



# FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## BOARD AGENDA LETTER

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**DATE:** April 5, 2017

**TO:** Board of Retirement

**FROM:** Donald C. Kendig, CPA  
Retirement Administrator

**SUBJECT:** Receipt of Analysis of Alternate voting Options– RECEIVE AND FILE

### **Recommended Action(s)**

1. Receive and file.

### **Fiscal and Financial Impacts**

None.

### **Discussion and Background**

Historically, the alternate retired member (Rogozinski) could only vote if the eighth (retired) member (Dowell) was absent.

AB 2376, added Government Code Section 31520.6, effective January 1, 2017 permitting the alternate retired member (Rogozinski) to vote if both the second (Cade) and third (Basua) are absent, or if either the second (Cade) or third (Basua) and the seventh (Gomez) member are absent.

In other words, if both trustees Basua and Cade, Basua and Gomez, or Cade and Gomez are absent, trustee Rogozinski may vote, in addition to trustee Rogozinski's ability to vote when trustee Dowell is absent. If three or all 4 are absent, she only votes once, but does make a potential quorum possible.

### **Attachment(s)**

1. AB 2376


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**AB-2376 County employees' retirement: Los Angeles County.** (2015-2016)

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## Assembly Bill No. 2376

### CHAPTER 134

An act to amend Sections 31494.2, 31494.5, and 31526 of, and to add Sections 31495.7 and 31520.6 to, the Government Code, relating to county employees' retirement.

[ Approved by Governor August 17, 2016. Filed with Secretary of State August 17, 2016. ]

### LEGISLATIVE COUNSEL'S DIGEST

AB 2376, Committee on Public Employees, Retirement, and Social Security. County employees' retirement: Los Angeles County.

The County Employees Retirement Law of 1937 (CERL) establishes retirement plans, known as Retirement Plan D and Retirement Plan E, that are applicable in the retirement system in Los Angeles County and prescribes procedures for members to transfer between those plans. CERL defines "Retirement Plan E" to mean the noncontributory retirement plan established by specific provisions, and defines "Retirement Plan D" to mean the contributory retirement plan otherwise available to new members of the retirement system on the transfer date.

This bill would revise the definition of Retirement Plan D to, instead, refer to the contributory retirement plan otherwise available to members of the system between June 1, 1979, and December 31, 2012, inclusive.

CERL provides for the retirement system in Los Angeles County specific ages and pension allowances for normal and early retirement. Under CERL, a member of a CERL retirement system who is eligible to retire at 50 years of age pursuant to specified statute, or who is required to retire because of age while a member of the Public Employees' Retirement System (PERS), a CERL retirement system in another county, the State Teachers' Retirement System (STRS), or a retirement system of any other public agency of the state that has established reciprocity with PERS subject to certain conditions, but who cannot retire concurrently from PERS, a CERL retirement system in another county, STRS, or a retirement system of any other public agency of the state that has established reciprocity with PERS subject to certain conditions, is entitled to have final compensation and service determined under specific statutes as if the member had retired concurrently under that other system (concurrent retirement exception). Provisions of CERL specifically applicable to Los Angeles County, among other things, apply reciprocal benefits, including the concurrent retirement exception, to the retirement system in Los Angeles County.

This bill would amend provisions of CERL specifically applicable to Los Angeles County to provide that the concurrent retirement exception applies to a member of the retirement system in Los Angeles County eligible to retire at 55 years of age and would state that the amendment is declaratory of existing law.

CERL sets forth the membership composition for boards of retirement, as specified. Under that law, the retirement board in specified counties is comprised of 9 members and an alternate member, as specified. That law also authorizes specified counties to appoint an alternate retired member to the office of the 8th member of the board and authorizes the alternate retired member to vote as a member of the board only in the event the

8th member is absent from a board meeting for any cause.

This bill would additionally authorize the alternate retired member to vote as a member of the board if the 8th member is present and both the 2nd and 3rd, both the 2nd and 7th, or both the 3rd and 7th members are absent for any cause.

Under CERL, except as specified, the management of a retirement system is vested in the board of retirement. CERL authorizes such a board to make regulations not inconsistent with that law, and requires that the regulations include specific provisions, including provisions for 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.

This bill would authorize those regulations, in lieu of a sworn statement, to provide for the submission by a member's employer to the retirement association of the information otherwise required in a sworn statement, in a form determined by the retirement association.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 31494.2 of the Government Code is amended to read:

**31494.2.** (a) A general member whose benefits are governed by Retirement Plan D may, during a period of active employment, elect to change plan membership and become a member, prospectively, in Retirement Plan E. The election shall be made upon written application signed by the member and filed with the board, pursuant to enrollment procedures and during an enrollment period established by the board, which enrollment period shall not occur more frequently than once every three years for that member. The change in plan membership shall be effective as of the transfer date, as defined in subdivision (d). Except as otherwise provided in this section, the rights and obligations of a member who elects to change membership under this section shall be governed by the terms of this article on and after the transfer date. Prior to the transfer date, the rights to retirement, survivors', or other benefits payable to a member and his or her survivors or beneficiaries shall continue to be governed by Retirement Plan D.

