



SACRS
Legislative Committee Agenda
Thursday, February 25, 2010, 9 A.M.
Office of the
Sacramento County Employees Retirement System
US Bank Building
980 Ninth Street, 18th Floor
Sacramento, CA 95814
Conference Call Phone Number: (916) 874-3537, Code: 601015
SCERS Phone (916) 874-9119

1. Minutes of January 15, 2010 Meeting
2. 2009 SACRS Legislation
 - **AB 609 (Conway)**
Administrative Expenditure Cap
 - **AB 1354 (Fong)**
Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008
Compliance with Final IRS Regulation on Section 415 Limits
3. Proposed 2010 SACRS-sponsored Legislation
 - Tulare County ERA # 1: Qualifications for Reciprocal Membership
4. Other '37 Act Legislation
 - Merced CERA: Reciprocity
5. Other Retirement Legislation
6. Anti-Spiking Legislation
7. Orange County Lawsuit Update
8. Other
9. Adjournment

Minutes

January 15, 2010 Meeting

Draft Minutes
SACRS Legislative Committee Meeting
January 15, 2010, 9 A.M.
Office of the
Sacramento County Employees Retirement System
US Bank Building
980 Ninth Street, 18th Floor
Sacramento, CA 95814

Committee Members in Attendance

Richard Stensrud, Chair
Yves Chery
Chuck Conrad
Art Goulet
Lance Kjeldgaard
Bill Pollacek
Annette St. Urbain
Julie Wyne
Andy Yeung

Others in Attendance

Lina Bernal
Bob Gaumer
Cynthia Lau
Jim Lites
Bob Palmer
Sulema Peterson
Mike Robson
Trent Smith

Participating Via Conference Call

Jerry Allen
Tracy Towner

1. Minutes of November 11, 2009 Meeting
Upon motion and second, the committee approved the minutes of the November 11, 2009 meeting as amended.

Mr. Chery, who was absent from the November 11 meeting, abstained from voting.

2. 2009 SACRS Legislation

AB 609 (Conway) – Administrative Expenditure Cap

Mr. Smith has not yet heard back from the SEIU lobbyist, but has spoken with Senator Correa's office as the bill is pending in his committee. Concerns relating to special district issues and total assets of the retirement system are pending resolution.

AB 1354 (Fong) – HEART Act of 2008 and Compliance With Final IRS Regulation on Section 415 Limits

Chairman Stensrud reiterated that the goal of the bill is to assist '37 Act members to be in compliance with federal tax law, and suggested that the language include clarification that regulations can be adopted to help achieve that objective. Bob Blum issued a list of federal tax compliance conflicts that will be addressed at the SACRS conference in May and at a future CALAPRs meeting.

Mr. Palmer reported that STRS is not planning to seek compliance with federal IRS regulations, and that PERS has not yet issued a decision on the regulations, but is seeking legislation allowing them to move forward if they determine that some regulations are out of compliance.

3. Proposed 2010 Legislation

Tulare County: Qualifications for Reciprocal Membership

Senator Correa's chief-of-staff is aware of the proposal, which was written into both 31527 (h) and 31527 (i).

San Joaquin County voted against the proposal at the last general membership meeting.

4. Other '37 Act Legislation

SB 414 (Correa) – County employee retirement: boards

Status: Senate PER

SACRS Position: Watch

Sponsor: CRCEA

Mr. Goulet reported that SB 414 will be amended to say that a board of supervisors will hold an election to fill a vacancy for the duration of the current term within 90 days that the vacancy occurs.

5. Other Retirement Legislation

AB 1603 (Solario) – Workers’ compensation: temporary partial disability

Status: Introduced 1/5/10

SACRS Position: Watch

Sponsor: California Labor Federation

AB 1603 allows an employee be deemed temporarily partially disabled during the period when the employee’s disability is permanent and stationary, no more than 60 days have elapsed after the date the employee was informed that the disability is permanent and stationary, in addition to other conditions.

SB 593 (Romero) – Public employees’ retirement: postretirement death benefits

Status: Senate PER

SACRS Position: Watch

Sponsor:

SB 593 increases death benefit from \$2,000 to \$6,163 upon the death of a retired school member. \$6,163 is possibly an after tax amount to get to \$5,000.

SB 711 (Leno) – Public meetings: closed sessions: labor negotiations

Status: Senate Floor

SACRS Position: Watch

Sponsor:

SB 711 limits closed sessions when discussing collective bargaining agreements and publicizes the agreement before the meeting.

There was also brief discussion of:

AB 1645 (Nestande) – State Budget: key liabilities

AB 1651 (De La Torre) – PERL: furloughs: retirement credit

SB 628 (Ashburn) – County employees: health benefit system

SB 810 (Leno) – Single-payer health care coverage

6. Anti-Spiking Legislation Committee

Mr. Palmer reported on the efforts of the anti-spiking legislation working group. SACRS Legislative Committee members voiced concern that the “laundry list” approach presented by the working group would present additional litigation issues in light of the Ventura decision.

Members discussed other matters to be considered when drafting language including: the possibility of a cap (e.g., base pay plus 15%), vesting issues related to new hires, identification or determination of a class or group,

Mr. Palmer will draft a response to members' concerns. Mr. Smith and Mr. Robson will try to meet with the Assembly PERSS Committee Consultant and the representative from the California Professional Firefighters to emphasize the committee's concerns. Mr. Lites will attempt to engage CSAC's assistance as well.

7. Fiduciary Duties and Government Code Section 31522

Members reviewed the memo distributed in advance of the meeting relating to an elected employee trustee's responsibilities as a Board Member and his/her obligations as a County employee. Mr. Goulet presented this as an informational item only.

8. Orange County Lawsuit Update

No new information.

9. Other

The next SACRS Legislative Committee meeting will take place on Thursday, February 25. The committee normally meets on the third Friday of every month, however, in order to discuss all of the legislation introduced by the February 19 deadline, the meeting will take place later in the month.

The new consultant to the Senate Committee on Public Employment and Retirement has not yet been named.

Ms. Lau informed the committee that LACERA will be sponsoring legislation to address noncontributory Plan E members.

10. Adjournment

With no additional business before the committee, the meeting was adjourned at 11:56 A.M.

SACRS-sponsored Legislation

AMENDED IN SENATE JULY 1, 2009
AMENDED IN ASSEMBLY JUNE 2, 2009
AMENDED IN ASSEMBLY APRIL 30, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 609

Introduced by Assembly Member Conway

February 25, 2009

An act to amend Sections 31580.2 and 31580.3 of the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 609, as amended, Conway. County employees retirement: administrative costs.

