



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 10C

MEETING DATE: April 21, 2021

SUBJECT: SACRS – 2021 Legislation

SUBMITTED FOR: Consent Deliberation and Action Receive and File

RECOMMENDATION

Staff recommends the Board support SACRS' sponsorship of SB 634 that makes technical and clarifying amendments to the County Employees' Retirement Law of 1937 (CERL).

PURPOSE

This item complies with the Strategic Management Plan goal of stakeholder communication and outreach by participating in the legislative process to monitor changes in state law affecting public pension plans.

DISCUSSION

The Senate Committee on Labor, Public Employment and Retirement is authoring SB 643, an omnibus bill for the state's retirement systems (CalPERS and CalSTRS) and the county retirement systems to provide noncontroversial changes to each entity's respective code sections.

The SACRS Legislative Committee is seeking SACRS approval of the member systems at the May 14 SACRS business meeting to "sponsor" the legislation.

After fielding proposals from member systems and deliberating among the legislative committee, several minor cleanup proposals were selected to be amended into SB 634 at the start of the 2021 legislative session.

These changes include clarifying that a Board of Retirement may contract with a private physician to provide medical advice as part of the board's duties related to processing disability claims, deleting an obsolete reference to procedures for purchasing additional service, changing incorrect code references, and fixing typos in the CERL.

ATTACHMENTS

- SACRS Legislative Committee Letter re: SB 634 – March 5, 2021
- Summary matrix of CERL Provisions in SB 634
- SB 634, as introduced February 19, 2021

Prepared by:

/S/

Eric Stern
Chief Executive Officer

March 5, 2021

TO: SACRS Board of Directors

FROM: SACRS Legislative Committee

RE: Sponsorship of SB 634 (Committee on Labor, Public Employment and Retirement)

Similar to last year with AB 2101 (Committee on Public Employment and Retirement), the Legislative Committee is pursuing another omnibus bill to provide technical and clarifying changes to the CERL. You may recall that SACRS' cleanup changes were initially placed into SB 783, then ultimately amended into AB 2101, a bill sponsored by SACRS, CalPERS, and CalSTRS that provided noncontroversial changes to each entity's respective code sections.

This year, the Senate Committee on Labor, Public Employment and Retirement is authoring another omnibus bill for SACRS, CalPERS, and CalSTRS technical cleanup.

After fielding proposals from member systems and deliberating among the legislative committee, several minor cleanup proposals were selected to be amended into SB 634 at the start of the new legislative session.

These changes include clarifying that a Board of Retirement may contract with a private physician to provide medical advice as part of the board's duties related to processing disability claims, deleting an obsolete reference to procedures for purchasing additional service, changing incorrect code references, and fixing typos. Along with these changes, the Legislative Committee will continue to review noncontroversial proposals to be added into this vehicle in the coming months.

On a separate track, the Legislative Committee continues to review more substantive CERL amendments for consideration by the Board of Directors for the 2022 legislative session.

The SACRS Legislative Committee is requesting Board of Directors approval for SACRS to formally sponsor SB 634. Thank you for your consideration.

The bill language for SB 634 and a summary matrix of CERL provisions in SB 634 are attached.

2021 CERL Amendments

Sec	Gov Code	Topic	Issue/Justification
9 14	31530 31732	County Health Officer as Medical Advisor	Updates statutes to conform to existing practices in which many retirement systems currently use outside, independent medical advisors to evaluate disability claims. Amendments clarify that the county health officer, either directly or through a duly authorized representative, shall advise the board on medical matters. Also clarifies that the board may contract with a physician in private practice under its existing authority to secure the necessary medical service and advice in carrying out its adjudication of disability retirement applications.
10	31565.5	County Office of Education	Fixes incorrect cross references when the Education Code was restructured years ago.
11	31641.8	Service Purchase-Installment Payments	Deletes obsolete section. The payment terms related to pre-tax and after-tax contributions in conformity with federal tax law are generally specified in the contracts that members sign when they elect to make additional contributions.
12 13	31680.2 31680.3	Post-Retirement Employment	Fixes typo/missing words. Section 31680.2 provides that retired members may be reemployed without reinstatement to membership in a position requiring special skills or knowledge for a period of time not to exceed 90 working days or 720 hours in one fiscal year of any other 12-month period. Section 31680.3 provides that the period of time not exceed 120 working days or 960 hours. The current statutes are missing the phrase "a period of time," similar to sentence structure in Section 31680.6.
15	31781.2	Survivor benefits	Fixes typo. The word "the" is missing before "guardian."

