CALIFORNIA PERS

Circular Letter

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TO: **PERSONNEL MANAGERS, FINANCE DIRECTORS: ALL CONTRACTING PUBLIC AGENCIES; COUNTY SUPERINTENDENTS OF SCHOOLS; AND SCHOOL DISTRICTS**

SUBJECT: GOVERNMENT CODE SECTION 20306, ADDED BY STATUTES OF 1996, CHAPTER 1164, ASSEMBLY BILL 2400

THIS CIRCULAR LETTER IS PROVIDED TO ALERT EMPLOYERS ABOUT THE PROVISIONS OF ASSEMBLY BILL 2400, ADDING GOVERNMENT CODE SECTION 20306. (CA,. STATS. 1996, CHAPTER 1164.) EACH EMPLOYER REMAINS RESPONSIBLE FOR COMPLYING WITH THE LAW. THIS CIRCULAR LETTER DOES NOT CONTAIN LEGAL ADVICE AND DOES NOT REPLACE, SUPERCEDE OR SUPPLEMENT THE PROVISIONS OF ASSEMBLY BILL 2400 OR ANY OTHER LAW. WE RECOMMEND THAT EACH EMPLOYER CONSULT WITH ITS GENERAL COUNSEL PRIOR TO MAKING ANY DECISIONS ON THIS MATTER.

Provisions of Section 20306:

> "(a) Not withstanding paragraph (1) of subdivision (a) of Section 20305, an *employee participating in this system, other than a local safety member, who is credited with less than five years of state service..."*

The employee must be a CalPERS member, in a miscellaneous position, who is not vested (less than five years total CalPERS service)...

> "and whose *service falls below the minimum service prescribed by paragraph (2) of, or subparagraph (A) or (B) of paragraph (3) of, subdivision (a) of Section 20305*..."

...and whose service falls below CalPERS membership thresholds (basically half time)...

> "...and who is *eligible for membership in an alternate retirement plan established or maintained by the county superintendent of schools or the public agency pursuant to Article 1.5 (commencing with Section 53215) of Chapter 2 of Part 1 of Division 2 of Title 5*,..."

...and who is eligible for membership in an alternate retirement plan established or maintained by the county superintendent of schools or the public agency as a pension trust (see ATTACHMENT A).

> " *may participate in that plan in accordance with the following provisions:...* "

Eligibility:

...participation in the alternate retirement plan is provided as follows:

> *"(1) Eligibility to participate in an alternate retirement plan for an employee who is employed on or after July 1, 1997, or the effective date of the establishment of an alternate retirement plan, whichever is later, and who is represented by an exclusive bargaining representative shall be determined by the provisions of a memorandum of understanding executed between the public agency and the exclusive bargaining representative of the employee. That memorandum of understanding shall prescribe all of the terms and conditions under which the alternate plan is established including the employer and employee contribution rates."*

If an employee is employed on or after July 1, 1997, or on or after the effective date of the establishment of an alternate retirement plan, whichever is later, and is represented by an exclusive bargaining representative, eligibility to participate in an alternate retirement plan shall be determined by a memorandum of understanding between the public agency and the exclusive bargaining representative. The memorandum of understanding shall state whether or not an employee will participate in the alternate retirement plan. If the memorandum of understanding states that the employee will be subject to the alternate retirement plan, it shall define all of the terms and conditions under which the alternate plan is established including the employer and employee contribution rates.

If an alternate retirement plan is established on or after July 1, 1997, and an employee represented by an exclusive bargaining representative is employed on or after the establishment of the alternate retirement plan, eligibility to participate in the alternate retirement plan shall be determined by a memorandum of understanding between the public agency and the exclusive bargaining representative as stated in the paragraph above.

> *"(2) Eligibility to participate in an alternate retirement plan for an employee who is employed on or after July 1, 1997, or the effective date of the establishment of an alternate retirement plan, whichever is later, and who is not represented by an exclusive bargaining representative shall be determined by the public agency."*

If an employee is employed on or after July 1, 1997, or on or after the establishment of an alternate retirement plan, whichever is later, and is not represented by an exclusive bargaining representative, eligibility to participate in the alternate retirement plan shall be determined by the public agency. The public agency shall determine the employees' eligibility to participate in CalPERS or be subject to the alternate retirement plan if their time base falls below CalPERS membership thresholds.

