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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 3. Retirement Board [31520 - 31543] (Article 3 added by Stats. 1947, Ch. 424.)

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.

(Amended by Stats. 2002, Ch. 784, Sec. 188. Effective January 1, 2003.)

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, and shall be referred to as the alternate seventh member. If there is no eligible candidate there may not be an alternate seventh 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 seventh members shall serve for a term of two years beginning on the date on which a retirement system established by this chapter becomes operative. 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 seventh members are three years, except as provided in Section 31523.

(b) The alternate seventh 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 seventh member shall fill the vacancy until a successor qualifies. The alternate seventh 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) The alternate seventh member shall be entitled to both of the following:

(1) The alternate seventh member shall have the same rights, privileges, responsibilities, and access to closed sessions as the second, third, seventh, and eighth member.

(2) The alternate seventh 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 any of its committees to which the alternate seventh member has been appointed whether or not the second, third, seventh, or eighth member is present.

(Amended by Stats. 2011, Ch. 124, Sec. 1. (SB 203) Effective January 1, 2012.)

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.

(Added by Stats. 1991, Ch. 1226, Sec. 7.)

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.

(Added by Stats. 2005, Ch. 64, Sec. 1. Effective January 1, 2006.)

31520.13. (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 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) This section shall apply only to a county of the 13th class, as defined in Sections 28020 and 28034.

(Added by Stats. 2015, Ch. 38, Sec. 1. (AB 663) Effective January 1, 2016.)

31520.2. (a) 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. The fourth member shall be a safety member elected by the safety membership of the association for a three-year term. The eighth member shall be a retired member of the association elected by the retired membership of the association for a three-year term. 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 a three-year term, the second person chosen shall

serve a four-year term, and the third person chosen shall serve a two-year term. The first person appointed as the ninth member shall serve a one-year term. Thereafter, all terms of all appointed members shall be three years.

(b) The board of investments shall be responsible for all investments of the retirement system.

(Amended by Stats. 2011, Ch. 124, Sec. 2. (SB 203) Effective January 1, 2012.)

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.

(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 for the remainder of the eighth member's term of office.

(c) Except as provided in subdivision (b), 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. 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 any of its committees to which the alternate retired member has been appointed whether or not the eighth member is present.

(d) 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.

(e) (1) In the event that this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate seventh member shall not sit and act for the retired 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 seventh member may sit and act for the eighth member as described in Section 31520.1.

(Amended by Stats. 2011, Ch. 124, Sec. 3. (SB 203) Effective January 1, 2012.)

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 seventh 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.

(Amended by Stats. 2011, Ch. 124, Sec. 4. (SB 203) Effective January 1, 2012.)

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 recognized 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.

(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 for the remainder of the eighth member's term of office.

(c) Except as otherwise provided in this section, 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.

(d) 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 any of its committees to which the alternate retired member has been appointed whether or not the eighth member is present.

(e) 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.

(f) (1) If this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate seventh 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 seventh member may sit and act for the eighth member as described in Section 31520.1.

(Amended by Stats. 2012, Ch. 178, Sec. 3. (SB 1382) Effective January 1, 2013.)

31520.6. Notwithstanding any provision to the contrary in Section 31520.3 or 31520.5, in any county in which there is an alternate retired member, if the eighth member is present, the alternate retired member may also vote as a member of the board in the event both the second and third, or both the second and seventh, or both the third and seventh members are absent for any cause.

(Added by Stats. 2016, Ch. 134, Sec. 4. (AB 2376) Effective January 1, 2017.)

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.

(Amended by Stats. 2007, Ch. 320, Sec. 3. Effective January 1, 2008.)

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.

(Amended by Stats. 2007, Ch. 320, Sec. 4. Effective January 1, 2008.)

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. The 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. The number of hours compensated under this section shall not 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.

(d) 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.

(Amended by Stats. 2008, Ch. 179, Sec. 103. Effective January 1, 2009.)

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.

(Repealed and added by Stats. 1998, Ch. 109, Sec. 3. Effective January 1, 1999.)

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.

(Amended by Stats. 1979, Ch. 55.)

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.

(Added by Stats. 1987, Ch. 188, Sec. 1. Effective July 23, 1987.)

