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**GOVERNMENT CODE - GOV**

**TITLE 4. GOVERNMENT OF CITIES [34000 - 45345]** ( Title 4 added by Stats. 1949, Ch. 79. )

**DIVISION 5. EMPLOYEES [45000 - 45345]** ( Division 5 added by Stats. 1949, Ch. 79. )

**CHAPTER 2. Retirement [45300 - 45345]** ( Chapter 2 added by Stats. 1949, Ch. 79. )

**ARTICLE 1. General [45300 - 45317]** ( Article 1 added by Stats. 1949, Ch. 79. )

**45300.** It is the intent of this article to enable any city to adopt such a retirement system as is adaptable to its size and type.

(Added by Stats. 1949, Ch. 79.)

**45301.** By ordinance, any city may establish a retirement system for its officers and employees and provide for the payment of retirement allowances, pensions, disability payments, and death benefits, or any of them.

(Added by Stats. 1949, Ch. 79.)

**45301.5.** Notwithstanding any provision of this chapter to the contrary, separate rates of contribution for male and female employees shall not be maintained or established, nor shall different allowances or benefits be established for male and female employees.

(Added by Stats. 1976, Ch. 1436.)

**45302.** Before the ordinance establishing a retirement system is adopted, the city legislative body shall adopt a resolution giving notice of intention to adopt the ordinance. The resolution shall contain a summary of the major provisions of the proposed retirement system.

(Added by Stats. 1949, Ch. 79.)

**45303.** The ordinance shall not be adopted unless an election is first held to permit the employees proposed to be included in the system to express by secret ballot their approval or disapproval of the retirement proposal.

(Added by Stats. 1949, Ch. 79.)

**45304.** The ballot used at the election shall include a summary of the retirement system as set forth in the resolution.

(Added by Stats. 1949, Ch. 79.)

**45305.** The election shall be conducted in a manner to be prescribed by the legislative body, and permit firemen, policemen, and other city employees included in the system, as separate groups, to express their approval or disapproval. The ordinance shall not include in the system any group a majority of whose members disapproves the system. Membership in the system is compulsory for all members of each group approving the system.

(Added by Stats. 1949, Ch. 79.)

**45306.** The ordinance establishing a retirement system may be adopted either by a majority vote of the electorate of the city or by approval of a two-thirds majority of the legislative body of the city. The ordinance shall not be repealed except by a vote of the electorate.

(Added by Stats. 1949, Ch. 79.)

**45307.** The ordinance shall provide for the appointment of a retirement board and for the delegation to the board of such powers and duties in relation to the system as are deemed advisable to carry out the intent and purpose of this article.

(Added by Stats. 1949, Ch. 79.)

**45308.** The legislative body may maintain its own pension and retirement fund or may contract with the legislative body of any city or county in the State, or any state department, for:

- (a) The performance of any service in connection with the establishment or administration of the retirement system.
- (b) The investment, care, or administration of retirement funds.
- (c) Any other service relating to the system or its funds.

*(Added by Stats. 1949, Ch. 79.)*

**45308.1.** All funds received by city retirement systems and not required for current disbursements shall be invested only in:

- (a) Securities which are legal for savings bank investments in this state, or which have been certified as legal investments for savings banks pursuant to Division 10 (commencing at Section 20000) of the Water Code.
- (b) Securities which, pursuant to the statutes or laws providing for the issuance of such securities, are entitled to the same force or value or use as bonds issued by any municipality.
- (c) Securities issued pursuant to those acts, statutes or laws of this state, wherein such law specifically states by reference or otherwise that such securities shall be legal investments for either savings banks, insurance companies, all trust funds, state school funds, and any funds which may be invested in bonds of cities, counties, cities and counties, school districts, or municipalities in the state.
- (d) Securities which have been investigated and approved by a commission or board now or hereafter authorized by law to conduct such investigation and give such approval, and by authority of which such securities are declared to be legal investments for insurers.
- (e) Securities issued pursuant to those acts, statutes or laws of this state, wherein such law specifically states by reference or otherwise that such securities shall be legal investments for any pension fund, retirement fund, or retirement plan.
- (f) Deposits at interest in any state or national bank in accordance with law authorizing and controlling the deposit of public funds in banks.
- (g) Certificates and shares of a savings and loan association or a federal savings and loan association, if the certificates or shares are insured as defined in Title IV of the National Housing Act.
- (h) Registered warrants of any political subdivision of this state.
- (i) A contract with an insurance company to whom the insurance commissioner has issued a certificate of authority entitling it to transact life and disability insurance, which contract may be for a deposit administration or immediate participation guarantee type of group annuity for members of the retirement system whereby contributions paid to the insurance company will be held and used to pay benefits.

*(Amended by Stats. 1970, Ch. 1094.)*

**45308.2.** Notwithstanding Section 45308.1 funds received by city retirement systems and not required for current disbursements may be invested in real property or improvements constructed or to be constructed on real property, when such real property or such improvements are acquired for sale or lease to a city, county, school district, political subdivision, or political corporation of this State, subject to the following limitations:

- (1) No investment shall be made in such real property or improvements unless it is approved by a four-fifths vote of the members of the body authorized by ordinance to invest the retirement funds.
- (2) No such investment shall be made unless the assets of the retirement system exceed five hundred thousand dollars (\$500,000), and the investment, together with other investments in real property and improvements, do not exceed twenty-five percent (25%) of the assets of the retirement system.
- (3) Before an investment is made in such real property or improvements, the investing authority shall enter into a lease or lease-option agreement with the public agency hereinbefore mentioned, under which said public agency agrees to rent the property at a monthly rental and for a period not to exceed 50 years, sufficient to return not less than the investment, together with interest at a rate hereinafter prescribed. The agreement may contain an option or options to purchase; provided, such option, together with the rentals, will return not less than the investment, together with interest at a rate hereinafter prescribed. In the event a building is built on land owned by the public agency, the agreement may contain an option to purchase the land at any time or at the termination of the lease at its fair market value.
- (4) The interest rate each year shall be one-fourth percent ( $\frac{1}{4}\%$ ) higher than the average interest rate received by the retirement system on assets other than real property or improvements for the preceding year.

(5) In order to make the provisions of this section relating to the investment in real property or improvements completely effective, the investing authority is authorized, for investment purposes only, to purchase, sell, or lease real property, or to enter into options therefor; and when necessary for investment purposes to enter into contracts for the construction of buildings, and to repair and maintain such property, and do any and all things necessary to protect the investment including, but not limited to, purchasing insurance against the loss of the property or the loss of use and occupancy of the property. It may also take any other action necessary to carry out the investment provisions of this section. In the construction of buildings the investing authority shall follow, substantially and insofar as applicable, the procedure and limitations prescribed by law for the construction of buildings by the city in which the retirement system is established.

*(Added by Stats. 1959, Ch. 168.)*

**45308.3.** Notwithstanding Section 45308.1, funds received by city retirement systems and not required for current disbursements may be invested in bonds issued pursuant to the Improvement Bond Act of 1915; provided, that an ad valorem tax on all property taxable by the public agency which authorized the issuance of such bonds, at a rate not exceeding ten cents (\$0.10) for each one hundred dollars (\$100) of assessed value, computed as of the date of such investment, would produce an amount equal to at least 100 percent of the principal and interest payable in any year thereafter on the issue of bonds in which such investment is made.

*(Amended by Stats. 1979, Ch. 373.)*

**45308.4.** Notwithstanding Section 45308.1, funds received by city retirement systems and not required for current disbursements may be invested in any of the following:

(a) First liens on real property if the loan is fully guaranteed or insured or covered by a commitment to guarantee or insure by the Federal Housing Commissioner.