The County Employees Retirement Law of 1937 requires a board of retirement, or a board of retirement and the board of investment, with appointed members to annually adopt a budget covering the entire expense of administration of the retirement system and prohibits the expense incurred in any year from exceeding $\frac{1}{100}$ of 1% of the total assets of the retirement system.

This bill would ~~increase that percentage to $\frac{1}{100}$ of 1%~~ *instead prohibit expenses incurred in any year from exceeding $\frac{1}{100}$ of 1% of the approved actuarial liability of the retirement system.* The bill would also make a conforming change regarding maximum expense in any year the expenditures include certain computer expenses.

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

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

1 SECTION 1. Section 31580.2 of the Government Code is
2 amended to read:

3 31580.2. In counties in which the board of retirement, or the
4 board of retirement and the board of investment, have appointed
5 personnel pursuant to Section 31522.1 or 31522.5, or both, the
6 respective board or boards shall annually adopt a budget covering
7 the entire expense of administration of the retirement system which
8 expense shall be charged against the earnings of the retirement
9 fund. Except as described in Section 31580.3, the expense incurred
10 in any year may not exceed ~~nineteen~~ *eighteen* hundredths of 1
11 percent of the ~~total assets~~ *approved actuarial liability* of the
12 retirement system.

13 SEC. 2. Section 31580.3 of the Government Code is amended
14 to read:

15 31580.3. (a) If during any year the expense of administration
16 of the retirement system includes expenditures for software,
17 hardware, and computer technology consulting services in support
18 of that software or hardware, the expense incurred may not exceed
19 the greater of the following:

20 (1) The sum of ~~nineteen~~ *eighteen* hundredths of 1 percent of the
21 ~~total assets~~ *approved actuarial liability* of the retirement system
22 plus one million dollars (\$1,000,000).

23 (2) ~~Twenty-four~~ *Twenty-three* hundredths of 1 percent of the
24 ~~total assets~~ *approved actuarial liability* of the retirement system.

25 (b) This section shall remain in effect only until January 1, 2013,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2013, deletes or extends that date.

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ASSEMBLY BILL

No. 1354

Introduced by Assembly Member Fong

February 27, 2009

An act to amend Section 31538 of the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1354, as introduced, Fong. County employees' retirement: cost-of-living adjustments.

The County Employees' Retirement Law of 1937 (CERL) provides that the management of a retirement system created pursuant to its provisions is vested in a board of retirement. CERL requires that the board of retirement adjust the payment of benefits payable pursuant to the law's provisions, including cost-of-living adjustments, as necessary, in order to maximize the benefits available to members who are subject to specified limits of the Internal Revenue Code.

This bill would prohibit the amount payable to a CERL retirement system member in a limitation year from exceeding the Internal Revenue Code limit as of the annuity starting date and as the limit may be increased in future years, as specified. The bill would specify that cost-of-living adjustments made to Internal Revenue Code limits continue to apply after a member's severance from employment or annuity starting date.

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

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

1 SECTION 1. Section 31538 of the Government Code is
2 amended to read:

3 31538. (a) The board shall adjust the payment of benefits
4 payable pursuant to this part, as necessary, in order to maximize
5 the benefits available to members who are subject to the limits of
6 Section 415 of the Internal Revenue Code. Those adjustments shall
7 include, but are not limited to, cost-of-living adjustments,
8 cost-of-living banks, temporary annuities, survivor continuance
9 benefits, or any combinations thereof.

10 (b) *The amount payable to a member in any limitation year,*
11 *including cost-of-living adjustments, shall not exceed the limit*
12 *established under Section 415(b) of the Internal Revenue Code at*
13 *the annuity starting date, and as may be increased in subsequent*
14 *years pursuant to Section 415(d) of the Internal Revenue Code*
15 *and applicable regulations.*

16 (c) *The cost-of-living adjustments made pursuant to Section*
17 *415(d) of the Internal Revenue Code to the limit established under*
18 *Section 415(b) of the Internal Revenue Code continue to apply*
19 *after a member's severance from employment or annuity starting*
20 *date.*

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: County employee retirement: membership

The County Employees' Retirement Law of 1937 (CERL) provides that the management of a retirement system created pursuant to its provisions is vested in a board of retirement. CERL authorizes the board of retirement to adopt regulations to designate the date that a person, who becomes a member of a system on a day other than the first calendar day of the month, provided that the designated day is within 6 weeks of the day that person entered service.

This bill would instead authorize a board of retirement to designate the date that a person, who becomes a member of the system on a day other than the first calendar day of the month, provided that the designated day is within 12 weeks of the day that person entered service. This bill would also authorize a board of retirement to designate the date that a member terminates service credited by the system, provided that



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designated day is not earlier than 12 weeks prior to that person's termination from
service.

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



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An act to amend Section 31527 of the Government Code, relating to
county employee retirement.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 31527 of the Government Code is amended to read:

31527. In its regulations, the board may include the following provisions:

(a) ~~From what~~ The warrants from which deductions of members' contributions shall be made.

(b) For a period of time longer than one year during which a member may redeposit ~~in the~~ the retirement fund an amount equal to all of the accumulated normal contributions ~~which~~ that he or she has withdrawn, plus regular interest thereon from the date of return to service.

(c) For a period of time longer than one year during which a member brought within the field of membership may pay into the retirement fund the amount equal to the contributions he or she would have made plus interest, if he or she had been a member from the date of its organization, or from the date of his or her entrance into county service, whichever is later.

(d) For a withdrawal charge against a member who withdraws his or her accumulated contributions. The withdrawal charge shall not exceed the interest credited to the member subsequent to the effective date of the regulation.

(e) For the exemption or exclusion from membership as a peace officer member or as a safety member or from membership altogether, in the discretion of the board, of persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose rate of compensation is less than eighty dollars (\$80) a month, or persons whose compensation is fixed at a rate by the day or hour.

(f) For the periodic physical examination, at county expense of safety members.



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(g) The amount of additional deductions from the salaries or wages of members pursuant to Article 15.5 or 16. ~~Such a~~ A provision may be adopted in anticipation of, and prior to Article 15.5 or 16 becoming operative in the particular county.