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.

(d) Notwithstanding subdivision (c), this section shall also apply to any county if the board of supervisors, by resolution adopted by majority vote, makes this section applicable in the county.

(Amended by Stats. 2018, Ch. 114, Sec. 1. (SB 1270) Effective January 1, 2019.)

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.

(Added by Stats. 2001, Ch. 120, Sec. 1. Effective January 1, 2002.)

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) Except as otherwise provided by Sections 31529.9 and 31596.1, 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 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.

(Amended by Stats. 2021, Ch. 26, Sec. 1. (AB 761) Effective January 1, 2022.)

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.

(Added by Stats. 2004, Ch. 533, Sec. 19. Effective January 1, 2005.)

31522.7. (a) In addition to the authority provided pursuant to Section 31522.5, the board of retirement in the County of San Bernardino 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, supervisors and employees with specialized training and knowledge in pension benefit member services, investment reporting compliance, investment accounting, pension benefit tax reporting, pension benefit financial accounting, pension law, 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) Except as otherwise provided by Sections 31529.9 and 31596.1, 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 if the retirement system elects to appoint personnel pursuant to this section.

(f) This section shall apply only 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.

(Added by Stats. 2009, Ch. 393, Sec. 1. (AB 1406) Effective January 1, 2010.)

31522.8. A board of retirement and a board of investments subject to this article shall adopt a policy for providing education to board members. The policy, at a minimum, shall do the following:

(a) Identify appropriate topics for board member education, which may include, but is not limited to, the following:

- (1) Fiduciary responsibilities.
- (2) Ethics.
- (3) Pension fund investments and investment program management.
- (4) Actuarial matters.
- (5) Pension funding.
- (6) Benefits administration.
- (7) Disability evaluation.
- (8) Fair hearings.

(9) Pension fund governance.

(10) New board member orientation.

(b) Establish a means for determining the programs, training, and educational sessions that qualify as board member education. Educational seminars sponsored by the state or national public pension fund organizations and seminars sponsored by accredited academic institutions shall be deemed to meet board member education requirements.

(c) Require that all board members receive a minimum of 24 hours of board member education within the first two years of assuming office and for every subsequent two-year period the board member continues to hold membership on the board.

(d) Require each board to maintain a record of board member compliance with the policy. The policy and an annual report on board member compliance shall be placed on the Internet Web site of the retirement system.

(Added by Stats. 2012, Ch. 15, Sec. 1. (AB 1519) Effective January 1, 2013.)

31522.9. (a) The board of retirement of a county may appoint a retirement administrator and other personnel as are required to accomplish the necessary work of the board. The board may authorize the administrator to make these appointments on its behalf. Notwithstanding any other law, the personnel so appointed shall not be county employees but shall become employees of the retirement system, subject to terms and conditions of employment established by the board of retirement, including those set forth in memoranda of understanding executed by the board of retirement and recognized employee organizations.

(b) Sections 31522.1 and 31522.2 shall not apply to a retirement system that appoints personnel pursuant to this section.

(c) The retirement system that appoints personnel pursuant to this section is a public agency for purposes of the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4).

(d) The compensation of personnel appointed pursuant to this section shall be an expense of administration of the retirement system, pursuant to Section 31580.2, except as provided in Sections 31529.5, 31529.9, and 31596.1.

(e) The board of retirement and the board of supervisors may enter into agreements as they determine are necessary and appropriate in order to carry out the provisions of this section.

(f) The retirement system, upon the effective date of this section, shall retain, for a 90-day transition employment period, nonprobationary employees who, upon the effective date of this section, were covered by a county memorandum of understanding and employed by the county at the retirement system's facilities, unless just cause exists to terminate the employees or legitimate grounds exist to lay off these employees. If during the 90-day period the retirement system determines that a layoff of these employees is necessary, the retirement system shall retain the employees by seniority within job classification. The terms and conditions of employment of the employees retained pursuant to this subdivision shall be subject to the terms and conditions established by the applicable memoranda of understanding executed by the board of retirement and the recognized employee organizations. During the 90-day transition period, probationary employees shall maintain only those rights they initially acquired pursuant to their employment with the county.

