Legislative Report
April 2016

Bold / Highlighted text represents changes since the last report

AB 241 (Gordon) would require, notwithstanding any other law and under certain conditions, a local public entity to provide the name and mailing address of each retired employee or his or her beneficiary receiving the retired employee's retirement benefit to any 501(c)(5) organization that is incorporated for the purpose of representing retired employees or their beneficiaries as members of the organization in the neutral evaluation process required under current law before a public entity may file for bankruptcy under Chapter 9. The problem with this bill is that most county retiree associations are not 501(c)(5) organizations but, rather, 501(c)(3), (4), or (7) organizations. 501(c)(5) organizations are labor organizations formed for collective bargaining purposes, not to represent retirees, although a 501(c)(7) organization composed of retired employees can qualify for exemption as a labor organization under IRC 501(c)(5) where it acts to secure and maintain retirement benefits for its members. I am only aware of a single county retiree association that is a 501(c)(5) organization; the Contra Costa County Retired Employees Association (CCCREA). Accordingly, CRCEA sought to have the bill amended to include 501(c)(3), (4) and (7) organizations, unsuccessfully so far. The bill is in the Senate Government and Finance Committee (Gov. & F.).

AB 259 (Dababneh) would additionally require an agency that was the source a breach of records security, and the breach compromised a person's social security number, driver's license number, or California identification card number, to offer to provide the person with identity theft prevention and mitigation services at no cost for not less than 12 months. The bill was held at the Senate Appropriations Committee (Appr.).

AB 736 (Cooley) would add Chief Operating Officer and Chief Financial Officer to the list of executive and managerial positions for which the Teacher's Retirement Board can set the compensation. The bill is in the Senate Public Employment and Retirement Committee (P.E. & R.).

AB 1052 (Cooley) would authorize the retirement boards of PERS and STRS to enter into agreements for investment of funds, and with investment managers and custodians using processes they deem necessary and consistent with their fiduciary duties. Apparently, there are other laws establishing requirements for state agencies when entering into agreements. Those laws would no longer apply to these retirement systems. The bill is in the Senate but has not been assigned to a committee.

AB 1640 (Stone) would extend indefinitely the exemption for those public employees (transit agency employees), whose collective bargaining rights are subject to specified provisions of federal law and who became a member of a state or local public retirement system prior to December 30, 2014. As you may recall, AB 1783 was passed in 2014. It amended PEPRA to provide that the exemption for the same employees would remain in effect until a specified federal district court decision on a certification by the United States Secretary of Labor, or until January 1, 2016. Apparently, the district court decision has not been rendered yet. Thus, the need for this bill. It is at the Assembly P. E. R. & S.S. Committee.

AB 1692 (Bonilla). CERL, among other things, authorizes the Board of Supervisors of Contra Costa County to make a Tier Three retirement plan applicable to certain non-safety officers and employees for whom the board is the governing body, and sets forth the terms and conditions of disability retirement allowances for Tier Three members. This bill would authorize that Board to apply the same terms and conditions to those non-safety officers and employees who are new members subject to the retirement formulas specified in PEPRA. It is at the Assembly P. E. R. & S.S. Committee.

AB 1812 (Wagner) would prohibit the retirement benefit paid to a member of any public retirement system from exceeding $100,000 if the employee's service is not included in the federal social security system, and from exceeding $80,000 if the employee's service is included in the federal social security system. The bill would also require that those amounts be adjusted annually by each public retirement system using the Consumer Price Index (CPI) for All Urban Consumers. This bill would apply to a public employee who is first employed by a public agency and becomes a member of any public retirement system on or after January 1, 2017. If any of these provisions are in conflict with a memorandum of understanding that is current and in effect on January 1, 2017, the memorandum of understanding would be controlling while it remains in effect, but upon expiration of that memorandum of understanding, these provisions would be controlling and would not be superseded by a subsequent memorandum of understanding.
As you may recall, PEPRA limits pensionable compensation, not the retirement benefit, and provides for adjustment of it annually based on the change in CPI for All Urban Consumers, U.S. City Average, from September to September. The bill is at the Assembly P. E. R. & S.S. Committee.