Introduced by Committee on Labor, Public Employment and Retirement (Senators Cortese (Chair), Durazo, Laird, Newman, and Ochoa Bogh)

February 19, 2021

An act to amend Sections 22011, 22802, 24204, and 26804 of the Education Code, and to amend Sections 20320, 20322, 20324, 31530, 31565.5, 31680.2, 31680.3, 31732, and 31781.2 of, to add Section 21499.1 to, and to repeal Section 31641.8 of, the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 634, as introduced, 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 request to purchase service credit in the program for certain types of other service. The bill would delete and obsolete cross-reference.

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 extend the requirement to return 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 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.

(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 provision 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 this regard.

CERL provides benefits based upon service credit, defines service for this purpose, and authorizes a member to elect to receive service credit for other forms of public service, as defined, by making contributions. CERL authorizes a member who has elected to make contributions to receive service credit to complete payment, at any time prior to the effective date of the member's retirement, by a lump sum.

This bill would repeal the above-described authority of a member to complete a payment by lump sum.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

3 22011. For an application or document requiring a signature,
4 that signature shall be in a form prescribed by the system,
5 including, but not limited to, on paper or made by electronic means.
6 Notwithstanding any other law, an application or document made
7 under this ~~part part~~, *Part 13.5 (commencing with Section 25900)*,
8 *or Part 14 (commencing with Section 26000)* that is signed and
9 submitted by the person authorized to do so using technology and
10 security measures prescribed by the system shall be deemed to be
11 a signed and valid original document.

12 SEC. 2. Section 22802 of the Education Code is amended to
13 read:

14 22802. (a) A member, other than a retired member, who was
15 previously excluded from membership in the Defined Benefit
16 Program may request to purchase service credit for:

- 17 (1) Service as a substitute excluded under Section 22602.
- 18 (2) Creditable service subject to coverage under the Cash
19 Balance Benefit ~~Program, excluding service credited pursuant to~~
20 ~~Section 26402, Program~~ if the member is currently contributing
21 to the Defined Benefit Program and has terminated all service
22 subject to coverage under the Cash Balance Benefit Program. Upon
23 requesting to purchase service credit under this paragraph, the
24 member shall cease to be eligible for a benefit for the same service
25 or time previously credited under the Cash Balance Benefit
26 Program pursuant to Part 14 (commencing with Section 26000).
- 27 (3) Service performed on a part-time basis excluded under
28 Section 22601.5 or Section 22604, other than service credited
29 under paragraph (2).
- 30 (4) Adult education service excluded under Section 22603, as
31 it read on December 31, 1995.
- 32 (5) Service as a school nurse excluded under Section 22606, as
33 it read on December 31, 1995.
- 34 (6) Service performed in a position prior to the date the position
35 was made subject to coverage under the Defined Benefit Program.
- 36 (7) Service subject to coverage under the Defined Benefit
37 Program performed while a member of another California public
38 retirement system, provided the member has ceased to be a member

1 of, and has ceased to be entitled to benefits from, the other
2 retirement system. The member shall not receive credit for the
3 service if the member may redeposit withdrawn contributions and
4 subsequently be eligible for any benefits based upon the same
5 service or based upon other full-time service performed during the
6 same period, from another California public retirement system.

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

12 (c) A member ~~may~~ shall not request to purchase service credit
13 for service or time described in paragraphs (1) and (3) to (7),
14 inclusive, of subdivision (a) if, after the request, the member would
15 continue to receive credit for the same service or time in the Cash
16 Balance Benefit Program under Part 14 (commencing with Section
17 26000) or another public retirement system.

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

21 SEC. 3. Section 24204 of the Education Code is amended to
22 read:

23 24204. (a) A service retirement allowance under this part shall
24 become effective upon any date designated by the member,
25 provided all of the following conditions are met:

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

29 (2) The effective date is later than the last day the member
30 earned creditable compensation pursuant to Section 22119.2 or
31 22119.3.

32 (3) The effective date is no earlier than one day after the date
33 on which the retirement allowance was terminated under Section
34 24208.

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

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

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

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

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

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

20 (c) The retirement date of a member who files an application
21 for retirement pursuant to Section 24201 on or after January 1,
22 2012, shall be no earlier than January 1, 2012.

