

Senate Bill No. 634

Passed the Senate August 16, 2021

Secretary of the Senate

Passed the Assembly July 15, 2021

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2021, at ____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 22011, 22302, 22802, 24204, and 26804 of the Education Code, and to amend Sections 20309, 20320, 20322, 20324, 22820, 31530, 31565.5, 31680.2, 31680.3, 31732, and 31781.2 of, and to add Section 21499.1 to the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 634, Committee on Labor, Public Employment and Retirement. Public employees' retirement.

(1) Existing law, the Teachers' Retirement Law, establishes the State Teachers' Retirement System (STRS) and creates the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program, based on final compensation, credited service, and age at retirement, subject to certain variations. STRS is administrated by the Teachers' Retirement Board. Existing law requires STRS to pay premiums associated with Medicare Part A for certain retired or disabled members, as specified. Existing law creates the Cash Balance Benefit Program, which is administered by the board, to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time.

Existing law applicable to the Defined Benefit Program, for applications and documents requiring a signature, requires that the signature be in a form prescribed by the system.

This bill would apply the above-described requirements regarding signed applications and documents to the Cash Balance Benefit Program and the requirement that STRS pay certain Medicare Part A premiums.

Existing law authorizes a member of STRS who is not retired and who was previously excluded from membership in the Defined Benefit Program to request to purchase service credit in the program for certain types of other service.

This bill would prohibit a member from purchasing service credit for any school year if the purchase would result in more than one year of service for that school year.

Existing law authorizes a member of STRS who files an application for service retirement to change or cancel their retirement application if specified requirements are met. In this regard, existing law requires a member to return the total gross distribution amount of all payments for any canceled retirement benefit, including a lump-sum payment, as specified.

This bill would delete an obsolete cross-reference and would extend the requirement to return the total gross distribution amount, as described above, to apply to any canceled benefit.

(2) The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which is administered by the Board of Administration of the Public Employees' Retirement System. PERL excludes specified appointees, elective officers, and legislative employees from membership in the system unless the person to whom these provisions apply elects to file with the board an election in writing to become a member.

This bill would prescribe the circumstances pursuant to which the start date would be determined for an appointee, elective officer, or legislative employee who elects to become a member of PERS. If the written election is received by the system within 90 days of the applicable appointment, current term, or start date for the position, the bill would require that the effective date be the start date of the appointment, the start date of the term, or the start date of the position. If the election is not received by the system within 90 days, as specified, the effective date would be the first day of the month in which the election is received by the system.

PERL authorizes certain members of PERS who are employed to perform service covered by the Defined Benefit Program of the State Teachers' Retirement Plan to elect to retain coverage by PERS for this service under specified conditions, including that the member submit a written election to retain coverage to PERS on a prescribed form and that a copy of the form be submitted to STRS.

This bill would instead require the member to submit the election to retain coverage to the employer and would delete the requirement that a copy of the form be submitted to STRS. The bill would require the employer to retain a copy of the employee's signed election form and submit the original signed form to PERS.

PERL prescribes the circumstances pursuant to which specified payments and benefits may be paid by PERS in connection with the death of a member, among others.

This bill would require that overpayments, issued after the date of death to a member, retired member, or beneficiary, made to or on behalf of any member, retired member, or beneficiary, as specified, be deducted from any subsequent payment or benefit that is payable by PERS as a result of the death.

Existing law, the Public Employees' Medical and Hospital Care Act (PEMHCA), which is administered by the Board of Administration of the Public Employees' Retirement System, governs the funding and provision of postemployment health care benefits for eligible retired public employees and their beneficiaries. Under PEMHCA, if specified firefighters and peace officers die as a result of injuries or disease arising in the course of their duties, their uninsured surviving spouses and eligible family members are deemed annuitants, as specified, and may be enrolled in health benefit plans.

This bill would authorize, for purposes of the above-described provisions, a notification of the death of any firefighter or peace officer to come from any reliable and verifiable source. The bill would make conforming changes regarding the duties of employers in these circumstances.

(3) The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions for the purpose of providing pension, disability, and death benefits to county and district employees. CERL vests management of the retirement systems created pursuant to its provisions in a board of retirement. CERL requires the county health officer to advise the board on medical matters and, if requested, attend its meetings.

This bill would authorize a county health officer's duly authorized representative to also advise the board of retirement with advice on medical matters.

CERL authorizes a member of a system established under its provisions who ceases to be an employee of the county under certain provisions of the Education Code to elect to remain a member of the CERL system.

