



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code: Section:

[Up^](#) [Add To My Favorites](#)

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 11.5. Deferred Retirement Option Program [31770 - 31779.3] (Article 11.5 added by Stats. 2003, Ch. 897, Sec. 1.)

31770. This article shall be known and may be cited as the "Deferred Retirement Option Program."

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

31771. The provisions of this section to Section 31776.5, inclusive, shall be referred to collectively as the "forward DROP provisions."

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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 the required beginning date specified in Section 401(a)(9) of Title 26 of the United States Code, or an 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 the required beginning date specified in Section 401(a)(9) of Title 26 of the United States Code, or an 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 applicable age that determines the required beginning date specified in Section 401(a)(9) of Title 26 of the United States Code, or an age determined by the Internal Revenue Service.

(Amended by Stats. 2023, Ch. 159, Sec. 16. (SB 885) Effective January 1, 2024.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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).

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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).

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

(Added by Stats. 2003, Ch. 897, Sec. 1. Effective January 1, 2004.)

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.