AB 1853 (Cooper) is a very important bill sponsored by SACRS. It would authorize the retirement boards operating under the County Employees' Retirement Law of 1937 (CERL) to modernize the operating authority structure for their system so that they can continue to fulfill their mission and meet the fiduciary responsibilities they owe to their stakeholders. Some years ago, 1937 Act systems began efforts to gain a more modernized operating authority structure. The primary mechanism for achieving this was to make the retirement system a separate employer from the county, but whose employees would participate in the retirement system, thereby making the retirement board the final decision maker and implementer of certain personnel matters; i.e., salaries and fringe benefits. Typically, all employees working for county retirement systems are county employees, and the county sets salaries and fringe benefits. Up to now, the systems who have been authorized by the Legislature to change their operating structure are OCERS, SBCERA, CCCERA, and VCERA. Each structure is different. They vary from explicitly named classifications, to broad categories of employees, or to all employees who perform work for the retirement systems. This bill would allow all systems to choose to adopt the OCERS, SBCERA, or CCCERA model, or do nothing. That is, the bill does not mandate change, but provides options for change if the retirement board chooses to do so. Additionally, the bill would allow any

of the systems who previously were given some operational authority to change their structure to elect a different model. **It was amended on March 29 to primarily make some minor corrections requested by SACRS.**

AB 1878 (Jones-Sawyer) This bill would have increased the amount of death benefit paid to the beneficiary upon the death of retired school members of PERS to $7,045, on and after January 1, 2017. As you may know, the maximum death benefit under CERL is $5000. **The bill was amended on March 28. It now provides that the benefit be not less than $5,000, and would authorize the Board of Administration of the Public Employees' Retirement System to adjust the death benefit amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index. The bill is at the Assembly P. E. R. & S.S. Committee.**

AB 2376 (Assembly PE, R & SS Committee) would revise the definition of Los Angeles County's Retirement Plan D, established under CERL, to refer to the contributory retirement plan otherwise available to members of LACERA between June 1, 1979, and December 31, 2012, inclusive, instead of the current definition in CERL. It also amends provisions of CERL specifically applicable to Los Angeles County to provide that the concurrent retirement exception applies to a member of the retirement system in Los Angeles County eligible to retire at 55 years of age and would state that the amendment is declaratory of existing law.
CERL requires that the regulations adopted by a board of retirement include provisions for the filing of a sworn statement by every person who is or becomes a member, showing date of birth, nature and duration of employment with the county, compensation received, and other information as is required by the board. This bill would authorize the regulations, in lieu of a sworn statement, to provide for the submission of the information by a member's employer instead of the person. Additionally, this bill would authorize the alternate retired member to vote as a member of the board if the 8th member is present and both the 2nd and 3rd, both the 2nd and 7th, or both the 3rd and 7th members are absent for any cause. This provision is sponsored by CRCEA. Finally, the bill provides that a safety member who receives credit for prior employment in public service, the principal duties of which consisted of active law enforcement or active fire suppression, or active service in the Armed Forces of the United States during time of war or national emergency, will have his or her retirement allowance for that service calculated under the safety benefit formula in effect on the date of the member's initial safety membership, rather than a single specified safety formula. The bill is still at the Assembly P. E. R. & S.S. Committee.

AB 2283 (Calderon), this bill initially required the STRS Board and the Board of Administration of PERS, consistent with their fiduciary duties, to cease investing in securitized home rental properties, on and after January 1, 2017. The bill would have also required the boards, consistent with their fiduciary duties, to liquidate investments in securitized home rental properties before January 1, 2018. It was amended on March 28 to eliminate the mandatory provisions regarding cessation of investing and liquidation and, instead, to evaluate their investment in

securitized home rental properties and ensure certain requirements are met, including that the property management group is in compliance with fair housing laws. Further, the bill would also require each board to appoint an independent ombudsman to implement a system of oversight and enforcement of the evaluation provisions. The bill is at the Assembly P. E. R. & S.S. Committee.

AB 2456 (Cooley) would have stated the intent of the Legislature to encourage state and local public employers that provide a defined benefit pension plan to their employees to effectively manage their pension contributions payments by investing surplus funds into a trust fund to be developed, established, and administered by the CalPERS Board of Administration. It was amended on March 17 to eliminate the intent language and, instead, now requires the Board to develop, establish, and administer what it has named "The California Employers' Pension Prefunding Trust Program" to encourage employers to effectively manage their pension contributions payments by investing surplus funds into that trust fund. The bill is at the Assembly P. E., R. & S.S. Committee.