This bill would correct an obsolete cross-reference in those provisions.

CERL requires a board of retirement to secure medical, investigatory, and other service and advice as is necessary for the purpose of administering provisions relating to disability retirement.

This bill would authorize the board to contract with a physician in private practice for the medical advice necessary to carry out the purpose of provisions relating to disability retirement.

This bill would make various technical and stylistic changes.

The people of the State of California do enact as follows:

SECTION 1. Section 22011 of the Education Code is amended to read:

22011. For an application or document requiring a signature, that signature shall be in a form prescribed by the system, including, but not limited to, on paper or made by electronic means. Notwithstanding any other law, an application or document made under this part, Part 13.5 (commencing with Section 25900), or Part 14 (commencing with Section 26000) that is signed and submitted by the person authorized to do so using technology and security measures prescribed by the system shall be deemed to be a signed and valid original document.

SEC. 2. Section 22302 of the Education Code is amended to read:

22302. (a) The board shall establish an ombudsperson position to serve as an advocate for the members of the Defined Benefit Program and participants of the Cash Balance Benefit Program. The duties of the ombudsperson position shall include reviewing and making recommendations to the chief executive officer regarding complaints by school employees, members, employee organizations, the Legislature, or the public regarding actions of the employees of the system.

(b) It is the intent of the Legislature that the salary of the position of ombudsperson be offset, as much as possible, through savings realized from a reduction in interest payments on delinquent benefits to members, and through a more efficient and improved public relations program.

SEC. 3. Section 22802 of the Education Code is amended to read:

22802. (a) A member, other than a retired member, who was previously excluded from membership in the Defined Benefit Program may request to purchase service credit for:

(1) Service as a substitute excluded under Section 22602.

(2) Creditable service subject to coverage under the Cash Balance Benefit Program if the member is currently contributing to the Defined Benefit Program and has terminated all service subject to coverage under the Cash Balance Benefit Program. Upon requesting to purchase service credit under this paragraph, the member shall cease to be eligible for a benefit for the same service or time previously credited under the Cash Balance Benefit Program pursuant to Part 14 (commencing with Section 26000).

(3) Service performed on a part-time basis excluded under Section 22601.5 or Section 22604, other than service credited under paragraph (2).

(4) Adult education service excluded under Section 22603, as it read on December 31, 1995.

(5) Service as a school nurse excluded under Section 22606, as it read on December 31, 1995.

(6) Service performed in a position prior to the date the position was made subject to coverage under the Defined Benefit Program.

(7) Service subject to coverage under the Defined Benefit Program performed while a member of another California public retirement system, provided the member has ceased to be a member of, and has ceased to be entitled to benefits from, the other retirement system. The member shall not receive credit for the service if the member may redeposit withdrawn contributions and subsequently be eligible for any benefits based upon the same service or based upon other full-time service performed during the same period, from another California public retirement system.

(b) A member who requests to purchase service credit under this part for service performed while excluded from membership under the Defined Benefit Program shall pay all of the required contributions for all or the portion of that service for which the member requests to purchase service credit.

(c) A member shall not request to purchase service credit for service or time described in paragraphs (1) and (3) to (7), inclusive, of subdivision (a) if, after the request, the member would continue to receive credit for the same service or time in the Cash Balance

Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system.

(d) A member shall not purchase service credit for any school year if the purchase would result in more than one year of service for that school year.

SEC. 4. Section 24204 of the Education Code is amended to read:

24204. (a) A service retirement allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for service retirement allowance is filed on a form provided by the system, which is executed no earlier than six months before the effective date of retirement allowance.

(2) The effective date is later than the last day the member earned creditable compensation pursuant to Section 22119.2 or 22119.3.

(3) The effective date is no earlier than one day after the date on which the retirement allowance was terminated under Section 24208.

(4) The effective date is no earlier than one year following the date on which the retirement allowance was terminated under subdivision (a) of Section 24117.

(5) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(6) The effective date is no earlier than one day after the date upon which the member completes payment of a service credit purchase pursuant to Section 22801, 22820, or 22826, or payment of a redeposit of contributions pursuant to Section 23200, except as provided in Section 22801 or 22829.

(b) A member who files an application for service retirement may change or cancel their retirement application if all of the following are met:

(1) The form provided by the system is received in the system's headquarters office no later than 30 days from the date the member's initial benefit payment for the member's most recent retirement under the Defined Benefit Program is paid by the system.