(h) The day upon which each person entering the county employ becomes a member of the ~~association system~~ if it is to be that day is other than the first day of the calendar month after his or her entrance into the service, provided that ~~said the~~ day shall be no later than ~~six~~ 12 weeks after his or her entrance into the service.

(i) The day upon which a member terminates service credited by the system, provided that the day shall be no earlier than 12 weeks prior to his or her termination from service.



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Other 1937 Act Legislation

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An act to add Section 31840.9 to the Government Code, relating to public employees' retirement.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 31840.9 is added to the Government Code, to read:

31840.9. The provisions of this article shall not apply to any person who is first hired by a public agency that is subject to this chapter on and after January 1, 2011.

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LEGISLATIVE COUNSEL'S DIGEST



Bill No.

as introduced, _ . . .

General Subject: Public employees' retirement: reciprocity.

The County Employees Retirement Law of 1937 specifies the retirement allowance payable to employees based on age and years of service. Existing law provides for reciprocity of retirement benefits, as specified, for a member of the Public Employees' Retirement System or a retirement system established under the County Employees Retirement Law of 1937 who retires concurrently under one of those systems and another specified public retirement system, if the period of time between the member's discontinuance of employment subject to the Public Employees' Retirement System or the retirement system established under the County Employees Retirement Law of 1937 and his or her entry into employment subject to the other system does not exceed 6 months or, in some cases, one year.

This bill would provide that those reciprocity provisions shall not apply to any person who is first hired by a public agency on and after January 1, 2011.

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



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AB 1739 (Lieu) – County employees’ retirement: disability: military leave
Status: Introduced 2/8/10
Last Amended:

AB 1902 (Portantino) – County employees’ retirement: Los Angeles County
Status: Introduced 2/16/10
Last Amended:

ASSEMBLY BILL

No. 1739

Introduced by Assembly Member Lieu

February 8, 2010

An act to add Section 31720.4 to the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1739, as introduced, Lieu. County employees' retirement: disability: military leave.

The County Employees Retirement Law of 1937 permits a member permanently incapacitated for the performance of duty to be retired for disability regardless of age only if the member's incapacity is a result of injury or disease arising out of, and in the course of, the member's employment, and the employment contributes substantially to the incapacity or the member has complete 5 years of service, as specified. Existing law permits the spouse of a member who dies in service after 5 years of service or as a result of service-connected injury or disease to elect a combined death benefit.

This bill would, in Los Angeles County, upon adoption by the board of supervisors or a district governing body, require that a member who becomes permanently incapacitated for the performance of duty with his or her county or district as a direct result of injury or disease arising out of, and in the course of, active military service while on military leave, as defined, be retired for nonservice-connected disability regardless of age or years of service. The bill would also permit the surviving spouse of a member who dies in the course of this active military service to receive the combined death benefit without regard to what would otherwise be required with regard to the member. The

bill would provide that the right to these benefits is not vested with respect to any member prior to the member's retirement or death.

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

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

1 SECTION 1. Section 31720.4 is added to the Government
2 Code, to read:

3 31720.4. (a) Notwithstanding subdivision (b) of Section 31720,
4 a member who becomes permanently incapacitated for the
5 performance of duty with his or her employing county or district
6 as a direct consequence and result of injury or disease arising out
7 of, and in the course of, active military service while on military
8 leave from the county or district, shall be retired for
9 nonservice-connected disability regardless of age or years of
10 service.

11 (b) Notwithstanding any provision to the contrary in Section
12 31781.3, the surviving spouse of a member who dies as a direct
13 consequence and result of injury or disease arising out of, and in
14 the course of, active military service while on military leave from
15 his or her employing county or district, shall be entitled to the
16 combined benefit under Section 31781.3 regardless of the
17 member's years of service at the time of death.

18 (c) For the purposes of this section:

19 (1) "Active military service" means full-time duty within a
20 branch of the Armed Forces of the United States.

21 (2) "Military leave" means an authorized leave of absence taken
22 from a member's employing county or district as a result of a
23 member being called to active military service because of his or
24 her position as a reservist or member of the National Guard.

25 (d) This section shall apply only to the County of Los Angeles
26 and shall not be operative with regard to the county, or a district
27 within the county, until the board of supervisors of the county, or
28 the governing body of the district, elects, by resolution adopted
29 by a majority vote, to make this section operative. The adoption
30 of a resolution making this section operative shall not create a
31 vested right with respect to any member prior to the member's
32 retirement or death. The board of supervisors or the governing
33 body of the district may repeal or amend the resolution at any time,

- 1 except to the extent that it would affect a member who is retired
- 2 or is deceased at the time of the repeal or amendment.

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ASSEMBLY BILL

No. 1902

Introduced by Assembly Member Portantino

February 16, 2010

An act to amend Sections 31488, 31490, and 31494.5 of, and to add Section 31495.6 to, the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1902, as introduced, Portantino. County employees' retirement: Los Angeles County.

Existing law establishes retirement plans, known as Retirement Plan D and Retirement Plan E, that are applicable in the retirement system in Los Angeles County and prescribe procedures for members to transfer between those plans. Under existing law, a member who transfers from Retirement Plan E to Retirement Plan D, as specified, may retire for service-connected or nonservice-connected disability and receive disability benefits under Retirement Plan D only if he or she has either (1) completed 2 continuous years of active service after his or her most recent transfer date, or (2) earned 5 years of retirement service credit under Retirement Plan D after his or her most recent transfer date. Existing law also provides that a member who becomes disabled and retires before meeting and does not meet either of these conditions (1) may apply for and receive only a deferred or service retirement allowance, and (2) for the purposes of calculating his or her retirement benefits under this section, shall be credited with service under Retirement Plan E, as specified, during any period he or she is totally disabled and is receiving, or eligible to receive, disability benefits, either

during or after any elimination or qualifying period, under a disability plan provided by the employer.

This bill would instead provide that a member who transfers from Retirement Plan E to Retirement Plan D, as specified, and who becomes disabled and has not completed the 2 continuous years of active service or earned 5 years of retirement service credit under Retirement Plan D after his or her most recent transfer date (1) may apply for and receive only a deferred or service retirement allowance, or (2) may elect to transfer prospectively back to Retirement Plan E, and for the purposes of calculating his or her retirement benefits under this section, shall in lieu of credit under Retirement Plan D be credited with service under Retirement Plan E, as specified, during any period he or she is totally disabled and is receiving, or eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer up to the earlier of the date he or she retires or no longer qualifies for disability benefits.