> *"(3) Eligibility to participate in an alternate retirement plan established prior to July 1, 1997, for an employee who is employed prior to that date, or for plans established on or after July 1, 1997, for an employee who is employed prior to the date the plan is established, shall be determined by the employee in accordance with the following election procedures:..."*

For employees employed prior to July 1, 1997, or prior to the establishment of an alternate retirement plan, whichever is later, eligibility to participate in the alternate retirement plan shall be decided by means of an election according to the following procedures:

> *"(A) The employer shall make available to each employee prior to October 1, 1997, or at least 90 days prior to the proposed effective date of the alternate retirement plan, whichever is later, information describing the employee's rights and responsibilities as a participant in either this system or the alternate retirement plan offered by the employer and describing the benefits provided by this system and that alternate retirement plan. The information shall include all of the terms and conditions under which the system and the alternate retirement plan are established including the employer and employee contribution rates."*

The affected employees must be fully informed regarding their rights and responsibilities and the benefits provided by this system and the alternate retirement plan. The information shall include all of the terms and conditions under which CalPERS and the alternate retirement plan are established including the employer and employee contribution rates. The election/information package must be given to the eligible employees prior to October 1, 1997 (or 90 days prior to the establishment of the alternate retirement plan, whichever is later).

Election:

> *"(B) An employee who fails to make an election prior to January 1, 1998, or 90 days after being given the election opportunity, whichever is later, shall be informed by the employer by certified mail that the failure to make that election has been deemed an election to participate in the alternate retirement plan whenever his or her employment fall below the requirements prescribed by Section 20305."*

If an employee fails to make an election choice prior to January 1, 1998 or 90 days after being given the election opportunity, whichever is later, the employee will be treated as though he or

she elected the alternate retirement plan. The employer will notify these employees by **certified mail** that they have **defaulted to the alternate retirement plan** if their time base falls below CalPERS membership thresholds.

> *"(C) The employer shall maintain in its files a written acknowledgment by the employee that the employee received the information required under this section within the specified timeframe and shall maintain election results and election forms of employees."*

The employer must keep in its files, written documentation that its employees received the information required under this section. The employer must also maintain the elections results and the election forms completed by its employees.

> *"(D) The employer shall notify the system as to the results of election by employees in the manner prescribed by the board."*

The employer shall notify this system of the results of its election by sending a list of its affected employees, including each member's full name and social security number, indicating whether they elected CalPERS, the alternate retirement plan, or failed to return an election ballot thereby defaulting to the alternate retirement plan.

> *"(b) An employee's participation in the alternate retirement plan shall commence as soon as it is reasonable for this system to determine the member's qualifications pursuant to Section 20305. Employers shall submit all information deemed necessary for this system to make those determinations. Participation in the alternate retirement plan shall continue until the system determines that the employee's employment meets the conditions for membership in this system, whereupon the employee shall reenter membership in this system."*

The earliest CalPERS can determine if a member's time base has dropped below membership thresholds is at the end of the fiscal year. The earliest this system could notify employers of those employees who should participate in the alternate retirement plan is September 15, after the close of the previous fiscal year business. If you, as the employer, **know for a fact** that an employee will not complete 1,000 hours in the fiscal year, and does not have 5 years of PERS service you may notify this system (by MSD-1 or on-line entry into the Corporate Data Base) that the employee will participate in the alternate retirement plan. If an employee accepts an appointment to a position which limits service to less than half time, you may "drop" them from CalPERS and report them to the alternate retirement plan on the effective date of the new appointment.

> *"(c) Each county superintendent of schools may make the school districts in the county responsible for any administrative costs which may be necessary to implement this section. Any cost incurred by a county superintendent of schools in complying with this section shall be reimbursed on a proportional basis by*

those school districts in the county participating in an alternative retirement system."

Each county superintendent of schools may require the reimbursement of administrative costs from the school districts in the county participating in an alternate retirement plan.

For the purposes of Government Code Section 20306, Social Security is not an alternate retirement plan. **If your agency does not have an alternate retirement plan established pursuant to Article 1.5 (commencing with Section 53215) of Chapter 2 of Part 1 of Division 2 of Title 5 (a pension trust), or if your part-time, temporary, seasonal employees are covered by Social Security prior to qualifying for CalPERS membership, you are not obligated by this legislation to establish such a plan nor are you subject to Section 20306.** You do not have an alternate retirement plan meeting the definition in Section 20306.