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

27 SEC. 4. Section 26804 of the Education Code is amended to
28 read:

29 26804. Application for a retirement benefit under this part shall
30 be made on a form prescribed by the system. A participant who
31 files an application for a retirement benefit may change or cancel
32 the retirement application if all of the following are met:

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

36 (b) The participant returns the total gross distribution amount
37 *of all payments* for any canceled retirement benefit, including a
38 lump-sum payment being changed to an annuity, to the system's
39 headquarters office no later than 45 days from the date of the
40 ~~participants's~~ *participant's* initial benefit payment. The participant

1 shall be liable for any adverse tax consequences that may result
2 from these actions.

3 SEC. 5. Section 20320 of the Government Code is amended
4 to read:

5 20320. (a) A person directly appointed by the Governor,
6 without the nomination of any officer or board, or directly
7 appointed by the Attorney General, Lieutenant Governor,
8 Controller, Secretary of State, Treasurer, or Superintendent of
9 Public Instruction exempt from civil service under Article VII of
10 the California Constitution, except those appointed pursuant to
11 subdivision (i) of Section 4 thereof, is excluded from membership
12 in this system unless ~~he or she~~ *the person* files with the board an
13 election in writing to become a member. *The election effective*
14 *date shall be the start date of the current appointment, provided*
15 *the election is received by this system within 90 days of the*
16 *applicable start date. If the election is not received by this system*
17 *within 90 days from the start date, the effective date shall be the*
18 *first day of the month in which the election is received by this*
19 *system.*

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

24 SEC. 6. Section 20322 of the Government Code is amended
25 to read:

26 20322. (a) An elective officer is excluded from membership
27 in this system unless the officer files with the board an election in
28 writing to become a member. *The election effective date shall be*
29 *the start date of the current term, provided the election is received*
30 *by this system within 90 days of the applicable start date. If the*
31 *election is not received by this system within 90 days from the start*
32 *date, the effective date shall be the first day of the month in which*
33 *the election is received by this system.* Upon electing to become a
34 member, the officer may further elect at any time prior to retirement
35 to receive service credit for ~~his or her~~ *their* prior, excluded service
36 by making the contributions as specified in Sections 21050 and
37 21051.

38 (b) As used in this part, “elective officer” includes any officer
39 of the Senate or Assembly who is elected by vote of the members
40 of either or both of the houses of the Legislature, and any

1 appointive officer of a city or county occupying a fixed term of
2 office, as well as officers of the state or contracting agencies elected
3 by the people, and persons elected to a city council or a county
4 board of supervisors.

5 (c) Notwithstanding any other provision of subdivision (a) or
6 (b), elected or appointed officers of a county superintendent of
7 schools, school district, or community college district, or of a
8 contracting agency, who serve on public commissions, boards,
9 councils, or similar legislative or administrative bodies are
10 excluded from membership in this system. This exclusion shall
11 only apply to those elected or appointed officers, other than city
12 or county officers, who are first elected or appointed to an office
13 on or after July 1, 1994, or who are elected or appointed to a term
14 of office not consecutive with the term of office held on June 30,
15 1994. For city or county elected or appointed officers, this
16 exclusion shall only apply to those officers who are first elected
17 or appointed to an office on or after January 1, 1997, or who are
18 elected or appointed to a term of office not consecutive with the
19 term of office held on December 31, 1996. This exclusion shall
20 not apply to persons elected to a city council or county board of
21 supervisors.

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

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

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

38 SEC. 7. Section 20324 of the Government Code is amended
39 to read:

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

16 (b) Upon electing to become a member, a legislative employee
17 may further elect at any time prior to retirement to receive service
18 credit for ~~his or her~~ *their* prior, excluded legislative service and
19 ~~he or she~~ *the legislative employee* shall have the option as to how
20 much of that prior legislative service is to be credited. The
21 legislative employee shall make contributions to this system as
22 specified in Sections 21050 and 21051 for the previous service as
23 a legislative employee for which ~~he or she~~ *desires they desire* to
24 receive service credit.

25 SEC. 8. Section 21499.1 is added to the Government Code, to
26 read:

27 21499.1. Any overpayment, issued after the date of death to a
28 member, retired member, or beneficiary, made to or on behalf of
29 any member, retired member, or beneficiary, including, but not
30 limited to, contributions, interest, retirement allowance, payments
31 of any kind, or federal or state tax, shall be deducted from any
32 subsequent payment or benefit that is payable by this system as a
33 result of the death.

