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GOVERNMENT CODE - GOV

TITLE 3. GOVERNMENT OF COUNTIES [23000 - 33205] (Title 3 added by Stats. 1947, Ch. 424.)

DIVISION 4. EMPLOYEES [31000 - 33017] (Division 4 added by Stats. 1947, Ch. 424.)

PART 3. RETIREMENT SYSTEMS [31200 - 33017] (Part 3 added by Stats. 1947, Ch. 424.)

CHAPTER 3. County Employees Retirement Law of 1937 [31450 - 31898] (Chapter 3 added by Stats. 1947, Ch. 424.)

ARTICLE 1.6. Alternative Plan for Counties of the 10th Class [31496 - 31498.7] (Article 1.6 added by Stats. 1982, Ch. 1381, Sec. 1.)

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.

(Added by Stats. 1982, Ch. 1381, Sec. 1.)

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.

(Amended by Stats. 2003, Ch. 96, Sec. 2. Effective January 1, 2004.)

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.

(Added by Stats. 1982, Ch. 1381, Sec. 1.)

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.

(Added by Stats. 1982, Ch. 1381, Sec. 1.)

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.

(Added by Stats. 1982, Ch. 1381, Sec. 1.)

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.

(Added by Stats. 1982, Ch. 1381, Sec. 1.)

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.

(Amended by Stats. 1992, Ch. 707, Sec. 4. Effective September 15, 1992.)

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.

(Amended by Stats. 1991, Ch. 344, Sec. 2. Effective August 6, 1991. Applicable as of March 1, 1991, pursuant to Sec. 3 of Ch. 344.)

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.

(Added by Stats. 1982, Ch. 1381, Sec. 1.)