(b) First liens on real property if the loan is fully guaranteed by the United States or any agency thereof pursuant to the "Servicemen's Readjustment Act of 1944" or any act of Congress supplementary or amendatory thereof.

*(Added by Stats. 1967, Ch. 1359.)*

**45308.5.** Notwithstanding Section 45308.1, in addition to any other investments as are authorized by this article, city retirement systems may in their discretion under the advice of proper counsel invest the assets of the retirement fund in an amount, determined on the basis of cost, not to exceed 10 percent of the assets in the first two years after the effective date of this section, not to exceed 15 percent during the third year after the effective date of this section, and not to exceed 25 percent thereafter, in common stock or shares, and not to exceed 2 percent of the assets in the first year after the effective date of this section, not to exceed 3 percent during the second year after the effective date of this section, and not to exceed 5 percent thereafter, in preferred stock or shares, of corporations created or existing under the laws of the United States, or any state, district, or territory thereof; provided that

(a) The stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended, or is listed on the National Market System of the NASDAQ Stock Market. The registration shall not be required with respect to the following stocks:

(1) The common stock of a bank which is a member of the Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus, and undivided profits, of at least fifty million dollars (\$50,000,000);

(2) The common stock of an insurance company which has capital funds, represented by capital, special surplus funds, and unassigned surplus, of at least fifty million dollars (\$50,000,000);

(3) Any preferred stock.

(b) The corporation has total assets of at least one hundred million dollars (\$100,000,000);

(c) Bonds of that corporation, if any are outstanding, qualify for investment of the retirement fund, and that there are no arrears of dividend payments on its preferred stock;

(d) The corporation has paid a cash dividend on its common stock in at least 8 of the 10 years next preceding the date of investment, and the aggregate net earnings available for dividends on the common stock of the corporation for the whole of that period have been equal to the amount of the dividends paid, and the corporation has paid an earned cash dividend in each of the last three years;

(e) The investment in any one company may not exceed 5 percent of the common shares outstanding; and

(f) No single common stock investment, based on cost, may exceed 2 percent of the assets of the fund.

*(Amended by Stats. 1999, Ch. 470, Sec. 3. Effective January 1, 2000.)*

**45308.55.** Notwithstanding Section 45308.1 the board may also invest in any stocks or shares of a diversified management investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars (\$50,000,000); except that the total investment in such stocks and shares, together with stocks and shares of all other corporations, may not exceed 25 percent of the assets of such fund determined on the basis of the cost of the stocks or shares.

*(Added by Stats. 1968, Ch. 471.)*

**45308.6.** For purposes of Section 45308.5, city retirement systems shall employ investment counsel or trust companies or trust departments of banks to render service in connection with the city retirement system's investment program.

*(Added by Stats. 1967, Ch. 1359.)*

**45308.7.** The city retirement board, if there is one, or the city treasurer with the approval of the city council, may enter into security loan agreements with broker-dealers and with California or national banks for the purpose of prudently supplementing the income normally received from investments.

(b) "Security loan agreement" means a written contract whereby a legal owner, the lender, agrees to lend specific marketable corporate or government securities for a period not to exceed one year. The lender retains the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled. The lender waives the right to vote the securities during the term of the loan. The lender may terminate the contract upon not more than five business days' notice as agreed, and the borrower may terminate the contract upon not less than two business days' notice as agreed. The borrower shall provide collateral to the lender in the form of cash or bonds or other interest-bearing notes and obligations of the United States or federal instrumentalities eligible for investment by a lending retirement fund.

Such collateral shall be in an amount equal to at least 102 percent of the market value of the loaned securities as agreed. The lender shall monitor the market value of the loaned securities daily. The loan agreement shall provide for payment of additional collateral on a daily basis, or at such times as the value of the loaned securities increases, to agreed-upon ratios. In no event, shall the amount of the collateral be less than the market value of the loaned securities.