Attached to this letter is a list of frequently asked questions along with the appropriate responses (ATTACHMENT B). Questions regarding this Circular Letter should be directed to Bobbie Talbert in Member Services Division at (916) 326-3141.

Kenneth Marzion, Chief
Actuarial and Employer Services Division

ATTACHMENTS

Article 1.5 of Chapter 2 of part 1 of Division 2 of Title 5

Pension Trusts

53215. "Local agency" as used in this article means a city, city and county, district, school district, municipal or public corporation, political subdivision, or other public agency of the State, or any instrumentality of one or more of any such agencies.

53216. The legislative body of a local agency may establish a pension trust funded by individual life insurance contracts, individual annuities, group policies of life insurance, or group annuities, or any one or combination of them, or by any other investment authorized by this article for the benefit of its officers and employees. The legislative body of a local agency may make participation in any plan under such pension trust optional with the officers and employees of the local agency or it may make participation in such pension trust plan compulsory for the officers and employees of such agency. Officers and employees who participate in such pension trust plan, whether it is optional or compulsory, shall have their plan contributions deducted from their compensation.

53216.1. It is the intent of the Legislature, consistent with the mandate of the voters in passing Proposition 21 at the June 5, 1984, Primary Election, to allow the board of any retirement system governed by this article to invest in any form or type of investment deemed prudent by the board pursuant to the requirements of Sections 53216.5 and 53216.6. It is also the intent of the Legislature to repeal, or amend as appropriate, certain statutory provisions, whether substantive or procedural in nature, that restrict the form, type, or amount of investments that would otherwise be considered prudent under the terms of those sections. This will increase the flexibility and range of investment choice available to these retirement systems, while ensuring protection of the interests of their beneficiaries.

53216.3. The legislative body shall employ investment counsel or trust companies or trust departments of banks to render service in connection with its investment program.

53216.4. The legislative body of the local agency shall report annually to the beneficiaries and potential beneficiaries of the pension trust on the status of the trust. The report shall include a description of securities held and a comprehensive report of transactions involving the investment of the assets similar to that required of a life insurance company licensed to do business in California. The annual report shall also include a detailed statement of the expenses of operating the pension trust, including compensation paid, fees paid, operating ratios, and net profit and loss statements,

including the acquisition cost, the book value, and market value of the total assets as of the date of the report. In the matter of commission fees and other fees paid to persons not employed by the local agency for services in connection with investments under this article, the names of those persons to whom such fees are paid and the amounts paid shall be clearly identified in the report.

53216.5. Notwithstanding any other provisions of this article and except as otherwise expressly restricted by the California Constitution and by law, the legislative body, trust, or other body, authorized to make investments for a pension trust, may invest, or delegate the authority to invest, the assets of the pension trust, through the purchase, holding, or sale of any form or type of investment, financial instrument, or financial transaction when prudent in the informed opinion of that body pursuant to Section 53216.6.

53216.6. The assets of the pension trust are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system. The legislative body, trust, or other body authorized to make investments for a pension trust, shall discharge its duties with respect to investing the assets of the pension trust. (a) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the trust. (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. (c) Shall diversify the investments of the trust so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

53216.7. Notwithstanding any other provision of this article to the contrary, separate rates of contribution for male and female employees shall not be maintained or established nor shall different allowances or benefits for male or female employees be maintained or established.

53217. From funds under its jurisdiction the legislative body may authorize payment to the trust of amounts equaling all or any portion of the moneys necessary to fund any pension trust established pursuant to this article. The legislative body may also authorize payment of amounts to cover the reasonable expenses of the administration of the trust. Such expenditures are charges against the funds of the agency making them.

53217.5. (a) It is the intent of the Legislature in enacting this section, to provide a uniform limit on the pension trust benefits for the members of the legislative bodies of all

political subdivisions of the state, including charter cities and charter counties. The Legislature finds and declares that uneven, conflicting, and inconsistent pension trust benefits for legislative bodies distort the statewide system of intergovernmental finance. The Legislature further finds and declares that the inequities caused by these problems extend beyond the boundaries of individual public agencies. Therefore, the Legislature finds and declares that these problems are not merely municipal affairs or matters of local interest and that they are truly matters of statewide concern that require the direct attention of the state government. In providing a uniform limit on the pension trust benefits for the legislative bodies of all political subdivisions of the state, the Legislature has provided a solution to a statewide problem that is greater than local in its effect. (b) Notwithstanding any other provision of law, the pension trust benefits of any member of a legislative body of any city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees. (c) Notwithstanding any other provision of law, members of the legislative body of a city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall not be eligible to accrue multiple pension trust benefits greater than the most generous schedule of benefits being received by any category of nonsafety employees from two or more public agencies for concurrent service except in the case of a member who serves as a regular full-time employee in a separate public agency. (d) This section shall be applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