(g) Subject to the employees' rights under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the retirement system, upon the effective date of this section, shall recognize as the exclusive representative of the employees retained pursuant to subdivision (f) the recognized employee organizations that represented those employees when employed by the county. The initial terms and conditions for those employees shall be as previously established by the applicable memoranda of understanding executed by the county and recognized employee organizations.

(h) This section shall apply only in Contra Costa County.

(Added by Stats. 2014, Ch. 244, Sec. 2. (SB 673) Effective January 1, 2015.)

31522.10. (a) In a county in which the board of retirement has appointed personnel pursuant to Section 31522.1, the board of retirement may appoint a retirement administrator, chief financial officer, chief operations officer, chief investment officer, chief technology officer, and general counsel.

(b) Notwithstanding any other law:

(1) The personnel appointed pursuant to this section shall 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.

(2) Any leave balance accrued by a county employee prior to his or her appointment as a retirement system employee pursuant to this chapter shall be transferred from the county to the retirement system. The county shall pay to the retirement system at the

time that the leave is transferred an amount equal to the value of the accrued leave at that time based on the compensation paid to the employee by the county immediately before the transfer.

(c) Except as otherwise provided by Sections 31529.9 and 31596.1, 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 a retirement system that elects to appoint personnel pursuant to this section.

(f) This section shall apply only to the retirement system established under this chapter in Ventura County at such time as the board of retirement, by resolution, makes this section applicable in that county.

(Amended by Stats. 2024, Ch. 131, Sec. 1. (SB 1189) Effective January 1, 2025.)

31522.11. (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, assistant administrators, a chief investment officer, subordinate investment officers next in line of authority to the chief investment officer, senior management employees next in line of authority to the subordinate investment officers, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel.

(b) Notwithstanding any other 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) Except as otherwise provided by Sections 31529.9 and 31596.1, 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 to Orange County.

(Added by Stats. 2021, Ch. 26, Sec. 2. (AB 761) Effective January 1, 2022.)

31523. (a) In the event of a vacancy in the second, third, seventh, eighth, or alternate seventh member position on the board of retirement, the board shall cause an election to fill the vacancy to be held at the earliest possible date, except as provided in Sections 31520.3 and 31520.5. The vacancy in the second, third, or eighth member position on the board of retirement shall be filled for the duration of the current term except that, if the remaining portion of the current term is six months or less on the date of the election, a single election may be held to fill the vacancy for the remainder of the current term and to fill the position for the succeeding term. With respect to a vacancy in the seventh member position, candidates shall be a safety member from a group which is not represented by an incumbent alternate seventh member. With respect to the alternate seventh member position, the candidates shall be limited to 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 that is not represented by an incumbent seventh board member. The successful candidate shall serve for the duration of the current term.

(b) If there is a vacancy with respect to the alternate retired member, the board of retirement shall, by majority vote, appoint a replacement alternate member in the same manner as prescribed in Sections 31520.3 and 31520.5 for the initial appointment of an alternate retired member, who shall serve until the expiration of the current term of the current eighth member.

(c) If an election has been called on the expiration of the term of office of any member or alternate member, or to fill a vacancy for the second, third, seventh, eighth, or alternate seventh member of a board of retirement, and only one candidate has been duly nominated in accordance with the rules established for the holding of that 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 the candidate.

(Repealed and added by Stats. 2011, Ch. 124, Sec. 7. (SB 203) Effective January 1, 2012.)

31523.1. (a) In the event of a vacancy in the second, third, fourth, or eighth member position on a board of investments established pursuant to Section 31520.2, the board of investments shall cause an election to be held at the earliest possible date to fill the vacancy. The vacancy in the second, third, fourth, or eighth member position shall be filled for the duration of the current term except that, if the remaining portion of the current term on the date of the election is six months or less, a single election may be held to fill the vacancy for the remainder of the current term and to fill the position for the succeeding term.

(b) If an election has been called on the expiration of the term of office of any member, or to fill a vacancy for the second, third, fourth, or eighth member position of a board of investments, and only one candidate has been duly nominated in accordance with the rules established for the holding of that 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 the candidate.

(Added by Stats. 2011, Ch. 124, Sec. 8. (SB 203) Effective January 1, 2012.)