(2) The member returns the total gross distribution amount of all payments for any canceled benefit, including a lump-sum

payment being changed to an annuity, to the system's headquarters office no later than 45 days from the date of the member's initial benefit payment. The member shall be liable for any adverse tax consequences that may result from these actions.

(c) The retirement date of a member who files an application for retirement pursuant to Section 24201 on or after January 1, 2012, shall be no earlier than January 1, 2012.

(d) Nothing in this section shall be construed to allow a member to receive more than one type of retirement or disability allowance for the same period of time by virtue of the member's own membership.

SEC. 5. Section 26804 of the Education Code is amended to read:

26804. Application for a retirement benefit under this part shall be made on a form prescribed by the system. A participant who files an application for a retirement benefit may change or cancel the retirement application if all of the following are met:

(a) The form provided by the system is received in the system's headquarters office no later than 30 days from the date of the participant's initial benefit payment.

(b) The participant returns the total gross distribution amount of all payments for any canceled retirement benefit, including a lump-sum payment being changed to an annuity, to the system's headquarters office no later than 45 days from the date of the participant's initial benefit payment. The participant shall be liable for any adverse tax consequences that may result from these actions.

SEC. 6. Section 20309 of the Government Code is amended to read:

20309. (a) A member of the system described in subdivision (b) who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan, may elect to retain coverage by this system for that subsequent service. An election to retain coverage under this system shall be submitted in writing by the member to the employer on a form prescribed by the system within 60 days after the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan. The employer shall retain a copy of the employee's signed election form and submit the original signed form to the system.

A member who elects to retain coverage under this system pursuant to this section shall be deemed to be a school member while employed by a school employer.

(b) This section shall apply to a member of the system who either (1) was employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education within 120 days before the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan or (2) has at least five years of credited service under this system.

(c) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

SEC. 7. Section 20320 of the Government Code is amended to read:

20320. (a) A person directly appointed by the Governor, without the nomination of any officer or board, or directly appointed by the Attorney General, Lieutenant Governor, Controller, Secretary of State, Treasurer, or Superintendent of Public Instruction exempt from civil service under Article VII of the California Constitution, except those appointed pursuant to subdivision (i) of Section 4 thereof, is excluded from membership in this system unless the person files with the board an election in writing to become a member. The election effective date shall be the start date of the current appointment, provided the election is received by this system within 90 days of the applicable start date. If the election is not received by this system within 90 days from the start date, the effective date shall be the first day of the month in which the election is received by this system.

(b) Upon electing to become a member, the person may further elect at any time prior to retirement to receive service credit for their prior, excluded state service by making the contributions as specified in Sections 21050 and 21051.

SEC. 8. Section 20322 of the Government Code is amended to read:

20322. (a) An elective officer is excluded from membership in this system unless the officer files with the board an election in writing to become a member. The election effective date shall be the start date of the current term, provided the election is received by this system within 90 days of the applicable start date. If the

election is not received by this system within 90 days from the start date, the effective date shall be the first day of the month in which the election is received by this system. Upon electing to become a member, the officer may further elect at any time prior to retirement to receive service credit for their prior, excluded service by making the contributions as specified in Sections 21050 and 21051.

(b) As used in this part, “elective officer” includes any officer of the Senate or Assembly who is elected by vote of the members of either or both of the houses of the Legislature, and any appointive officer of a city or county occupying a fixed term of office, as well as officers of the state or contracting agencies elected by the people, and persons elected to a city council or a county board of supervisors.

(c) Notwithstanding any other provision of subdivision (a) or (b), elected or appointed officers of a county superintendent of schools, school district, or community college district, or of a contracting agency, who serve on public commissions, boards, councils, or similar legislative or administrative bodies are excluded from membership in this system. This exclusion shall only apply to those elected or appointed officers, other than city or county officers, who are first elected or appointed to an office on or after July 1, 1994, or who are elected or appointed to a term of office not consecutive with the term of office held on June 30, 1994. For city or county elected or appointed officers, this exclusion shall only apply to those officers who are first elected or appointed to an office on or after January 1, 1997, or who are elected or appointed to a term of office not consecutive with the term of office held on December 31, 1996. This exclusion shall not apply to persons elected to a city council or county board of supervisors.