Existing law defines the age at time of entrance into the retirement system for a person who enters within 90 days, except as specified, of last rendering service as a member of the Public Employees' Retirement System, another retirement system established under the County Employees Retirement Law of 1937, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to specified conditions, and who retains his membership in such other system or systems, as the age at entry into the first such other system. Existing law also defines the member's age at the time of entrance into the retirement system for a person who, after entering, redeposits the contributions he or she withdrew from the Public Employees' Retirement System, and who otherwise meets all requirements for reciprocity under this article by reason of his or her membership in the Public Employees' Retirement System, as his or her age at entry into the Public Employees' Retirement System, commencing with the pay period immediately following receipt of confirmation from the Public Employees' Retirement System that all withdrawn contributions have been redeposited.

This bill would authorize a nonretired member to use current, forfeited, and vested membership periods, as specified, when meeting the reciprocity requirements for purposes of determining age of entry.

Existing law prohibits a member of Retirement Plan E from being credited with service for any period of time, in excess of 22 consecutive

workdays, in which the member is absent from work without pay, except as specified.

This bill would instead prohibit a member from being credited with service for any payroll period, in which no compensation is received by the member, except as specified.

Existing law requires a member to have completed 10 years of service to be vested under Retirement Plan E. Under existing law, for the purposes of calculating those 10 years of service, an unpaid leave of absence of not to exceed one year, or a leave of absence for which an employee receives any benefit that has been approved by the employer, is not considered an interruption of service, except that the period of time of unpaid leave in excess of 22 consecutive workdays is not considered as service in calculating other specified benefits.

This bill would instead provide that a payroll period in which no compensation is received by a member shall not be considered as service in calculating those other benefits.

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 31488 of the Government Code is
2 amended to read:

3 31488. Unless the context otherwise requires, the definitions
4 contained in this section, govern the construction of this article.

5 (a) As used in subdivisions (f) and (g) of Section 31491,
6 subdivisions (b) and (c) of Section 31492, and Section 31495,
7 "board" means the board of investments. In all other cases "board"
8 means the board of retirement.

9 (b) "Employer" means the county or district or agency whose
10 employees are members of the retirement system of the county.

11 (c) "Federal system" means the Old Age and Survivors
12 Insurance provisions of the Social Security Act.

13 (d) "Final compensation" means the average annual
14 compensation earnable by a general member during any three
15 years, whether or not consecutive, elected by the member at or
16 before the time an application for retirement is filed or, if no
17 election is made, during the three years in which the member or
18 former member last earned compensation preceding retirement. If
19 a member or former member has less than three years of service,

1 final compensation shall be determined by dividing total
2 compensation by the number of months of service credited to the
3 member or former member and multiplying by 12. In no event
4 shall final compensation include any disability benefits received
5 by the member or former member under a disability plan provided
6 by the employer.

7 (e) "Member" or "general member" means an employee hired
8 on a monthly permanent basis of at least three-quarter time, as
9 defined by the employer, except an employee eligible for safety
10 membership.

11 (f) "Primary insurance amount" means the monthly retirement
12 benefit payable under the federal system at the age at which full
13 retirement benefits are available under the federal system. This
14 age is deemed to be age 65 until June 30, 1983.

15 (g) "Service" means the period of uninterrupted employment
16 of a member and the time in which a member or former member
17 (1) is totally disabled, and (2) is receiving disability benefits or is
18 eligible to receive disability benefits either during or after any
19 elimination or qualifying period, under a disability plan provided
20 by the employer.

21 Except as otherwise herein provided, a member shall not be
22 credited with service for any *payroll* period of time, ~~in excess of~~
23 ~~22 consecutive workdays,~~ in which *no compensation is received*
24 ~~by the member is absent from work without pay.~~

25 Unless otherwise provided, service shall not include military
26 service or public service other than service with the employer.

27 SEC. 2. Section 31490 of the Government Code is amended
28 to read:

29 31490. (a) Except as provided in Sections 31490.5 and 31494,
30 and under reciprocal provisions of this article, a member who was
31 in public service prior to becoming a member may not elect to
32 receive credit in this retirement plan for that public service time,
33 and shall not receive credit for that prior public service.

34 (b) Absence from work or termination of employment while an
35 eligible employee or disability beneficiary, as defined by a
36 disability plan provided by the employer, shall not be considered
37 as breaking the continuity of service.

38 (c) For the purposes of subdivision (b) of Section 31491, an
39 unpaid leave of absence of not to exceed one year, or a leave of
40 absence for which an employee receives any benefit that has been

1 approved by the employer, shall not be considered an interruption
2 of service. However, ~~the period of time of unpaid leave in excess~~
3 ~~of 22 consecutive workdays a payroll period in which no~~
4 ~~compensation is received by a member~~ shall not be considered as
5 service in calculating the benefits otherwise provided under this
6 article.

7 SEC. 3. Section 31494.5 of the Government Code is amended
8 to read:

9 31494.5. (a) A general member whose benefits are governed
10 by Retirement Plan E may, during a period of active employment,
11 elect to change plan membership and become a member,
12 prospectively, in Retirement Plan D. The election shall be made
13 upon written application signed by the member and filed with the
14 board, pursuant to enrollment procedures and during an enrollment
15 period established by the board, which enrollment period shall not
16 occur more frequently than once every three years for that member.
17 The change in plan membership shall be effective as of the transfer
18 date, as defined in subdivision (g). Except as otherwise provided
19 in this section, the rights and obligations of a member who elects
20 to change membership under this section shall be governed by the
21 terms of Retirement Plan D on and after the transfer date. Prior to
22 the transfer date, the rights to retirement, survivors', or other
23 benefits payable to a member and his or her survivors or
24 beneficiaries shall continue to be governed by Retirement Plan E.

25 (b) If a member has made the election to change plans under
26 subdivision (a), monthly contributions by the member and the
27 employer under the terms of Retirement Plan D shall commence
28 as of the transfer date. For the purposes of calculating the member's
29 contribution rate under Retirement Plan D, his or her entry age
30 shall be deemed to be his or her age at his or her birthday nearest
31 the transfer date; however, if the member exchanges service credit
32 in accordance with subdivision (c), with regard to contributions
33 made for periods after that exchange, his or her entry age shall be
34 adjusted and deemed to be the member's age at his or her birthday
35 nearest the date on which begins the most recent period of
36 unbroken service credited under Retirement Plan D, taking into
37 account service purchased under subdivision (c). In no event shall
38 the exchange of service under subdivision (c) affect the entry age
39 with respect to, or the cost of, employee contributions made, or
40 service purchased, prior to the exchange.