31524. Separation from the service of the county of a member of the board vacates his office.

(Added by Stats. 1947, Ch. 424.)

31525. The board may make regulations not inconsistent with this chapter. The regulations become effective when approved by the board of supervisors.

(Added by Stats. 1947, Ch. 424.)

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 one of the following:

(1) 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 other information as is required by the board.

(2) In lieu of a sworn statement, the submission by the member's employer to the retirement association of the information otherwise required in paragraph (1), in a form determined by the retirement association.

(c) For forms of annuity certificates and other forms as required.

(Amended by Stats. 2016, Ch. 134, Sec. 5. (AB 2376) Effective January 1, 2017.)

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 retirement fund an amount equal to all of the accumulated normal contributions that he or she 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 or she would have made plus interest, if he or she had been a member from the date of its organization, or from the date of his or her entrance into service, whichever is later.

(d) For a withdrawal charge against a member who withdraws his or her 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 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 (commencing with Section 31841) or Article 16 (commencing with Section 31861). Such a provision may be adopted in anticipation of, and prior to Article 15.5 (commencing with Section 31841) or Article 16 (commencing with Section 31861) becoming operative in the particular county.

(h) The day upon which each person becomes a member of the association if it is to be other than the first day of the calendar month after his or her entrance into service. However, that day shall be no later than 12 weeks after his or her entrance into service, or the day upon which the member terminates service credited by the association, and that the day shall be no earlier than 12 weeks prior to the member's termination from employment.

(i) Notwithstanding any other law, for the use and acceptance of a document requiring a signature that is submitted by a member using an electronic signature, if the document and electronic signature are submitted using technology the board deems sufficient to ensure its integrity, security, and authenticity. A document submitted pursuant to the regulation shall be given the same force as a signed, valid original document.

(j) For the use of recorded telephone communications for the processing of authorized transactions affecting a member's account, if the board approves procedures adequate to protect the member and the system. These procedures shall include adequate validation and authentication of member identity and permanent retention of recorded communication.

(Amended by Stats. 2013, Ch. 778, Sec. 11. (SB 215) Effective January 1, 2014.)

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.

(c) An individual who held a position designated in Section 31522.3, 31522.4, or 31522.5, or was a member of the board or an administrator, shall not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person except the county, by making any formal or informal appearance before, or any oral or written communication to, the retirement system, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

(Amended by Stats. 2009, Ch. 301, Sec. 8. (AB 1584) Effective October 11, 2009.)

31529. The district attorney, or the county counsel if there is one, is the attorney for the board.

(Added by Stats. 1947, Ch. 424.)

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.

(Added by Stats. 1992, Ch. 1047, Sec. 2. Effective January 1, 1993.)

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.

(Added by Stats. 1977, Ch. 202.)

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.

(Added by Stats. 1990, Ch. 1467, Sec. 1.)

31529.9. (a) In addition to the powers granted by Sections 31522.5, 31522.9, 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 31522.5, 31522.7, 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, 9th class, 14th class, 15th class, or the 16th class as described by Sections 28020, 28023, 28028, 28030, 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.

(Amended by Stats. 2014, Ch. 244, Sec. 3. (SB 673) Effective January 1, 2015.)

31530. The county health officer, either directly or through a duly authorized representative, shall advise the board on medical matters and, if requested by the board, shall attend its meetings.

(Amended by Stats. 2021, Ch. 186, Sec. 12. (SB 634) Effective January 1, 2022.)

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.

(Added by Stats. 1947, Ch. 424.)

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.

(Amended by Stats. 1969, Ch. 239.)

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.

(Amended by Stats. 1968, Ch. 547.)

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.

(Amended by Stats. 1968, Ch. 546.)

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.

(Amended by Stats. 1990, Ch. 652, Sec. 1.)

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 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 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.

(Amended by Stats. 2011, Ch. 48, Sec. 2. (SB 637) Effective January 1, 2012.)

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.

(Added by Stats. 1978, Ch. 556.)

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.

(Added by Stats. 1993, Ch. 24, Sec. 1. Effective January 1, 1994.)

31538. (a) 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.

(b) The amount payable to a member in any limitation year, including cost-of-living adjustments, shall not exceed the limit established under Section 415(b) of the Internal Revenue Code at the annuity starting date, and as may be increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and applicable regulations.