(c) "Marketable securities" means securities that are freely traded on recognized exchanges or marketplaces.

(d) Each board or city treasurer entering into security loan agreements shall do all of the following:

(1) Maintain detailed records of all security loans.

(2) Develop controls and reports to monitor the conduct of the transactions.

(3) Publicize the net results of the security loan transaction separate from the results of other investment activities.

*(Added by Stats. 1982, Ch. 508, Sec. 1.)*

**45309.** Among other matters, the ordinance establishing the system shall provide for:

(a) The amount of benefits to be paid to any officers or employees, or their beneficiaries, and the terms and conditions upon which the benefits will be paid.

(b) The contribution to be paid by the officers or employees to the pension and retirement fund.

(c) The contribution to be paid by the city to the pension and retirement fund, which, exclusive of contributions paid on account of service rendered prior to the effective date of the ordinance, shall not exceed the total contribution paid to the pension and retirement fund by the officers and employees.

(d) The personnel of the retirement board, which shall consist of not less than five members, at least two of whom shall be elected by the officers and employees who are included in the retirement system.

(e) The adoption of regulations for the administration of the system by the retirement board.

(f) The refunding to any officer or employee who withdraws from the system, prior to retirement, of the amount of his or her contribution and the interest credited to his or her contribution upon the officer's or employee's request following withdrawal from the system.

*(Amended by Stats. 2002, Ch. 883, Sec. 4. Effective January 1, 2003.)*

**45309.5.** A member of a pension or retirement system established pursuant to this chapter shall not receive credit for service or contributions for credit for service in violation of the prohibitions provided in Section 34095 or Section 50033.

*(Added by Stats. 2006, Ch. 355, Sec. 6. Effective January 1, 2007.)*

**45310.** The ordinance may provide that:

(a) The amount of the retirement, compensation, or pension may be predicated, in part, upon services rendered the city by an officer or employee prior to the establishment of the system.

(b) The contribution of officers and employees included in the system may be collected by deducting the amounts of such contributions from the salary or wages due the officers and employees.

*(Added by Stats. 1949, Ch. 79.)*

**45310.3.** Notwithstanding any other provision of law, a person ceases to be a member for any portion of his or her service as an elected public officer that is forfeited pursuant to Section 1243.

*(Added by Stats. 2005, Ch. 322, Sec. 4. Effective January 1, 2006.)*

**45310.5.** The ordinance may provide for a modification of rights and benefits of a member because of membership in a reciprocal system similar to and under the same conditions as those provided under the County Employees' Retirement Law of 1937 and the Public Employees' Retirement Law because of membership in two or more retirement systems established by or pursuant to such laws. The ordinance shall be filed with each board administering a reciprocal system and shall become effective upon the adoption of a resolution of such administering board accepting the city system as a reciprocal system. Such modification shall apply only to a member whose termination and entry into employment resulting in a change in membership from the city system to a reciprocal system or from a reciprocal system to the city system occurs after such effective date; provided, however, that provisions relating to computation of final compensation shall apply to any other member if such provision would have applied had the termination and entry into employment occurred after such effective date.

A reciprocal system, for purposes of this section, means a retirement system established under the County Employees' Retirement Law of 1937, the Public Employees' Retirement System, a retirement system of a city whose retirement ordinance contains the provisions authorized by this section, or a retirement system of a city or city and county established by its charter and providing for modifications of rights and benefits similar to and under the same conditions as those provided for under this section.

When a city has established a reciprocal retirement system under this section and has received approval thereof from the Public Employees' Retirement System, then such system shall be automatically reciprocal with all other state, local and public agencies who are members, or contracting members of the Public Employees' Retirement System or any retirement system established under the County Employees Retirement Law of 1937.