1 (c) A general member who has elected to change plans under
2 subdivision (a) also may elect to exchange, at that time or any time
3 thereafter, but prior to the earlier of his or her application for
4 retirement, termination from employment, or death, some portion
5 designated in whole-month increments, or all of the service credited
6 under Retirement Plan E for an equivalent amount of service
7 credited under Retirement Plan D, provided, however, that the
8 member may not exchange less than 12 months service or, if less,
9 the total service credited under Retirement Plan E. The exchange
10 shall be effective on the date when the member completes the
11 purchase of that service by depositing in the retirement fund, by
12 lump sum or regular monthly installments, over the period of time
13 determined by a resolution adopted by a majority vote of the board
14 of retirement, or both, but in any event prior to the earlier of his
15 or her death or the date that is 120 days after the effective date of
16 his or her retirement, the sum of: (1) the contributions the member
17 would have made to the retirement fund under Retirement Plan D
18 for that length of time for which the member shall receive credit
19 as service under Retirement Plan D, computed in accordance with
20 the rate of contribution applicable to the member under Retirement
21 Plan D, based upon his or her entry age, and in the same manner
22 prescribed under Retirement Plan D as if that plan had been in
23 effect during the period for which the member shall receive service
24 credit, and (2) the regular interest thereon.

25 For the purposes of this subdivision, a member's entry age shall
26 be deemed to be the member's age at his or her birthday nearest
27 the date on which begins the most recent period of unbroken
28 service credited under Retirement Plan D following completion
29 of the service exchange under this subdivision. A member may
30 receive credit for a period of service under only one plan and in
31 no event shall a member receive credit for the same period of
32 service under both Retirement Plan D and Retirement Plan E.

33 A member who fails to complete the purchase of service as
34 required under this subdivision shall be treated as completing an
35 exchange of service under Retirement Plan E for an equivalent
36 amount of service under Retirement Plan D only with regard to
37 the service that actually has been purchased through completed
38 deposit with the retirement fund of the requisite purchase amount,
39 calculated in accordance with this subdivision.

1 (d) Except as otherwise provided in this section, effective as of
2 the transfer date, a member who has transferred to Retirement Plan
3 D pursuant to this section and his or her survivors or beneficiaries
4 shall receive retirement, disability, survivors', death, or other
5 benefits that shall consist of: (1) the benefits to which they are
6 entitled under the terms of Retirement Plan D, but based on the
7 member's service credited only under that plan, and payable at the
8 time and in the manner provided under Retirement Plan D, and
9 (2) the benefits to which they would have been entitled under the
10 terms of Retirement Plan E had the member remained a member
11 of Retirement Plan E, but based on the member's service credited
12 only under that plan, and payable at the time and in the manner
13 provided under Retirement Plan E. Except as otherwise provided
14 in this section, the calculation of the portion of a member's or
15 beneficiary's benefit that is attributable to each plan is subject to
16 that plan's respective, separate terms, including, but not limited
17 to, the definitions of "final compensation" and provisions
18 establishing cost-of-living adjustments, establishing minimum age
19 and service requirements, and governing integration with federal
20 social security payments. Notwithstanding the foregoing, the
21 aggregate service credited under both Retirement Plan D and
22 Retirement Plan E shall be taken into account for the purpose of
23 determining eligibility for, and vesting of, benefits under each
24 plan.

25 (e) Notwithstanding any other provision of Retirement Plan D
26 or Retirement Plan E, a member who transfers into Retirement
27 Plan D under this section may retire for service-connected or
28 nonservice-connected disability and receive disability benefits
29 under Retirement Plan D only if he or she has either (1) completed
30 two continuous years of active service after his or her most recent
31 transfer date, or (2) earned five years of retirement service credit
32 under Retirement Plan D after his or her most recent transfer date.
33 *A Notwithstanding any provision to the contrary, a member who*
34 *becomes disabled and retires before meeting and does not meet*
35 *either of these conditions (1) may apply for and receive only a*
36 *deferred or service retirement allowance, and or (2) may elect to*
37 *transfer prospectively back to Retirement Plan E, and for the*
38 *purposes of calculating his or her retirement benefits under this*
39 *section, shall in lieu of credit under Retirement Plan D be credited*
40 *with service under Retirement Plan E as provided under subdivision*

1 (g) of Section 31488 during any period he or she is totally disabled
2 and is receiving, or eligible to receive, disability benefits, either
3 during or after any elimination or qualifying period, under a
4 disability plan provided by the employer *up to the earlier of the*
5 *date he or she retires or no longer qualifies for disability benefits.*
6 If a member dies before he or she is eligible to retire and before
7 completing either two continuous years of active service after the
8 transfer date *into Retirement Plan D* or earning five years of
9 retirement service credit under Retirement Plan D ~~after the~~ *that*
10 transfer date, that member's beneficiary shall not be entitled to the
11 survivor allowance under Section 31781.1 or 31781.12, if
12 operative.

13 (f) Notwithstanding any other provisions of Retirement Plan D
14 or Retirement Plan E, a member who has transferred to Retirement
15 Plan D pursuant to this section and who retires for disability when
16 eligible under this section and Retirement Plan D, may not also
17 retire for service and receive service retirement benefits under
18 Retirement Plan E. However, for the purpose of calculating
19 disability benefits under Retirement Plan D, the "sum to which he
20 or she would be entitled as service retirement" or his or her "service
21 retirement allowance," as those terms are used in Sections 31726,
22 31726.5, and 31727.4, shall consist of the blended benefit to which
23 the member would be entitled under subdivision (d) if he or she
24 retired for service, not just the service retirement benefit to which
25 he or she would be entitled under Retirement Plan D.

26 (g) As used in this section:

27 (1) "Active service" means time spent on active, on-the-job
28 performance of the duties of a full-time or part-time position and
29 on any authorized paid leaves of absence; provided, however, that
30 any authorized paid leave of absence or part-time service shall not
31 constitute active service if the leave of absence or part-time service
32 is necessitated by a preexisting disability, injury, or disease. The
33 board of retirement shall determine whether or not a leave of
34 absence or part-time service is necessitated by a preexisting
35 disability, injury, or disease, and thus excluded from the member's
36 active service, based upon evidence presented by the employer
37 and the member upon request by the board.