(c) The cost-of-living adjustments made pursuant to Section 415(d) of the Internal Revenue Code to the limit established under Section 415(b) of the Internal Revenue Code continue to apply after a member's severance from employment or annuity starting date.

(Amended by Stats. 2010, Ch. 188, Sec. 2. (AB 1354) Effective January 1, 2011.)

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.

(Added by Stats. 2004, Ch. 466, Sec. 1. Effective January 1, 2005.)

31540. (a) The obligations of the retirement system to its members continue throughout their respective memberships, and the obligations of the retirement system to, and in respect to, retired members continue throughout the lives of the retired members, and thereafter until all obligations to the members' beneficiaries under optional settlements have been discharged. The obligations of the county or district to the retirement system with respect to members employed by them, respectively, continue throughout the memberships of the members, and the obligations of the county or district to the retirement system with respect to retired members

formerly employed by them, respectively, continue until all of the obligations of the retirement system to those retired members have been discharged. The obligations of any member to the retirement system continue throughout his or her membership, and thereafter until all of the obligations of the retirement system to that member have been discharged.

(b) For the purposes of payments into or out of the retirement fund for adjustment of errors or omissions, the period of limitation of actions shall be three years, and shall be applied as follows:

(1) In cases in which the retirement system makes an erroneous payment to a member or beneficiary, the system's right to collect shall expire three years from the date of payment.

(2) In cases in which the retirement system owes money to a member or beneficiary, the period of limitation shall not apply.

(c) Notwithstanding subdivision (b), in cases in which payment is erroneous because of the death of the retired member or beneficiary or because of the remarriage of the beneficiary, the period of limitation shall be 10 years and that period shall commence with the discovery of the erroneous payment.

(d) Notwithstanding subdivision (b), if any payment has been made as a result of fraudulent reports for compensation made, or caused to be made, by a member for his or her own benefit, the period of limitation shall be 10 years and that period shall commence either from the date of payment or upon discovery of the fraudulent reporting, whichever date is later.

(e) 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 or omission.

(f) This section shall apply only to a county of the first class as described in Section 28020.

(Added by Stats. 2012, Ch. 59, Sec. 2. (AB 2664) Effective January 1, 2013.)

31541. (a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, if all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the county or district, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 31540.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same as they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any other provision of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That, even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same, as they would have been if the error or omission had not occurred.

(3) That the purposes of this chapter will not be effectuated if the correction is performed in a retroactive manner.

(f) This section shall apply only to a county of the first class as described in Section 28020.

(Added by Stats. 2012, Ch. 59, Sec. 3. (AB 2664) Effective January 1, 2013.)

31541.1. (a) Subject to subdivisions (c), (d), and (e) of Section 31541, the board, upon any terms it deems just, may correct prior board decisions made between January 1, 2013, and December 31, 2015, that were based upon an error of law existing at the time of the decision in the determination of the effective date of disability retirement pursuant to Section 31724. A member seeking correction of errors and omissions pursuant to this section may file an application for correction to the board no later than one year from the date this section becomes operative.

(b) This section shall apply to a county of the first class as described in Section 28020 and 28022.

(Added by Stats. 2018, Ch. 97, Sec. 1. (AB 2076) Effective January 1, 2019.)

31541.2. (a) For purposes of this section, the following definitions apply:

(1) "Agreement" means a memorandum of understanding or collective bargaining agreement between the employer and an exclusive representative pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1).

(2) "Alameda" means the Supreme Court case of Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032 and its holding.

(3) "Disallowed compensation" means nonpensionable compensation reported for a member of the retirement system that the system subsequently determines is not in compliance with PEPRA, the holding in Alameda, other provisions of this part, or the system's administrative regulations or policies through no fault of the member.

For purposes of this paragraph, "disallowed compensation" also includes nonpensionable compensation that was previously included in an agreement.

(4) "Employer" means the appropriate applicable county, county agency, or special district standing in relationship between the employee and the system.