*(Amended by Stats. 1973, Ch. 378.)*

**45310.6.** When a city has established a reciprocal retirement system under this chapter, the following shall apply:

(a) Any former member who left service under that system and became a member of a reciprocal retirement system or a retirement system established under the Public Employees' Retirement Law, and who did not elect to, or was not eligible to, leave his or her contributions on deposit, may elect to redeposit those contributions if he or she is an active member of a reciprocal retirement system or the Public Employees' Retirement System at the time of redeposit. A former member may exercise this right by redepositing in the retirement fund of the city he or she left, the amount of accumulated contributions and interest that he or she withdrew from that retirement fund plus regular interest thereon from the date of separation.

(b) A former member who redeposits under this section shall have the same rights as a member who elected to leave his or her accumulated contributions on deposit in the fund. The deferred retirement allowance of the member shall be determined in accordance with provisions applicable to a member retiring directly from city employment on the date of his or her retirement.

(c) A former member who redeposits under this section shall be entitled to a reduced age at entry, commencing with contributions payable the first day of the month following the date the association receives notice of the redeposit, if applicable.

(d) This section does not apply to either of the following:

(1) A member or former member who is retired.

(2) A former member who is not in the service of an employer making him or her a member of a retirement system established under the Public Employees' Retirement Law or a reciprocal retirement system.

(e) This section shall only apply to either of the following:

(1) A former member who is in the service of an employer as an officer or employee of a law enforcement agency or fire department whose principal duties consist of active law enforcement or firefighting and prevention service, but excluding one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(2) A former member who is in the service of an employer and seeks to redeposit contributions for past employment as an officer or employee of a law enforcement agency or fire department in the city's retirement system whose principal duties consisted of active law enforcement or firefighting and prevention service, but excluding one whose principal duties were those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions did not clearly come within the scope of active law enforcement or firefighting and prevention service, even though the officer or employee was subject to occasional call, or was occasionally called upon, to perform duties within the scope of active law enforcement or firefighting and prevention service.

(f) For purposes of this section, a "former member" is a member who left service under a retirement system established under this chapter and who did not elect to, or was not eligible to, leave his or her contributions on deposit with the system.

(g) Each city retirement system subject to this section shall establish criteria to determine the eligibility of a former member to redeposit contributions, and the amount of contributions that may be redeposited, in those cases in which the system no longer maintains complete records with respect to the former member.

(h) It is the intent of the Legislature in enacting this section to recognize a statewide public obligation to all those whose duties as local public safety officers expose them to more than ordinary risks through their contribution to ensuring public safety and to ensure that those who do serve or have served as local public safety officers shall have the ability to receive pension benefits for past public service in other jurisdictions within the state.

*(Added by Stats. 2002, Ch. 883, Sec. 5. Effective January 1, 2003.)*

**45310.7.** (a) On and after January 1, 2003, a member who is credited with less than the number of years of service required for vesting shall have the right to elect to leave accumulated contributions on deposit in the retirement fund of the city's retirement system. Failure to make an election to withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the system's retirement fund.

(b) An election to allow accumulated contributions to remain in the system's retirement fund may be revoked by the member at any time except: (1) while the member is employed in service in a position in which the member is not excluded from membership in the system with respect to that service; (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds; or (3) while the member is in service in a reciprocal retirement system, entered within six months after discontinuing service in the city's retirement system. All accumulated contributions made up to the time of revocation may then be withdrawn.

(c) A member whose membership continues under this section is subject to the same age, service, and disability requirements as apply to other members for service or disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

(d) Service, solely for purposes of meeting minimum service qualifications for service or disability retirement, shall also include service credited as an employee of a reciprocal system when the member retires concurrently from all reciprocal retirement systems. A member whose combined service from all reciprocal retirement systems does not meet the minimum service qualifications may not receive a service or disability retirement from this system.

(e) For purposes of this section, "accumulated contributions" means the sum of all member contributions standing to the credit of a member's individual account, and interest thereon.