(b) Except as otherwise provided in this section, effective as of the transfer date, a member who has transferred to Retirement Plan E pursuant to this section and his or her survivors or beneficiaries shall receive retirement, survivors', and other benefits that shall consist of: (1) the benefits to which they are entitled under the terms of Retirement Plan E, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan E, and (2) the benefits to which they would have been entitled under the terms of Retirement Plan D had the member remained a member of Retirement Plan D, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan D. Except as otherwise provided in this section, the calculation of the member's, survivors', or beneficiaries' benefits under each plan shall be subject to that plan's respective, separate terms, including, but not limited to, the definitions of "final compensation" and provisions establishing cost-of-living adjustments, establishing minimum retirement age and service requirements, and governing integration with federal social security payments. Notwithstanding the foregoing, the aggregate service credited under both retirement plans shall be taken into account for the purpose of determining eligibility for and vesting of benefits under each plan.

(c) Notwithstanding any other provision of Retirement Plan D or Retirement Plan E:

(1) A member who has transferred to Retirement Plan E pursuant to this section may not retire for disability and receive disability retirement benefits under Retirement Plan D.

(2) If a member who has transferred to Retirement Plan E pursuant to this section dies prior to retirement, that member's survivor or beneficiary may not receive survivor or death benefits under Retirement Plan D but shall receive a refund of the member's contributions to Retirement Plan D together with all interest credited thereto.

(d) As used in this section:

(1) "Period of active employment" means a period during which the member is actively performing the duties of a full-time or part-time employee position or is on any authorized paid leave of absence, except a leave of absence during which the member is totally disabled and is receiving, or is eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer.

(2) "Retirement Plan D" means the contributory retirement plan otherwise available to members of the system between June 1, 1979, and December 31, 2012, inclusive.

(3) "Retirement Plan E" means the noncontributory retirement plan established under this article.

(4) "Transfer date" means the first day of the first month that is at least 30 days after the date that the application is filed with the board to change plan membership under subdivision (a).

(e) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

**SEC. 2.** Section 31494.5 of the Government Code is amended to read:

**31494.5.** (a) A general member whose benefits are governed by Retirement Plan E may, during a period of active employment, elect to change plan membership and become a member, prospectively, in Retirement Plan D. The election shall be made upon written application signed by the member and filed with the board, pursuant to enrollment procedures and during an enrollment period established by the board, which enrollment period shall not occur more frequently than once every three years for that member. The change in plan membership shall be effective as of the transfer date, as defined in subdivision (g). Except as otherwise provided in this section, the rights and obligations of a member who elects to change membership under this section shall be governed by the terms of Retirement Plan D on and after the transfer date. Prior to the transfer date, the rights to retirement, survivors', or other benefits payable to a member and his or her survivors or beneficiaries shall continue to be governed by Retirement Plan E.

(b) If a member has made the election to change plans under subdivision (a), monthly contributions by the member and the employer under the terms of Retirement Plan D shall commence as of the transfer date. For the purposes of calculating the member's contribution rate under Retirement Plan D, his or her entry age shall be deemed to be his or her age at his or her birthday nearest the transfer date; however, if the member exchanges service credit in accordance with subdivision (c), with regard to contributions made for periods after that exchange, his or her entry age shall be adjusted and deemed to be the member's age at his or her birthday nearest the date on which begins the most recent period of unbroken service credited under Retirement Plan D, taking into account service purchased under subdivision (c). In no event shall the exchange of service under subdivision (c) affect the entry age with respect to, or the cost of, employee contributions made, or service purchased, prior to the exchange.

(c) (1) A general member who has elected to change plans under subdivision (a) also may elect to exchange, at that time or any time thereafter, but prior to the earlier of his or her application for retirement, termination from employment, or death, some portion designated in whole-month increments, or all of the service credited under Retirement Plan E for an equivalent amount of service credited under Retirement Plan D, provided, however, that the member may not exchange less than 12 months' service or, if less, the total service credited under Retirement Plan E. The exchange shall be effective on the date when the member completes the purchase of that service by depositing in the retirement fund, by lump sum or regular monthly installments, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, or both, but in any event prior to the earlier of his or her death or the date that is 120 days after the effective date of his or her retirement, the sum of: (1) the contributions the member would have made to the retirement fund under Retirement Plan D for that length of time for which the member shall receive credit as service under Retirement Plan D, computed in accordance with the rate of contribution applicable to the member under Retirement Plan D, based upon his or her entry age, and in the same manner prescribed under Retirement Plan D as if that plan had been in effect during the period for which the member shall receive service credit, and (2) the regular interest thereon.