AB 2650 (Nazarian). This bill is a reprise of AB 1410, which died in the last session. It would prohibit the boards of administration of the Public Employees' Retirement System and State Teachers' Retirement System from making additional or new investments, or renewing existing investments, of public employee retirement funds in an investment vehicle in Turkey that is issued by the government of Turkey or that is owned, controlled, or managed by the government of Turkey. It would also require the boards to liquidate existing investments in Turkey in these types of investment vehicles on or before July 1, 2018, subject to engagement with the government of Turkey regarding whether it is transitioning to publicly accepting its responsibility for the Armenian Genocide, and would require these boards, on or before January 1, 2019, to make a specified report to the Legislature and the Governor regarding these actions. As is customary in bills which restrict investments by pension systems, the bill would provide that its provisions do not require a board to take any action that the board determines in good faith is inconsistent with its constitutional fiduciary responsibilities to the retirement system, and would indemnify the State's General Fund and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract to the boards, in connection with actions relating to these investments.

AB 2833 (Cooley) would, for contracts entered into on and after January 1, 2017, require a public pension or retirement system to require private equity fund managers, partnerships, portfolio companies, and affiliates to make specified disclosures regarding fees and expenses in connection with limited partner agreements on a form prescribed by the system. Consistent with requirements relating to public records, the bill would require a public pension or retirement system to disclose the information received in connection with the limited partner agreements at least once annually at a meeting open to the public. This bill is in response to a lot of negative publicity about hidden fees and charges associated

with investments by retirement systems in hedge funds and private equity. The bill is in the Assembly P. E., R. & SS Committee.

SB 24 (Hill) would authorize a joint powers authority formed by the Cities of Belmont, Foster City, and San Mateo on or after January 1, 2013, to provide employees who are not new members under PEPRA with the defined benefit plan or formula that was received by those employees from their respective employers on December 31, 2012, if they are employed by the joint powers authority within 180 days of the city providing for the exercise of a common power, to which the employee was associated, by the joint powers authority. The bill would also prohibit the formation of a joint powers authority on or after January 1, 2013, in a manner that would exempt a new employee or a new member from the requirements of PEPRA, and would make legislative findings as to the necessity of a special statute for the cities listed above. The bill is at the Senate Appr. Committee.

SB 201 (Wiekowski) would require a court, in an action by a third party to enjoin disclosure of a public record or declaratory relief concerning a request to inspect a public record, to apply the provisions of the California Public Records Act as if the action had been initiated by a person requesting disclosure of a public record. It would also require the third party seeking an injunction or declaratory relief to provide notice to the person whose request prompted the action at the same time the defendant public agency in the action is served. The bill resides at the desk of the Secretary of the Senate.

SB 574 (Pan) requires disclosure by the University of California of information regarding alternative investments it has made that is in the constructive possession of, or is otherwise accessible or obtainable by it. Under current law, specified records concerning alternative investments are exempt from disclosure unless the information in those records have already been publicly released. The bill is in the Senate Appr. Committee.

SB 897 (Roth**)** Existing law (Labor Code sec. 4850) provides that certain peace officers, firefighters, and other specified public employees are entitled to a leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of employment, for the period of the disability, but not to exceed one year. The leave of absence is in lieu of temporary disability payments or maintenance allowance payments otherwise payable under the workers' compensation system. The payment made during the leave of absence is tax-free and the time during the leave counts towards service in the retirement system. This bill would apply to and allow only police officers, firefighters, and sheriffs employed by local agencies an additional year of a leave of absence without loss of salary. **The bill was amended on March 29 to limit its application to catastrophic injuries at the hands of another, such as severe burns, severe bodily injuries resulting from a building collapse, and severe bodily injuries resulting from a shooting or stabbing. The catastrophic injury must have been incurred, during duty, through the direct result of the actions of another, including a battery, or through active firefighting operations without respect to**

the cause of the fire. The bill in the Senate Labor & Industrial Relations Committee (L. & I. R.).

SB 1162 (Berryhill) was gutted and amended on March 30 and require the CalPERS board to transfer available excess assets credited to the miscellaneous member category from the Mammoth Lakes Fire District (MLFD) employer account to satisfy MLFD's unfunded accrued actuarial obligations for its safety plan, if requested by MLFD. This transfer could only occur if the excess funding as measured by the actuarial value of the assets exceeds 200% of the accrued actuarial liability and the market value of the assets exceeds 150% of the amount this system would be obligated to pay to persons based on their service to MLFD after their contract with CalPERS was terminated. These values would be determined by the CalPERS chief actuary. The bill is at the Senate Rules Committee.