(5) "Initiated a process" means a system has formally adopted a resolution or made an administrative determination for a correction process on identified disallowed compensation that has required or will require collecting any portion of an overpayment from, or refunding member contributions to, any affected active member, retired member, survivor, or beneficiary, or adjusting the retirement allowance of any affected retired member, survivor, or beneficiary due to the determination of disallowed compensation by the system, including a determination by the system that is consistent with PEPRA, the holding in Alameda, and other provisions of this part.

(6) "PEPRA" means the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1).

(7) "System" means a retirement association or system established pursuant to the County Employees Retirement Law of 1937 (commencing with Section 31450).

(b) If the system determines that the compensation reported for a member is disallowed compensation, it shall require the employer to discontinue reporting the disallowed compensation.

(1) (A) In the case of an active member, the system shall credit all employer contributions made on the disallowed compensation against future contributions to the benefit of the employer that reported the disallowed compensation, and shall return any member contribution paid by, or on behalf of, that member, to the member directly or indirectly through the employer that reported the disallowed compensation, except as provided by subparagraph (B).

(B) A system that has initiated a process prior to January 1, 2024, to recalculate an active member's compensation earnable pursuant to Section 31461 to exclude disallowed compensation and return contributions, either directly to the member or indirectly through the employer, may continue to use that process to ensure compliance with PEPRA, and that is consistent with, and pursuant to, the holding in Alameda.

(2) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation, the system shall credit the employer contributions made on the disallowed compensation against future contributions, to the benefit of the employer that reported the disallowed compensation, shall return any member contributions paid by, or on behalf of, that member, to the member directly, and the system shall permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.

(3) (A) In the case of a retired member, survivor, or beneficiary whose final compensation at the time of retirement was predicated upon the disallowed compensation as described in paragraph (2), the repayment and notice requirements described in this paragraph and paragraph (4) shall apply only if all of the following conditions are met:

- (i) The employer reported the compensation to the system and made contributions on that compensation while the member was actively employed.
- (ii) The system determined after the date of retirement that the compensation was disallowed.
- (iii) The member was not aware that the compensation was disallowed at the time the employer reported it.

(B) If the disallowed compensation meets the conditions of subparagraph (A), the employer that reported contributions on it shall do all of the following:

- (i) Pay to the system, as a direct payment, or through recognition in the actuarial accrued liability, as determined by the system, the full cost of any overpayment of the prior paid benefit made to an affected retired member, survivor, or beneficiary resulting from the disallowed compensation.
- (ii) Pay to the affected retired member, survivor, or beneficiary, as appropriate, an amount that is 20 percent of the amount calculated by the system representing the actuarial equivalent present value of the difference between the monthly allowance that was predicated on the disallowed compensation and the adjusted monthly allowance calculated pursuant to paragraph (2) for the duration the system projects to pay that allowance to the retired member, survivor, or beneficiary. The employer shall begin payment within six months of notice from the system as prescribed in paragraph (4) and may have up to four years to complete the payment. The system may charge the employer the actual costs of actuarial services provided under this paragraph.

(4) The system shall provide a written notice to the employer that reported contributions on the disallowed compensation and to the affected retired member, survivor, or beneficiary, including, at a minimum, all of the following:

- (A) The overpayment amount that the employer shall pay to the system as described in subparagraph (B) of paragraph (3).
- (B) The actuarial equivalent present value that the employer owes to the retired member, survivor, or beneficiary as described in clause (ii) of subparagraph (B) of paragraph (3), if applicable.
- (C) Written disclosure of the employer's obligations to the retired member, survivor, or beneficiary pursuant to this section.

(5) In lieu of the process described in paragraphs (3) and (4), a system that has initiated a process prior to January 1, 2024, to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation pursuant to paragraph (2) may continue to use that process provided that it is consistent with PEPRA, and with the holding in Alameda.

(6) Upon the employer's request, the system shall provide the employer with contact information data in its possession of a relevant retired member, survivor, or beneficiary in order for the employer or agency to fulfill their obligations to that retired member, survivor, or beneficiary pursuant to this section. The recipient of this contact information data shall keep it confidential, shall use such contact data only to the extent necessary to carry out its duties under this section, and shall not be disclosable under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).