38 (2) "Entry age" means the age used for calculating the normal
39 rate of contribution to Retirement Plan D with respect to a member

1 who has transferred membership to Retirement Plan D under this
2 section.

3 (3) "Period of active employment" means a period during which
4 the member is actively performing the duties of a full-time or
5 part-time employee position or is on any authorized paid leave of
6 absence, except a leave of absence during which the member is
7 totally disabled and is receiving, or is eligible to receive, disability
8 benefits, either during or after any elimination or qualifying period,
9 under a disability plan provided by the employer.

10 (4) "Retirement Plan D" means the contributory retirement plan
11 otherwise available to new members of the retirement system on
12 the transfer date.

13 (5) "Retirement Plan E" means the noncontributory retirement
14 plan established under this article.

15 (6) "Transfer date" means the first day of the first month that
16 is at least 30 days after the date that the application is filed with
17 the board to change plan membership under subdivision (a).

18 (h) This section shall only be applicable to Los Angeles County
19 and shall not become operative until the board of supervisors of
20 that county elects, by resolution adopted by a majority vote, to
21 make this section operative in the county.

22 SEC. 4. Section 31495.6 is added to the Government Code, to
23 read:

24 31495.6. A member may use current, forfeited, and vested
25 membership periods earned under this chapter when meeting the
26 reciprocity requirements for purposes of determining age of entry,
27 as defined in Sections 31833 and 31833.1. This section shall not
28 apply to members who are retired from this system.

O

Other Retirement Legislation

AB 1696 (Bill Berryhill) – Death benefits: payment duration
Status: Introduced 1/28/10
Last Amended:

AB 1743 (Hernandez) – Political Reform Act of 1974: placement agents
Status: Introduced 2/8/10
Last Amended:

AB 1821 (Ma) – PERS: preretirement death benefits
Status: 2/11/10
Last Amended:

AB 1856 (Fong) – Public employees' retirement
Status: 2/12/10
Last Amended:

AB 1862 (Eng) – Teachers' Retirement Board: members
Status: Introduced 2/12/10
Last Amended:

AB 1913 (Davis) – Retirement: pension fund
Status: Introduced 2/16/10
Last Amended:

ABX8 32 (Nestande) – State budget: key liabilities
Status: Introduced 1/25/10
Last Amended:

SB 919 (Hollingsworth) – Public retirement: social security
Status: Introduced 2/1/10
Last Amended:

SB 921 (Ashburn) – Public Employees' Medical and Hospital Care Act: employer contributions: Shasta County
Status: Introduced 2/1/10
Last Amended:

SB 922 (Ashburn) – Public Employees' Medical and Hospital Care Act: employer contributions: Placer County
Status: Introduced 2/1/10
Last Amended:

SB 989 (Hollingsworth) – Workers' compensation: permanent disability rating schedule
Status: Introduced 2/8/10
Last Amended:

SB 1007 (Hancock) – Political Reform Act of 1974: retirement system boards
Status: Introduced 2/10/10
Last Amended:

ASSEMBLY BILL

No. 1696

Introduced by Assembly Member Bill Berryhill

January 28, 2010

An act to amend Section 4703.5 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1696, as introduced, Bill Berryhill. Death benefits: payment duration.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, and in the course of, employment. Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, permanent partial disability, and in the case of death. Existing law provides that totally dependent minor children of the deceased worker shall receive death benefits until the youngest child attains 18 years of age, or until the death of a child physically or mentally incapacitated from earning, at a weekly rate of at least \$224.

This bill would extend death benefits until 19 years of age if the child is still attending high school.

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

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

1 SECTION 1. Section 4703.5 of the Labor Code is amended to
2 read:
3 4703.5. In the case of one or more totally dependent minor
4 children, as defined in Section 3501, after payment of the amount
5 specified in Section 4702, and notwithstanding the maximum
6 limitations specified in Sections 4702 and 4703, payment of death
7 benefits shall continue until the youngest child attains ~~age 18 years~~
8 *of age (19 years of age if the child is still attending high school)*,
9 or until the death of a child physically or mentally incapacitated
10 from earning, in the same manner and amount as temporary total
11 disability indemnity would have been paid to the employee, except
12 that no payment shall be made at a weekly rate of less than two
13 hundred twenty-four dollars (\$224).

O

ASSEMBLY BILL

No. 1743

**Introduced by Assembly Member Hernandez
(Principal coauthor: Assembly Member Lieu)
(Coauthors: Assembly Members Block, Blumenfield, Buchanan,
Ma, Portantino, Saldana, and Audra Strickland)
(Coauthor: Senator Correa)**

February 8, 2010

An act to amend Sections 7513.8 and 82002 of, and to add Sections 7513.86 and 7513.87 to, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1743, as introduced, Hernandez. Political Reform Act of 1974: placement agents.

Existing law regulates investments made by public pension and retirement systems and defines the term "placement agent" to mean a person or entity hired, engaged, or retained by an external manager, as defined, to raise money or investment from a public retirement system in California. Existing law, the Political Reform Act of 1974, provides for the comprehensive regulation of the lobbying industry, including requiring lobbyists to register with the Secretary of State and prohibiting lobbyists from engaging in certain activities in connection with legislative and administrative actions, as defined.

This bill would prohibit a person from acting as a placement agent in connection with any potential system investment made by a state public retirement system unless that person is registered as a lobbyist and is in full compliance with the Political Reform Act of 1974 as that act applies to lobbyists. The bill would also require a person acting as

a placement agent in connection with any potential system investment made by a local public retirement system to comply with any applicable requirements imposed by a local government agency in addition to those imposed by state law. However, the bill would exempt from these requirements an employee, officer, director, equity holder, partner, member, or trustee of an external manager who spends one-third or more of his or her time, during a calendar year, managing the assets controlled by the external manager. The bill would further expand the definition of “administrative action” for purposes of the Political Reform Act of 1974 to include, with regard only to placement agents, the decision by any state agency to enter into a contract to invest state public retirement system assets.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

- 1 SECTION 1. Section 7513.8 of the Government Code is
- 2 amended to read:
- 3 7513.8. As used in Sections 7513.85, 7513.86, 7513.87, 7513.9,
- 4 and 7513.95:
- 5 (a) “Board” means the retirement board of a public pension or
- 6 retirement system, as defined in subdivision (h) of Section 17 of
- 7 Article XVI of the California Constitution.