(f) It is the intent of the Legislature in enacting this section to recognize that the state has a compelling interest in ensuring that its public agencies recruit and retain the highest caliber of public employees by allowing local public employees to retain the service credit that they earned through their service as local public employees in order to encourage them to return to public employment and continue to serve the public.

*(Amended by Stats. 2003, Ch. 62, Sec. 155. Effective January 1, 2004.)*

**45311.** (a) It is the intent of the Legislature in enacting this section to recognize a public obligation to all those whose duties as local prosecutors, local public defenders, and local public defender investigators expose them to more than ordinary risks in their contribution to an effective statewide criminal justice system and to ensure that those who serve as local prosecutors, local public defenders, and local public defender investigators and who become incapacitated in the performance of their duties or by age may be replaced by more capable employees and shall receive pension benefits commensurate with those received by local prosecutors, local public defenders, and local public defender investigators in other jurisdictions within the state.

(b) The ordinance shall provide that the officers and employees of the city whose positions meet or, on or after January 1, 2002, met the criteria of a local prosecutor, local public defender, or local public defender investigator, as described in Section 20423.6 or 31469.2, shall be accorded those pension benefits accorded to safety members under the retirement system of the city.

Notwithstanding the foregoing, the pension benefits accorded to a local prosecutor, local public defender, or local public defender investigator may not be greater than those benefits provided to local safety members of the Public Employees' Retirement System under Section 21363.1 or safety members of a county retirement system under Section 31664.2.

(c) Except as provided in subdivision (e) and notwithstanding any other provision of this chapter, past service shall be converted to safety service, if the past service was rendered in a position that has been made subject to safety benefits pursuant to this section. For local prosecutors described in paragraph (2) of subdivision (b) of Section 20423.6, and paragraph (2) of subdivision (a) of Section 31469.2, service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for purposes of this section. Any unfunded liability resulting from this section shall be paid by the employer.

(d) This section shall apply only to a person whose effective date of retirement is on or after the date this section becomes operative in the city.

(e) Notwithstanding any other provision of this chapter, within 90 days after this section becomes operative in the city, or on the first day of the calendar month following his or her entrance into service, whichever is later, any local prosecutor, local public defender, or local public defender investigator may file a written election not to become subject to the pension benefits accorded to safety members under the retirement system of the city.

(f) This section shall not be operative in a city unless and until the city council or board of supervisors, by ordinance adopted by majority vote, makes this section operative in the city. A resolution to make this section operative in the city shall include all local prosecutors, local public defenders, and local public defender investigators as described in Section 20423.6 or 31469.2.

(g) This section does not apply to any local prosecutor, local public defender, or local public defender investigator, as described in Section 20423.6 or 31469.2, who dies prior to the date this section becomes operative in the city.

*(Added by Stats. 2002, Ch. 1152, Sec. 15. Effective January 1, 2003.)*

**45312.** Nothing in this article prohibits the enhancement of the pension and retirement fund by private or voluntary contributions, nor the transfer to the fund of any surplus funds of the city which in the sound discretion of the legislative body may properly be used for such purpose.

*(Added by Stats. 1949, Ch. 79.)*

**45313.** The retirement board shall require competent medical proof before retiring any officer or employee for physical disability.

*(Added by Stats. 1949, Ch. 79.)*

**45314.** After the retirement of a person for disability, if it appears that the disability has diminished, the board shall reduce the retirement payment to correspond with the degree of disability. The retirement payment shall cease when the disability has fully ceased.

*(Added by Stats. 1949, Ch. 79.)*

**45315.** The determination of the retirement board is final and shall not be modified or set aside except for fraud or abuse of discretion.

*(Added by Stats. 1949, Ch. 79.)*

**45316.** This article provides an alternative procedure for the establishment of retirement systems in cities.

*(Added by Stats. 1949, Ch. 79.)*

**45317.** Any regularly established fire or police protection district may adopt a retirement system for its employees pursuant to this article.

*(Added by Stats. 1949, Ch. 79.)*