34 SEC. 9. Section 31530 of the Government Code is amended
35 to read:

36 31530. The county health ~~officer~~ *officer, either directly or*
37 *through a duly authorized representative*, shall advise the board
38 on medical matters and, if requested by the board, shall attend its
39 meetings.

1 SEC. 10. Section 31565.5 of the Government Code is amended
2 to read:

3 31565.5. Any member of a system established under this
4 chapter who ceases to be an employee of the county under the
5 provisions of ~~Education Code Section 873~~ *Section 1312 of the*
6 *Education Code* may elect as authorized in ~~Education Code Section~~
7 ~~873.1~~ *Section 1313 of the Education Code* to remain a member of
8 such system.

9 SEC. 11. Section 31641.8 of the Government Code is repealed.

10 ~~31641.8. Any member who has elected to make contributions~~
11 ~~pursuant to this chapter by installment payments may, at any time~~
12 ~~prior to the effective date of his retirement, complete payment~~
13 ~~thereof by lump sum.~~

14 SEC. 12. Section 31680.2 of the Government Code is amended
15 to read:

16 31680.2. (a) Any person who has retired may be employed in
17 a position requiring special skills or knowledge, as determined by
18 the county or district employing ~~him or her, for them,~~ *for a period*
19 *of time* not to exceed 90 working days or 720 hours, whichever is
20 greater, in any one fiscal year or any other 12-month period
21 designated by the board of supervisors and may be paid for that
22 employment. That employment shall not operate to reinstate the
23 person as a member of this system or to terminate or suspend ~~his~~
24 ~~or her~~ *their* retirement allowance, and no deductions shall be made
25 from ~~his or her~~ *their* salary as contributions to this system.

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

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

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

1 the limit on postretirement employment provided in subdivision
2 (a) to the greater of 90 working days or 720 hours shall remain
3 effective.

4 SEC. 13. Section 31680.3 of the Government Code is amended
5 to read:

6 31680.3. (a) Notwithstanding Section 31680.2, any member
7 who has been covered under the provisions of Section 31751 and
8 has retired may be reemployed in a position requiring special skills
9 or knowledge, as determined by the county or district employing
10 the member, for *a period of time* not to exceed 120 working days
11 or 960 hours, whichever is greater, in any one fiscal year and may
12 be paid for that employment. That employment shall not operate
13 to reinstate the person as a member of this system or to terminate
14 or suspend the person's retirement allowance, and no deductions
15 shall be made from the person's salary as contributions to this
16 system.

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

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

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

32 SEC. 14. Section 31732 of the Government Code is amended
33 to read:

34 31732. The board shall secure such medical, investigatory and
35 other service and advice as is necessary to carry out the purpose
36 of this article. Notwithstanding Section 31529, the board may
37 contract with an attorney in private practice for the legal services
38 and advice necessary to carry out the purpose of this article.
39 *Notwithstanding Section 31530, the board may contract with a*
40 *physician in private practice for the medical advice necessary to*

1 *carry out the purpose of this article.* It shall pay for such services
2 and advice such compensation as it deems reasonable.

3 SEC. 15. Section 31781.2 of the Government Code is amended
4 to read:

5 31781.2. In lieu of accepting in cash the death benefit payable
6 under Section 31781 or 31781.01, the surviving spouse of a
7 member who dies prior to reaching the minimum retirement age
8 and who at the date of the member's death has 10 or more years
9 of service to the member's credit, shall have the option to leave
10 the amount of the death benefit on deposit in the retirement system
11 until the earliest date when the deceased member could have retired
12 had the member lived, and at that time receive the retirement
13 allowance provided for in Section 31765, 31765.1, or 31765.11,
14 whichever is applicable.

15 If, at the death of the spouse, the spouse is survived by one or
16 more unmarried children of the member, under the age of 18 years,
17 the retirement allowance shall continue to the child or children,
18 collectively, until every child dies, marries, or attains the age of
19 18 years. If the spouse dies, either before or after the death of the
20 member, without either making the election or receiving any
21 portion of the death benefit, and no part of the death benefit had
22 been paid to any person, prior to the payment of any benefits, the
23 legally appointed guardian of the children shall make the election
24 herein provided for on behalf of the surviving children as, in *the*
25 guardian's judgment, may appear to be in their interest and
26 advantage, and the election so made shall be binding and
27 conclusive upon all parties in interest.

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

O