SB 1203 (Hertzberg) was gutted and amended on March 28 to require a joint powers authority (JPA) to offer defined benefit plans or formulas that are not PEPRA plans or formulas, provided that the plans or formulas were those the employees received prior to the creation of the authority, the employees are not new members under PEPRA, and they are employed by the JPA with 180 days after its creation of the JPA. The bill is at the Senate P. E. & R. Committee.

SB 1297 (Pan) was gutted and amended on April 5 to authorize a state or local public employer participating in an employee retirement savings plan, including deferred compensation plans and payroll deduction individual retirement account plans, to deduct contributions for automatic enrollment and automatic escalation in the employee retirement plan. It would require an employer that provides for automatic enrollment in a supplemental retirement savings plan to provide a default option that meets specified criteria and provide that an employer that provides automatic enrollment or automatic escalation is not liable for the investment decisions made by the employer on behalf of any participating employee for the default investment of contributions made for that employee, if specified requirements are met. The bill would prohibit deductions from the compensation of represented employees, and would also prohibit g higher contributions for non-represented employees than for represented employees in related retirement membership classifications unless the related represented employees have agreed to receive a lower rate of contribution or to not participate in the employee supplemental retirement savings plan in a collectively bargained MOU. The bill is at the Senate P. E. & R. Committee.

SB 1353 (Pan) was gutted and amended on March 28 to modify existing law prohibiting the boards of administration of PERS and STRS from investing in Sudan and in thermal coal companies, subject to the boards' plenary authority and fiduciary responsibility for investment of moneys and administration of the systems. This bill would provide, in connection with these prohibitions, that a board determination that an action fails to satisfy constitutional fiduciary

responsibilities requires a recorded roll-call vote of the full board, following a presentation and discussion of findings in an open session during a properly noticed public hearing. The bill was referred to the Senate P. E. & R. and Jud Committees.

SB 1390 (Block) was gutted and amended on March 28 to permit a retired STRS member to work for a school district and be paid within 180 days after retirement without reinstatement in STRS, if certain conditions are met, including that there is a current or projected teacher shortage in a subject area, as designated by the Superintendent of Public Instruction. Existing law prohibits compensation during the first 180 days after retirement. The bill is at the Senate P. E. & R. Committee.

SB 1436 (Bates) was amended on March 28. Existing law authorizes the legislative body of a local agency to hold a closed session regarding the salaries and fringe benefits of its unrepresented employees, but prohibits the closed session from including final action on the proposed compensation of such employees. This bill would require the legislative body to orally report a summary of a recommendation for final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive during the open meeting prior to taking final action. This appears to be a liberalization of current requirements since, currently, the final action must be agendized and, typically, there is a written report on the recommendation. The bill is at the Senate Gov. & F. Committee.

Other

Kern County is at it again! Although no bill has been introduced yet, the County is apparently planning to introduce one to modify 1937 Act Article 5.5, at least as far as Kern County is concerned. Article 5.5 is optional, only three 1937 Act counties have adopted it, and, under the current financial underfunded pension systems, it is unlikely any others will join them. This article established what is known as the Supplemental Retiree Benefit Reserve (SRBR), which may be used for retiree benefits in excess of regular pensions, as determined by the retirement board. It is funded by transferring of 50% of a retirement system's net earnings (excess earnings) into the SRBR, to the extent there are any. What Kern County is interested in accomplishing is to establish other criteria for the transfer of excess earnings. It would require all excess earnings to go into the system's main pension reserve, and none to the SRBR, whenever the pension system is funded at less than 95% and the SRBR is at least 120% funded. Under current circumstances, it is unlikely that any earnings will be transferred to the SRBR for quite some time since, as of the system's last actuarial valuation, it is funded at only 62%, while the SRBR is funded at 175%. A bit of disconcerting information is that it appears that SEIU Local 521 has agreed in an MOU to work with the County on securing the legislation.

Congress is also at it again! A bill has been introduced in the House (H.R. 4822), to be known as the Public Employee Pension Transparency Act (PEPTA). It would require state and local pension to plans to comply with certain reporting and disclosure requirements. The genesis of the bill is the number of allegations being made that pension systems are concealing their true financial obligations. This follows new requirements recently promulgated by the Governmental Accounting Standards Board regarding reporting and disclosure by retirement systems and their sponsoring public agencies. As Congress is inclined to act, or fail to act, it will be a while before any bill gets out of both houses and onto the President's desk.