(2) For the purposes of this subdivision, a member's entry age shall be deemed to be the member's age at his or her birthday nearest the date on which begins the most recent period of unbroken service credited under Retirement Plan D following completion of the service exchange under this subdivision. A member may receive credit for a period of service under only one plan and in no event shall a member receive credit for the same period of service under both Retirement Plan D and Retirement Plan E.

(3) A member who fails to complete the purchase of service as required under this subdivision shall be treated as completing an exchange of service under Retirement Plan E for an equivalent amount of service under Retirement Plan D only with regard to the service that actually has been purchased through completed deposit with the retirement fund of the requisite purchase amount, calculated in accordance with this subdivision.

(d) Except as otherwise provided in this section, effective as of the transfer date, a member who has transferred to Retirement Plan D pursuant to this section and his or her survivors or beneficiaries shall receive retirement, disability, survivors', death, or other benefits that shall consist of: (1) the benefits to which they are entitled under the terms of Retirement Plan D, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan D, and (2) the benefits to which they would have been entitled under the terms of Retirement Plan E had the member remained a member of Retirement Plan E, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan E. Except as otherwise provided in this section, the calculation of the portion of a member's or beneficiary's benefit that is attributable to each plan is subject to that plan's respective, separate terms, including, but not limited to, the definitions of "final compensation" and provisions establishing cost-of-living adjustments, establishing minimum age and service requirements, and governing integration with federal social security payments. Notwithstanding the foregoing, the aggregate service credited under both Retirement Plan D and Retirement Plan E shall be taken into account for the purpose of determining eligibility for, and vesting of, benefits under each plan.

(e) Notwithstanding any other provision of Retirement Plan D or Retirement Plan E, a member who transfers into Retirement Plan D under this section may retire for service-connected or nonservice-connected disability and receive disability benefits under Retirement Plan D only if he or she has either (1) completed two continuous years of active service after his or her most recent transfer date, or (2) earned five years of retirement service credit under Retirement Plan D after his or her most recent transfer date. Notwithstanding any other provision to the contrary, a member who becomes disabled and does not meet either of these conditions (1) may apply for and receive only a deferred or service retirement allowance, or (2) may elect to transfer prospectively back to Retirement Plan E, and for the purposes of calculating his or her retirement benefits under this section, shall in lieu of credit under Retirement Plan D be credited with service under Retirement Plan E as provided under subdivision (g) of Section 31488 during any period he or she is totally disabled and is receiving, or eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer up to the earlier of the date he or she retires or no longer qualifies for disability benefits. If a member dies before he or she is eligible to retire and before completing either two continuous years of active service after the transfer date into Retirement Plan D or after earning five years of retirement service credit under Retirement Plan D after that transfer date, that member's beneficiary shall not be entitled to the survivor allowance under Section 31781.1 or 31781.12, if operative.

(f) Notwithstanding any other provisions of Retirement Plan D or Retirement Plan E, a member who has transferred to Retirement Plan D pursuant to this section and who retires for disability when eligible under this section and Retirement Plan D, may not also retire for service and receive service retirement benefits under Retirement Plan E. However, for the purpose of calculating disability benefits under Retirement Plan D, the "sum to which he or she would be entitled as service retirement" or his or her "service retirement allowance," as those terms are used in Sections 31726, 31726.5, and 31727.4, shall consist of the blended benefit to which the member would be entitled under subdivision (d) if he or she retired for service, not just the service retirement benefit to which he or she would be entitled under Retirement Plan D.

(g) As used in this section:

(1) "Active service" means time spent on active, on-the-job performance of the duties of a full-time or part-time position and on any authorized paid leaves of absence; provided, however, that any authorized paid leave of absence or part-time service shall not constitute active service if the leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease. The board of retirement shall determine whether or not a leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease, and thus excluded from the member's active service, based upon evidence presented by the employer and the member upon request by the board.

(2) "Entry age" means the age used for calculating the normal rate of contribution to Retirement Plan D with respect to a member who has transferred membership to Retirement Plan D under this section.

(3) "Period of active employment" means a period during which the member is actively performing the duties of a full-time or part-time employee position or is on any authorized paid leave of absence, except a leave of absence during which the member is totally disabled and is receiving, or is eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer.

(4) "Retirement Plan D" means the contributory retirement plan otherwise available to members of the system between June 1, 1979, and December 31, 2012, inclusive.

(5) "Retirement Plan E" means the noncontributory retirement plan established under this article.

(6) "Transfer date" means the first day of the first month that is at least 30 days after the date that the application is filed with the board to change plan membership under subdivision (a).

(h) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

**SEC. 3.** Section 31495.7 is added to the Government Code, to read:

**31495.7.** Section 31835.1 applies to a member eligible to retire at 55 years of age pursuant to Section 31491. This section is declaratory of existing law.

**SEC. 4.** Section 31520.6 is added to the Government Code, to read:

**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.

**SEC. 5.** Section 31526 of the Government Code is amended to read:

**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.