1 (b) "External manager" means an asset management firm that
2 is seeking to be, or has been, retained by a public retirement system
3 in California to manage a portfolio of assets, including securities,
4 for a fee.

5 (c) "Placement agent" means any person or entity hired,
6 engaged, or retained by, or acting on behalf of, an external
7 manager, or on behalf of another placement agent, as a finder,
8 solicitor, marketer, consultant, broker, or other intermediary to
9 raise money or investment from, or to obtain access to, a public
10 retirement system in California, directly or indirectly, including,
11 without limitation, through an investment vehicle.

12 SEC. 2. Section 7513.86 is added to the Government Code, to
13 read:

14 7513.86. (a) A person shall not act as a placement agent in
15 connection with any potential system investment made by a state
16 public retirement system unless that person is registered as a
17 lobbyist in accordance with Chapter 6 (commencing with Section
18 86100) of Title 9 and is in full compliance with the Political
19 Reform Act of 1974 (Title 9 (commencing with Section 81000))
20 as that act applies to lobbyists.

21 (b) This section does not apply to an employee, officer, director,
22 equity holder, partner, member, or trustee of an external manager
23 who spends one-third or more of his or her time, during a calendar
24 year, managing the assets controlled by the external manager.

25 SEC. 3. Section 7513.87 is added to the Government Code, to
26 read:

27 7513.87. (a) A person acting as a placement agent in
28 connection with any potential system investment made by a local
29 public retirement system shall comply with any applicable
30 requirements imposed by a local government agency pursuant to
31 Section 81013, in addition to the requirements of this chapter.

32 (b) This section does not apply to an employee, officer, director,
33 equity holder, partner, member, or trustee of an external manager
34 who spends one-third or more of his or her time, during a calendar
35 year, managing the assets controlled by the external manager.

36 SEC. 4. Section 82002 of the Government Code is amended
37 to read:

38 82002. (a) "Administrative action" means ~~the~~ *either of the*
39 *following*:

1 (1) *The proposal, drafting, development, consideration,*
 2 *amendment, enactment, or defeat by any state agency of any rule,*
 3 *regulation, or other action in any ratemaking proceeding or any*
 4 *quasi-legislative proceeding, which shall include any proceeding*
 5 *governed by Chapter 3.5 (commencing with Section 11340) of*
 6 *Part 1 of Division 3 of Title 2.*

7 (2) *With regard only to placement agents, the decision by any*
 8 *state agency to enter into a contract to invest state public*
 9 *retirement system assets.*

10 (b) “*Ratemaking proceeding*” means, for the purposes of a
 11 proceeding before the Public Utilities Commission, any proceeding
 12 in which it is reasonably foreseeable that a rate will be established,
 13 including, but not limited to, general rate cases, performance-based
 14 ratemaking, and other ratesetting mechanisms.

15 (c) “*Quasi-legislative proceeding*” means, for purposes of a
 16 proceeding before the Public Utilities Commission, any proceeding
 17 that involves consideration of the establishment of a policy that
 18 will apply generally to a group or class of persons including, but
 19 not limited to, rulemakings and investigations that may establish
 20 rules affecting an entire industry.

21 SEC. 5. No reimbursement is required by this act pursuant to
 22 Section 6 of Article XIII B of the California Constitution because
 23 the only costs that may be incurred by a local agency or school
 24 district will be incurred because this act creates a new crime or
 25 infraction, eliminates a crime or infraction, or changes the penalty
 26 for a crime or infraction, within the meaning of Section 17556 of
 27 the Government Code, or changes the definition of a crime within
 28 the meaning of Section 6 of Article XIII B of the California
 29 Constitution.

30 SEC. 6. The Legislature finds and declares that this bill furthers
 31 the purposes of the Political Reform Act of 1974 within the
 32 meaning of subdivision (a) of Section 81012 of the Government
 33 Code.

O

ASSEMBLY BILL

No. 1821

Introduced by Assembly Member Ma

February 11, 2010

An act to amend Section 21570 of the Government Code, relating to the Public Employees' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

AB 1821, as introduced, Ma. Public Employees' Retirement System: preretirement death benefits.

The Public Employees' Retirement Law provides preretirement death benefits for the surviving spouse or children, or both, as specified, of state members and specified school members not covered by the federal Social Security Act. That law prescribes various allowances for preretirement death benefits, but specifies that a person is prohibited from receiving more than one allowance, as specified.

This bill would make a technical, nonsubstantive change to that provision.

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

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

- 1 SECTION 1. Section 21570 of the Government Code is
- 2 amended to read:
- 3 21570. No person shall receive more than one allowance under
- 4 this article and that allowance shall be the largest of the monthly

1 ~~allowances~~ *allowance* to which he or she would otherwise be
2 entitled.

O

ASSEMBLY BILL

No. 1856

Introduced by Assembly Member Fong

February 12, 2010

An act to amend Section 21032 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1856, as introduced, Fong. Public employees' retirement.

The Public Employees' Retirement Law provides a comprehensive set of rights and benefits based upon age, service credit, and final compensation. Under the Public Employees' Retirement Law, members may elect to receive service credit for various types of public service, and this election is effective only if an appropriate payment, or authorization for payment, of the contributions and interest required for the credit is made.

This bill would make a technical, nonsubstantive change to these provisions.

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

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

1 SECTION 1. Section 21032 of the Government Code is
2 amended to read:
3 21032. A member may elect at any time prior to retirement, in
4 accordance with regulations of the board, to receive credit for
5 public service, under any of the definitions in this article, in
6 addition to his or her current and prior service credit. An election

1 shall be effective only if accompanied by a lump-sum payment of
2 the contributions and interest required for the credit or by
3 authorization for immediate institution of payroll deduction of
4 installment payment of the contributions and interest. The right of
5 election is subject to Sections 20894 and 20961, and shall be
6 ineffective with respect to any time or employment for which the
7 member subsequently becomes entitled to or eligible to elect to
8 receive service credit in another system supported in whole or in
9 part from public funds, in which case *the* accumulated contributions
10 on deposit for the period of service credit shall be paid to the
11 member.

O

ASSEMBLY BILL

No. 1862

Introduced by Assembly Member Eng

February 12, 2010

An act to amend Section 22200 of the Education Code, relating to the Teachers' Retirement Board.

LEGISLATIVE COUNSEL'S DIGEST

AB 1862, as introduced, Eng. Teachers' Retirement Board: members.