53218. Any law prohibiting, restricting, or limiting the assignment of or order for wages or salary does not prohibit, restrict, or limit the powers conferred in this article nor the power of officers or employees to authorize and approve payment of trust contributions by wage and salary deductions.

53219. A pension trust established pursuant to this article shall have trustees, agents or officers who shall carry on the business of the pension trust. The by-laws or declaration of trust shall prescribe the manner in which and the officers or agents by whom the pension trust may be conducted and the manner in which its funds shall be collected and disbursed. The funds and investments of a pension trust shall be held separately and independently of the funds and investments of the employer and of any other person.

53220. Unless the legislative body of the local agency specifically provides that a pension trust plan established pursuant to this article is compulsory upon the officers and employees of the local agency, it shall not be compulsory for an officer or employee of such agency to accept or join in such plan. If, pursuant to Section 53216, the legislative

body of the local agency makes such plan compulsory, it may provide that every officer and employee of the local agency who is eligible for membership, except for elective officers, shall on the start of the first pay period following the effective date of this section automatically become a member of said plan; and, that thereafter each other employee and officer of said agency who is eligible for membership in said plan under its terms, except for elective officers, automatically becomes a member of said plan on the day of his entry into employment with said agency. The legislative body of the local agency may provide that elective officers of said agency become members of said plan either on the first day of taking office or on the first day of the payroll period following the filing of a declaration by such an officer with the board of trustees of the pension trust to become a member.

53221. The legislative body of the local agency which establishes a pension trust plan pursuant to the provisions of this article may provide for waiver of membership by prospective employees in the case of newly hired employees who have obtained the age of 60 years of age. Such legislative body may also provide that an employee shall at the end of the pay period in which he or she obtains the age of 70 automatically cease to be an employee of the agency which hired him.

53222. The legislative body of a local agency which establishes a pension trust plan pursuant to the provisions of this article may grant reciprocal retirement benefits to members who are entitled to retirement rights or benefits from other retirement systems established under this article, Chapter 2 (commencing with Section 45300) of Division 5 of Title 4 of this code, the Public Employees' Retirement Law, or the County Employees Retirement Law of 1937.

53223. The legislative body of the local agency which establishes a pension trust plan pursuant to the provisions of this article may adopt any other provisions and regulations concerning such plan which are not specifically prohibited by statute.

53224. The legislative body of a local agency which establishes a pension trust plan pursuant to the provisions of this article may contribute to a plan which is established pursuant to the Federal Employee Retirement Income Security Act of 1974.

CONCERNS REGARDING IMPLEMENTATION OF AB 2400
(Alternate Retirement Plan Election)

Below is a list of commonly asked questions we have received regarding the implementation of AB 2400.

1. *What is a non-vested member?*

   A. CalPERS member who has less than five years of total CalPERS service credit.

2. *What does it mean to be a vested member of CalPERS?*

   A. A vested member of CalPERS has at least five years of total CalPERS service and is eligible to receive a lifetime monthly service retirement allowance or a lifetime monthly disability retirement allowance. Other benefits (such as health benefits) may be available depending on the agency's contract with CalPERS.

3. *What are my employees electing?*

   A. Your employees are deciding if they want to be subject to CalPERS or the Alternate Retirement Plan should their time base drop below CalPERS membership requirements. Once they have a total of five years service credit in CalPERS, they no longer qualify to become subject to the alternate retirement plan.

   Example: A part time employee working 1,500 hours in each of the last two fiscal years, elects to become subject to the alternate retirement plan on November 1, 1997. This employee works a total of 1,500 hours in fiscal year 1997/98 and 990 hours in fiscal year 1998/99 and does not have 5 years of CalPERS service credit on July 1, 1999. When would they be subject to the alternate retirement plan? They would be subject to the alternate retirement plan at the end of fiscal year 1998/99.