(d) Any person holding the office of city attorney or the office of assistant city attorney, whether employed, appointed, or elected, is excluded from the definition of “elective officer” as defined in subdivision (b). This subdivision shall apply only to persons first employed, elected, or appointed on or after July 1, 1994, or following any break in state service while serving in the office if the office was held on June 30, 1994.

(e) In accordance with Section 20125, the board shall be the sole judge of which elected or appointed positions qualify the incumbent as an “elective officer” in this system under this section.

(f) Notwithstanding any other provision of law, with respect to elective officers of contracting agencies, payment by a contracting agency of employer contributions and any other amounts for employer paid benefits under this system shall not be construed as receipt of salary or compensation by the elective officer for purposes of any statutory salary or compensation limitation.

SEC. 9. Section 20324 of the Government Code is amended to read:

20324. (a) An employee of the Senate or the Assembly, or the respective committees thereof, whose salaries or wages are paid from the Senate Operating Fund or the Assembly Operating Fund or the Operating Funds of the Assembly and Senate, shall be deemed a “legislative employee.” A legislative employee is excluded from membership in this system unless the person files with the board an election in writing to become a member. The election effective date shall be the start date of the current position, provided the election is received by this system within 90 days of the applicable start date. If the election is not received by this system within 90 days from the start date, the effective date shall be the first day of the month in which the election is received by this system. The election shall not be required of a legislative employee who was a member of this system on October 1, 1963.

(b) Upon electing to become a member, a legislative employee may further elect at any time prior to retirement to receive service credit for their prior, excluded legislative service and the legislative employee shall have the option as to how much of that prior legislative service is to be credited. The legislative employee shall make contributions to this system as specified in Sections 21050 and 21051 for the previous service as a legislative employee for which they desire to receive service credit.

SEC. 10. Section 21499.1 is added to the Government Code, to read:

21499.1. Any overpayment, issued after the date of death to a member, retired member, or beneficiary, made to or on behalf of any member, retired member, or beneficiary, including, but not limited to, contributions, interest, retirement allowance, payments of any kind, or federal or state tax, shall be deducted from any

subsequent payment or benefit that is payable by this system as a result of the death.

SEC. 11. Section 22820 of the Government Code is amended to read:

22820. (a) Upon the death, on or after January 1, 2002, of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, a firefighter employed by the Department of Forestry and Fire Protection, a firefighter employed by the federal government who was a resident of this state and whose regular duty assignment was to perform firefighting services within this state, or a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or 830.6 of the Penal Code, if the death occurred as a result of injury or disease arising out of and in the course of their official duties, the surviving spouse or other eligible family member of the deceased firefighter or peace officer, if uninsured, is deemed to be an annuitant under Section 22760 for purposes of enrollment. All eligible family members of the deceased firefighter or peace officer who are uninsured may enroll in a health benefit plan of the surviving spouse's choice. However, an unmarried child of the surviving spouse is not eligible to enroll in a health benefit plan under this section if the child was not a family member under Section 22775 and regulations pertinent thereto prior to the firefighter's or peace officer's date of death. A notification of the death of any firefighter or peace officer subject to this section may come from any reliable and verifiable source. Upon request, the employer of the deceased firefighter or peace officer shall provide to the board within 10 business days any updated contact information for a surviving spouse or family member who may be eligible for enrollment in a health benefit plan under this section.

(b) Upon notification, the board shall promptly determine eligibility and shall forward to the eligible spouse or family member the materials necessary for enrollment. In the event of a dispute regarding whether a firefighter's or peace officer's death occurred as a result of injury or disease arising out of and in the course of their official duties as required under subdivision (a), that dispute shall be determined by the Workers' Compensation Appeals Board, subject to the same procedures and standards applicable to hearings relating to claims for workers' compensation

benefits. The jurisdiction of the Workers' Compensation Appeals Board under this section is limited to the sole issue of industrial causation and this section does not authorize the Workers' Compensation Appeals Board to award costs against the system.

(c) (1) Notwithstanding any other provision of law, and except as otherwise provided in subdivision (d), the state shall pay the employer contribution required for enrollment under this part for the uninsured surviving spouse of a deceased firefighter or peace officer for life, and the other uninsured eligible family members of a deceased firefighter or peace officer, provided the family member meets the eligibility requirements of Section 22775 and regulations pertinent thereto.

(2) The contribution payable by the state for each uninsured surviving spouse and other uninsured eligible family members shall be adjusted annually and be equal to the amount specified in Section 22871.

