.

(d) The board shall determine the amount of employer contributions required for deposit into the Replacement Benefit Custodial Fund, based on all of the following:

(1) The amount of benefits that will not be payable from the retirement fund, or the retirement trust fund of a participating agency, because of the payment limitations in Section 415.

(2) The amount by which an employer's contributions to the retirement fund, or the retirement fund of a participating agency shall be reduced, for annuitants whose benefit payments are limited by Section 415.

(e) The board shall establish within the Replacement Benefit Custodial Fund an individual account for each annuitant whose benefit payments are limited by Section 415. Employer contributions shall be credited to each account as of the date accrued and payable to the account of each annuitant as of the date on which the contribution is made. Replacement benefits shall be debited from each account as of the date paid to each annuitant.

(f) If all sections of this part, except Section 21763 and this section, become inoperative, pursuant to Section 21763, and all acts required and authorized by Section 21763 have been fully performed, any remaining balance in a member's individual account in the Replacement Benefit Custodial Fund shall revert to, and become part of, the trust fund of the retirement system from which the member retired.

(Amended by Stats. 2001, Ch. 793, Sec. 34. Effective January 1, 2002. Note: This section is not subject to termination under Section 21763.)

21759. This part shall be administered by the board in conformity with its powers and duties set forth in Part 3 (commencing with Section 20000). The board shall, to the extent it determines feasible, follow the procedures set forth in Article 7 (commencing with Section 20220) of Chapter 2 of Part 3. The power conferred upon the board by Sections 20134 and 20160 shall encompass any retirement system under this part, including participating agencies that contract for board administration of replacement benefits and employers that are required to enroll members in replacement benefits pursuant to Section 21757.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 4. Effective January 1, 1996. Conditionally inoperative as prescribed in Section 21763.)

21760. The board, in addition to its general rulemaking authority under Section 20121, may adopt regulations that implement this part. Those regulations shall be exempt from review by the Office of Administrative Law. However, the board shall transmit those regulations to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(Added by renumbering Section 21758 (as amended by Stats. 1995, Ch. 938) by Stats. 1996, Ch. 906, Sec. 201. Effective January 1, 1997. Conditionally inoperative as prescribed in Section 21763.)

21761. The state, school employers, as defined in Section 20063, and all contracting agencies under this system shall be deemed to have elected to contract with the board for administration of the replacement benefit plan pursuant to this part. A participating agency may contract with the board for administration to participate in the replacement benefit plan administered by the board, as follows:

(a) A participating agency shall deposit its replacement benefit contributions into the Replacement Benefit Custodial Fund, as the board directs.

(b) At the request of the board, the participating agency shall furnish any data concerning its members the board requires to direct the payment of replacement benefit contributions.

(c) A public agency that intends to contract under this section and become a participating agency shall do so only pursuant to the procedure set forth in Sections 20469 to 20471, inclusive.

(d) The ordinance or resolution by which a public agency approves a contract under this section shall be filed with the board. A participating agency under this section shall not maintain any other replacement benefit plan, except upon the express approval of the board.

(e) A contract entered into under this section may be amended pursuant to the procedure set forth in Section 20472.

(f) For the purpose of paying necessary contributions to the replacement benefit plan, the county superintendent of schools may, on an annual basis or as otherwise directed by the board pursuant to this section, draw requisitions against the county school service fund and the funds of the respective school districts or other local educational agencies in amounts equal to the total of contributions required to be paid pursuant to this part.

(Amended by Stats. 2017, Ch. 277, Sec. 1. (AB 1243) Effective January 1, 2018. Conditionally inoperative as prescribed in Section 21763.)

21762. If the Internal Revenue Service determines that any provision of Part 3 (commencing with Section 20000) or this part cannot be given effect without placing a retirement system administered under this part or Part 3 out of conformity with Section 415 of Title 26 of the United States 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 Part 3 as of the effective date of the determination. The board shall notify the Secretary of State whenever a nonconforming provision becomes inoperative under this section.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 4. Effective January 1, 1996. Conditionally inoperative as prescribed in Section 21763.)

21763. (a) If Section 415 of Title 26 of the United States Code is amended to exclude public retirement systems, or if the application of Section 415 to public retirement systems is invalidated by the final decision of an appellate court of proper jurisdiction, all sections of this part, except this section and Section 21758, shall become inoperative as of the effective date of that amendment or decision. The board shall immediately notify the Secretary of State whenever any provision of this part becomes inoperative pursuant to this section.

(b) Whenever all sections of this part, except this section and Section 21758, become inoperative pursuant to this section, and to the extent not prohibited by the Internal Revenue Code, the board shall do all of the following:

(1) Remove the pension limitations imposed by Section 415 for prospective payments to annuitants.

(2) Eliminate the replacement benefits, and reimburse annuitants for that portion of their pension funds that had been credited to the Replacement Benefit Custodial Fund but not yet been disbursed, with accrued interest.

(3) Take any and all other actions it deems necessary or feasible.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 4. Effective January 1, 1996. Note: Termination clause affects all sections in Part 3.4 (Sections 21750 to 21765) except Section 21758 and this section.)

21764. It is the sole intent of the Legislature, in enacting this part, 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 Public Employees' Retirement System, to elect the "grandfather" option in Section 415(b)(10) of Title 26 of the United States Code, and to provide, to the extent deemed reasonable, commensurate replacement benefits to affected members of this system and of other participating agencies that elect to contract with this system for the administration of a replacement benefits plan.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of Title 26 of the United States 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, in enacting this part, to not impose upon local public agencies that are contracting agencies with this system or upon other local public agencies that elect to contract with this system for the administration of a replacement benefits plan, 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 this title.

If either the Commission on State Mandates or a court determines that this part 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 this title or from any other state fund.

(Amended by Stats. 2001, Ch. 793, Sec. 36. Effective January 1, 2002. Conditionally inoperative as prescribed in Section 21763.)

21765. The Legislature reserves the power and right to amend this part, as needed to effect its purposes. This part shall be controlling over any memorandum of understanding reached between employers and employees pursuant to Chapter 10

(commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), or Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(Added by Stats. 1995, Ch. 379, Sec. 4. Effective January 1, 1996. Conditionally inoperative as prescribed in Section 21763.)