   However, the employee would be re-enrolled in CalPERS during fiscal year if during fiscal year 99/2000 the employee worked in excess of 1,000 hours. The employee would be brought back into CalPERS on the first payroll of the month following that in which he/she crossed the 1,000 hour threshold.

4. *What is a "qualified" alternate retirement plan for the purposes of AB2400?.*

   A. The statute does not address the question of "qualified". The advice of your legal counsel should be sought if further clarification is needed

5. *Can CalPERS tell me whether my agency's plan is a pension trust?*

   A. No. You should look at the documents establishing the plan, talk to the plan administrator and/or seek the advice of your legal counsel.

6. *We received a list and Information Package from CalPERS. Does this mean our alternative retirement plan is an alternate retirement plan for AB 2400 purposes?*

   A. NO. If you received a list and Information Package, it means someone at your agency or district returned the questionnaire informing us you have an alternate retirement plan.

7. *Does AB 2400 require us to establish a pension trust?*

   A. NO. The statute does not address this question; however, you may want to seek the advice of legal counsel.

8. *If a public agency or school district currently has Social Security and opts to take an alternative retirement plan other than Social Security in the future, will it be necessary for the district to hold an election?*

   A. If a district does not have an alternate retirement plan on July 1, 1997, but establishes an alternate plan after July 1, 1997 (pursuant to Article 1.5...), the school district or public agency is required to follow the mandates of Government Code Section 20306

9. *Are the requirements of Section 20306 a one-time event or ongoing?*

   A. If an agency has an alternate retirement plan, or establishes an alternate retirement plan, then the election is a one time event. If an employee is hired on or after July 1, 1997 (or the effective date of the establishment of an alternate retirement plan). then eligibility to be subject to the alternate retirement plan is not determined by election but by an MOU, if there is an exclusive bargaining representative, or by the agency/school district if there is no exclusive bargaining representative.

10. *Which employees get an information package? Is it just the part-time employees?*

   A. All miscellaneous employees who are CalPERS members prior to July 1, 1997.or prior to the establishment of the alternate retirement plan, and have less than five years total CalPERS service are to get an information package.

If an employee is in two school districts under the same County Superintendent of Schools, one with Social Security and the other with an alternate retirement plan which meets the criteria in AB 2400, could the employee have the right to elect?

A. Yes, if not vested. Only the employment in the district with the alternate retirement plan could be subject to AB 2400.

13. *Can members of CalPERS who fall below 50 percent get a refund from CalPERS when they elect out?*

A. No. As long as the employee is actively employed, such a refund would constitute an in-service distribution of retirement contributions and prohibited by Federal Law.

14. *Can an employee that has access to an alternate plan and to Social Security participate in the election.*

A. Yes. Social Security coverage on its own is not considered an alternate retirement plan under this section of law. Section 20306 does not exclude employees covered by Social Security and also subject to an alternate retirement plan.

15. *If you are vested, can you stay in CalPERS if you fall below 50 percent?*

A. Vested members are excluded from the provision of Section 20306. They <u>must</u> remain in CalPERS membership.

16. *What happens to employees who are employed after the election and drop below 50 percent - must they go into the alternative retirement plan?*

A. If the employee has less than five years service credit and is represented by an exclusive bargaining representative, eligibility is determined by the MOU. If the employee has less than five years service credit and is <u>not</u> represented, eligibility is determined by the employer.

17. *If a member goes back to CalPERS membership at 50 percent after being below 50 percent, what would the buyback process be? Can the employee purchase time when they were in an alternate retirement plan?*

A. A CalPERS member cannot purchase service credit for service which is covered by another retirement system supported wholly or in part by public funds.

19. *If we miss someone during the election and do not find out until after October 1, 1997, do we give them an information/election package?*

A. Yes. If they had an election right, you have to give them the opportunity to make a choice.

20. *If an employer's CalPERS plan is coordinated with Social Security and they also have an alternate retirement plan, will non vested CalPERS members who work less than qualifying time and are thus enrolled in that alternate plan also be removed from Social Security?*

    A. The CalPERS legal staff is investigating whether or not the Social Security Administration will issue an Administrative Ruling on that issue.

21. *If a public agency or school district has an alternative plan other than Social Security, the district must have an election. If this election process is not an option and is mandated it would be subject to mandated costs and the state will have to pay. How will the state pay for the additional workload?*

    A. Agencies feeling they have a claim for mandated costs associated with this bill should direct their claim to:

Commission of State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814,