

Legislative Report
September 2016

This will be the last report for this legislative year, unless the Legislature overrides one or more of the Governor's vetoes mentioned below.

Bold text represents changes since the last report

AB 241 (Gordon) required, 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 was 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). Since no 1937 Act county has yet declared bankruptcy, and the June 9 amendment limited the applicability of the bill to bankruptcies filed prior to Dec. 31, 2011, the bill as it currently exists is of no importance to CRCEA members. **The bill passed the Senate on August 15 (27-11), the Assembly on August 18 (65-11) and was sent to the Governor, who signed it on September 9 (Chap. 252).**

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 is dead.**

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 was amended on May 10 to add a provision limiting the increase that may be granted to the incumbents in the positions, as follows: (1) Ten percent for the 2017-18 fiscal year and (2) Five percent for any fiscal year subsequent to 2017-18. **The bill was signed by the Governor on Sept. 24 (Chap. 553).**

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 had been in the Senate since Sept. 10, 2015, but was finally referred to the P.E. & R. committee on May 21 (I missed that in my last report). It has been amended a few times since then, and no longer applies to PERS. It has gone through a few strange machinations, but finally passed out of the Senate (39-0) and sent to the Assembly for concurrence in the amendments. On August 30, the author asked that the bill be ordered to the inactive file.**

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 PEPR 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. AB 1640 was amended on June 20 in a strange way. The earlier version, as indicated above, applies to affected public employees hired prior to Dec. 30, 2014. A provision was added that makes it applicable to

any protected employee, but the provision limiting application to those hired prior to the specified date was not deleted, so the bill is internally inconsistent. **It passed the Appr. Committee on August 2 (5-2), but was ordered to the inactive file on August 29 at the request of Senator Monning.**

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. **The bill passed out of the Senate on August 1 (38-0), and the Governor signed it on August 17 (Chap. 123).**

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 dead.**

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 have allowed 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. **The bill was vetoed by the Governor on September 23. His Veto message was "This bill authorizes the retirement board of any county retirement system, operating under the Retirement Law of 1937, to unilaterally separate from the county where it operates.**

This is too far-reaching. Previous bills that authorized a county retirement system to become independent were the result of agreement between the county and the retirement system. This more collaborative approach better serves the public interest.”

What the Governor failed to recognize is that moves for independence derive from situations where the County is uncooperative in terms of establishing needed positions or in establishing appropriate salary ranges for the very specialized positions necessary for proper administration of the retirement system. Under those circumstances, it is hard to see how agreement with the county on legislation authorizing separation could be reached.

AB 1878 (Jones-Sawyer) This bill would authorize the amount of death benefit paid to the beneficiary upon the death of retired school members of PERS, currently \$2000, to be adjusted based on changes in the All Urban California Consumer Price Index, on and after January 1, 2017, following each actuarial valuation. **The bill was vetoed by the Governor on Sept. 26. His message was “This bill authorizes the California Public Employees' Retirement System Board to increase the lump-sum post-retirement death benefit for state and school members based on inflation.**

Given the state's huge unfunded pension liabilities, I don't believe it is prudent to add the additional costs that this bill would require.”

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 dead.**

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. **The Senate amendments were concurred in by the Assembly on August 1 (76-0) and the bill was sent to the Governor, who signed it on August 17 (Chap. 134)**

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 dead.**

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. The bill was amended on the Assembly floor on April 26 to provide that existing investments in Turkey would have to be liquidated within 6 months of the passage of a federal law imposing sanctions on Turkey and to require submittal of a report to the Legislature within one year of passage of such a law. **The bill is dead.**

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 was signed by the Governor on Sept. 14 (Chap. 361).**

SB 24 (Hill) originally would have authorized 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 entities 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 was amended in the Assembly on August 18 to apply instead to the Belmont Fire Protection District, Estero Municipal Improvement District, and the City of San Mateo. It was signed by the Governor on Sept. 23 (Chap. 531).**

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. **The bill is dead.**

SB 294 (Pan) PERL provides that a member with an absence due to military service or service with the uniformed services has the right to receive credit for service under specified conditions for that absence and requires the member's employer to contribute both the employee and employer contributions for that service credit. This bill would require the CalPERS to provide a separate and unique form to be used by a member to receive credit for that military service and would require the form to clearly state that the member has no obligation to pay for any portion of the employer contribution if eligibility is determined under the specified conditions. The bill would also require employers to provide the member with that form and inform the member of his or her rights to receive that credit with employer-paid contributions within 30 days of the member's return to state service and, until April 1, 2017, would further require state agencies to provide letters or electronic communications to all employees informing them of those rights. This bill would also require an employer to inform a new employee upon hiring of the rights to purchase service credit for certain active service, prior to the person's first employment with that employer or entrance into the retirement system, in the Armed Forces of the United States or in the Merchant Marine of the United States. **The bill was signed by the Governor on Sept. 27 (Chap. 707)**

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 dead.**

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. **It was amended and passed out of the Assembly on August 22 (71-2). The Senate concurred in the amendments on August 25 (36-1) and sent it the Governor, who vetoed it on Sept. 30. His message was "This bill doubles from one to two years special leave benefits for police officers, firefighters, or sheriffs who are disabled by a qualifying catastrophic injury. This leave is required to be provided at full salary and tax-free, resulting in take home pay that is higher than pre-injury wages.**

I was concerned when told this bill was prompted by a City of Riverside police officer who nearly lost his health benefits while on temporary disability. In that case, the City chose to extend the officer's benefits. Upon closer review, I have not found any other city which terminates the health benefits of police officers while they are on temporary disability.

As noted in my veto of AB 1451 last year, this disability leave benefit drives up costs significantly. Many local agencies are under significant financial stress. They must consider employee benefit increases in light of competing demands for critical services and long term pension and health care debts.

In light of all this, I believe the decision on how to handle cases such as this is best left to the local jurisdiction.”

SB 1162 (Berryhill) would 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 have occurred 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 was amended on June 15 to eliminate the 200% requirement mentioned above. **The bill was vetoed by the Governor on Sept. 16. His veto message was “Inherent in the nature of our pension systems is that each employee plan be funded separately and expend its funds only for the benefit of specific beneficiaries. This bill would upend this longstanding practice and set a harmful precedent by allowing the transfer of assets from one employee group to another.”**

SB 1203 (Hertzberg) authorizes 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. **It passed in the Assembly on August 18 (74-1) and was sent to the Governor, who signed it on Sept. 27 (Chap. 729).**

SB 1353 (Pan) would have modified 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 have provided, 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 gutted and amended in the Assembly on June 8 and now pertains to the State Teacher's Retirement System (STRS). It establishes a formula for increasing or decreasing the Legislature's annual required appropriation to STRS, and the purpose is to pay off the unfunded actuarial liability. The bill was signed by the Governor on Sept. 14 (Chap. 350).**

SB 1390 (Block) would 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. **The bill is dead.**

SB 1436 (Bates) 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 agendaized and, typically, there is a written report on the recommendation. **The bill passed out of the Assembly on August 4 (77-0), and was signed by the Governor on August 22 (Chap. 175).**