(c) (1) An employer or authorized employee representative may submit to the system for review an additional compensation item that a party to a proposed agreement requests be included, contained, adopted, or entered into that agreement, on and after January 1, 2025, that is intended to form the basis of a pension benefit calculation, in order for the system to review consistency of the proposal with PEPRA, the holding in Alameda, Section 31461, other provisions in the part, and the system's administrative regulations or policies.

(2) A submission to the system for review under paragraph (1) shall include all supporting documents or requirements the system deems necessary to complete its review.

(3) The system shall provide guidance regarding the submission within 90 days of the receipt of all information required to make a review.

(d) The system may periodically publish a notice of the proposed compensation language submitted to the system pursuant to this section for review and the guidance it provided.

(e) This section does not alter or abrogate an employer's responsibility to meet and confer in good faith with the employee organization regarding the impact of the disallowed compensation or the effect of any disallowed compensation on the rights of the

employees and the obligations of the employer to its employees, including any employees who, due to the passage of time and promotion, may have become exempt from inclusion in a bargaining unit, but whose benefit was the product of collective bargaining.

(f) This section does not affect or otherwise alter a party's right to appeal any determination regarding disallowed compensation made by the system after July 30, 2020.

(g) The board of retirement or board of supervisors, as authorized pursuant to this chapter, may enter into any contracts for administrative purposes or as may be necessary and appropriate to carry out the provisions of this section.

(h) (1) It is the intent of the Legislature in enacting this section to fully comply with the provisions of the Internal Revenue Code, the Internal Revenue Service Employee Plans Compliance Resolution System (EPCRS), and any successor to such Internal Revenue Service program, that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the county employees' retirement systems.

(2) Systems that have initiated a process under this section that was or is intended to comply with the Internal Revenue Code and EPCRS requirements may revise the process as necessary to the extent required to comply with the Internal Revenue Code and EPCRS in order to maintain the tax exempt status of the system.

(Added by Stats. 2024, Ch. 427, Sec. 1. (AB 3025) Effective January 1, 2025.)

31542. (a) The board shall establish a procedure for assessing and determining whether an element of compensation was paid to enhance a member's retirement benefit. If the board determines that compensation was paid to enhance a member's benefit, the member or the employer may present evidence that the compensation was not paid for that purpose. Upon receipt of sufficient evidence to the contrary, a board may reverse its determination that compensation was paid to enhance a member's retirement benefits.

(b) Upon a final determination by the board that compensation was paid to enhance a member's retirement benefit, the board shall provide notice of that determination to the member and employer. The member or employer may obtain judicial review of the board's action by filing a petition for writ of mandate within 30 days of the mailing of that notice.

(c) Compensation that a member was entitled to receive pursuant to a collective bargaining agreement that was subsequently deferred or otherwise modified as a result of a negotiated amendment of that agreement shall be considered compensation earnable and shall not be deemed to have been paid to enhance a member's retirement benefit.

(Added by Stats. 2012, Ch. 296, Sec. 29. (AB 340) Effective January 1, 2013.)

31542.5. (a) When a county or district reports compensation to the board, it shall identify the pay period in which the compensation was earned regardless of when it was reported or paid. Compensation shall be reported in accordance with Section 31461 and shall not exceed compensation earnable, as defined in Section 31461.

(b) The board may assess a county or district a reasonable amount to cover the cost of audit, adjustment, or correction, if it determines that a county or district knowingly failed to comply with subdivision (a). A county or district shall be found to have knowingly failed to comply with subdivision (a) if the board determines that either of the following applies:

(1) The county or district knew or should have known that the compensation reported was not compensation earnable, as defined in Section 31461.

(2) The county or district failed to identify the pay period in which compensation earnable was earned, as required by this section.

(c) A county or district shall not pass on to an employee any costs assessed pursuant to subdivision (b).

(Added by Stats. 2012, Ch. 296, Sec. 30. (AB 340) Effective January 1, 2013.)

31543. The board may audit a county or district to determine the correctness of retirement benefits, reportable compensation, and enrollment in, and reinstatement to, the system. During an audit, the board may require a county or district to provide information, or make available for examination or copying at a specified time and place, books, papers, data, or records, including, but not limited to, personnel and payroll records, as deemed necessary by the board.

(Added by Stats. 2012, Ch. 296, Sec. 31. (AB 340) Effective January 1, 2013.)