(3) The state's contribution under this section shall commence on the effective date of enrollment of the uninsured surviving spouse or other uninsured eligible family members. The contribution of each surviving spouse and eligible family member shall be the total cost per month of the benefit coverage afforded to them under the plan less the portion contributed by the state pursuant to this section.

(d) The cancellation of coverage by an annuitant, as defined in this section, shall be final without option to reenroll, unless coverage is canceled because of enrollment in an insurance plan from another source.

(e) For purposes of this section, "surviving spouse" means a spouse who was married to the deceased firefighter or peace officer on the deceased's date of death and either was married for a continuous period of at least one year prior to the date of death or was married to the deceased prior to the date the deceased firefighter or peace officer sustained the injury or disease resulting in death.

(f) For purposes of this section, "uninsured" means that the surviving spouse is not enrolled in an employer-sponsored health plan under which the employer contribution covers 100 percent of the cost of health care premiums.

(g) The board has no duty to identify, locate, or notify any surviving spouse or eligible family member who may be or may become eligible for benefits under this section.

SEC. 12. Section 31530 of the Government Code is amended to read:

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.

SEC. 13. Section 31565.5 of the Government Code is amended to read:

31565.5. Any member of a system established under this chapter who ceases to be an employee of the county under the provisions of Section 1312 of the Education Code may elect as authorized in Section 1313 of the Education Code to remain a member of such system.

SEC. 14. Section 31680.2 of the Government Code is amended to read:

31680.2. (a) Any person who has retired may be employed in a position requiring special skills or knowledge, as determined by the county or district employing them, for a period of time not to exceed 90 working days or 720 hours, whichever is greater, in any one fiscal year or any other 12-month period designated by the board of supervisors and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend their retirement allowance, and no deductions shall be made from their salary as contributions to this system.

(b) (1) This section shall not apply to any retired person who is otherwise eligible for employment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(3) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail, except that the limit on postretirement employment provided in subdivision (a) to the greater of 90 working days or 720 hours shall remain effective.

SEC. 15. Section 31680.3 of the Government Code is amended to read:

31680.3. (a) Notwithstanding Section 31680.2, any member who has been covered under the provisions of Section 31751 and has retired may be reemployed in a position requiring special skills or knowledge, as determined by the county or district employing the member, for a period of time not to exceed 120 working days or 960 hours, whichever is greater, in any one fiscal year and may be paid for that employment. That employment shall not operate to reinstate the person as a member of this system or to terminate or suspend the person's retirement allowance, and no deductions shall be made from the person's salary as contributions to this system.

(b) (1) This section shall not apply to any retired member who is otherwise eligible for reemployment under this section if, during the 12-month period prior to an appointment described in this section, that retired person receives unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(c) Beginning January 1, 2013, if any provision of this section conflicts with the California Public Employees' Pension Reform Act of 2013, the provisions of that act shall prevail.

SEC. 16. Section 31732 of the Government Code is amended to read:

31732. The board shall secure such medical, investigatory and other service and advice as is necessary to carry out the purpose of this article. Notwithstanding Section 31529, the board may contract with an attorney in private practice for the legal services

and advice necessary to carry out the purpose of this article. Notwithstanding Section 31530, the board may contract with a physician in private practice for the medical advice necessary to carry out the purpose of this article. It shall pay for such services and advice such compensation as it deems reasonable.

SEC. 17. Section 31781.2 of the Government Code is amended to read:

31781.2. In lieu of accepting in cash the death benefit payable under Section 31781 or 31781.01, the surviving spouse of a member who dies prior to reaching the minimum retirement age and who at the date of the member's death has 10 or more years of service to the member's credit, shall have the option to leave the amount of the death benefit on deposit in the retirement system until the earliest date when the deceased member could have retired had the member lived, and at that time receive the retirement allowance provided for in Section 31765, 31765.1, or 31765.11, whichever is applicable.

If, at the death of the spouse, the spouse is survived by one or more unmarried children of the member, under the age of 18 years, the retirement allowance shall continue to the child or children, collectively, until every child dies, marries, or attains the age of 18 years. If the spouse dies, either before or after the death of the member, without either making the election or receiving any portion of the death benefit, and no part of the death benefit had been paid to any person, prior to the payment of any benefits, the legally appointed guardian of the children shall make the election herein provided for on behalf of the surviving children as, in the guardian's judgment, may appear to be in their interest and advantage, and the election so made shall be binding and conclusive upon all parties in interest.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children up to the 22nd birthdays of the children if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

Approved _____, 2021

Governor