The State Teachers' Retirement Law establishes the procedures by which members of the Teachers' Retirement Board are selected. Existing law provides for the election of 3 members of the board by specified members of the defined Benefit Program and specified participants of the Cash Balance Benefit Program at elections conducted by the board. Existing law also authorizes the Governor to appoint 5 persons to the board, including a person who is either a retired member of the Defined Benefit Program or a retired participant of the Cash Balance Benefit Program.

This bill would, beginning January 1, 2012, instead provide that the board member that is either a retired member of the Defined Benefit Program or a retired participant of the Cash Balance Benefit Program would be elected by retired members of the Defined Benefit Program and retired participants of the Cash Balance Benefit Program.

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 22200 of the Education Code is amended
2 to read:

3 22200. (a) The plan and the system are administered by the
4 Teachers' Retirement Board. On and after January 1, 2004, the
5 members of the board are as follows:

6 (1) The Superintendent of Public Instruction.

7 (2) The Controller.

8 (3) The Treasurer.

9 (4) The Director of Finance.

10 (5) ~~Three~~Four persons who are either members of the Defined
11 Benefit Program or participants in the Cash Balance Benefit
12 Program, as follows:

13 (A) One person who, at the time of election, is an active member
14 of the Defined Benefit Program or an active participant of the Cash
15 Balance Benefit Program employed by a school district that
16 provides instruction for prekindergarten, kindergarten, or grades
17 1 to 12, inclusive, or a county office of education, in a position
18 other than a school administrator that requires a services credential
19 with a specialization in administrative services. This member shall
20 be elected by the active members of the Defined Benefit Program
21 and active participants of the Cash Balance Benefit Program who
22 are employed by a school district that provides instruction for
23 prekindergarten, kindergarten, or grades 1 to 12, inclusive, or
24 county office of education, pursuant to regulations adopted by the
25 board, for a four-year term commencing on January 1, 2004.

26 (B) One person who, at the time of election, is an active member
27 of the Defined Benefit Program or an active participant of the Cash
28 Balance Benefit Program employed by a school district that
29 provides instruction for prekindergarten, kindergarten, or grades
30 1 to 12, inclusive, or a county office of education. This member
31 shall be elected by the active members of the Defined Benefit
32 Program and active participants of the Cash Balance Benefit
33 Program who are employed by a school district that provides
34 instruction for prekindergarten, kindergarten, or grades 1 to 12,
35 inclusive, or a county office of education, pursuant to regulations
36 adopted by the board, for a four-year term commencing on January
37 1, 2004.

1 (C) One person who, at the time of election, is a community
2 college instructor and an active member of the Defined Benefit
3 Program or an active participant of the Cash Balance Benefit
4 Program employed by a community college district, who shall be
5 elected by the active community college members of the Defined
6 Benefit Program and the active community college participants of
7 the Cash Balance Benefit Program, pursuant to regulations adopted
8 by the board, for a four-year term commencing on January 1, 2004.

9 (D) *One person, who at the time of the election, is either a*
10 *retired member under this part or a retired participant under Part*
11 *14 (commencing with Section 26000). This member shall be elected*
12 *by the retired members of the Defined Benefit Program and the*
13 *retired participants of the Cash Balance Benefit Program, pursuant*
14 *to regulations adopted by the board, for a four-year period*
15 *commencing on January 1, 2012.*

16 (6) ~~Five~~Four persons appointed by the Governor for a term of
17 four years, subject to confirmation by the Senate, as follows:

18 (A) One person who, at the time of appointment, is a member
19 of the governing board of a school district or a community college
20 district.

21 ~~(B) One person who is either a retired member under this part~~
22 ~~or a retired participant under Part 14 (commencing with Section~~
23 ~~26000):~~

24 ~~(C)~~

25 (B) Three persons representing the public, whose terms shall
26 be staggered by varying the first terms of these members, as
27 follows:

28 (i) One person to a term expiring December 31, 2005.

29 (ii) One person to a term expiring December 31, 2006.

30 (iii) One person to a term expiring December 31, 2007.

31 (b) A person who is employed to perform creditable service by
32 a community college district and either a school district that
33 provides instruction for prekindergarten, kindergarten, or grades
34 1 to 12, inclusive, or a county office of education, may only be
35 elected to the position on the board that corresponds to the position
36 in which he or she accrued the most service credit during the prior
37 school year.

- 1 (c) The members of the board shall annually elect a chairperson
- 2 and vice chairperson.

O

ASSEMBLY BILL

No. 1913

Introduced by Assembly Member Davis

February 16, 2010

An act relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1913, as introduced, Davis. Retirement: pension fund.

The Public Employees' Retirement Law creates the Public Employees' Retirement Fund, which is a trust fund created and administered solely for the benefit of the members and retired members of this system and their survivors and beneficiaries. The Board of Administration of the Public Employees' Retirement System has the exclusive control of the administration and investment of the retirement fund.

This bill would declare the intent of the Legislature to enact legislation to encourage equal opportunity, and to establish quantifiable goals, for state pension fund utilization of emerging investment managers in the management of assets in specific asset classes.

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

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

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation to encourage equal opportunity, and to establish
- 3 quantifiable goals, for state pension fund utilization of emerging

- 1 investment managers in the management of assets in specific asset
- 2 classes.

O

ASSEMBLY BILL

No. 32

**Introduced by Assembly Member Nestande
(Principal coauthor: Assembly Member Arambula)**

January 25, 2010

An act to amend Section 13337 of the Government Code, relating to state fiscal affairs.

LEGISLATIVE COUNSEL'S DIGEST

AB 32, as introduced, Nestande. State Budget: key liabilities.

Under existing law, various duties and responsibilities are imposed upon the Governor and the Department of Finance in connection with the preparation and submission of the annual State Budget to the Legislature at each regular session thereof, including, among other things, the requirement to include a complete plan of all proposed expenditures and estimated revenues for the ensuing fiscal year.

This bill additionally would require the Governor, or the Department of Finance acting on his or her behalf, at the same time as the Governor's Budget is submitted to the Legislature, to submit a report to the Legislature, setting forth a list of the state's key liabilities, in the nature of debt, deferred payments, and other liabilities that will affect the state's financial health in the future. The bill would direct that the report include a discussion of budget-related, infrastructure-related, and retirement-related liabilities, as well as recommendations for the retirement of those liabilities.

The bill also would require the Governor's Budget to include a section that specifies the percentages and amounts of General Fund revenues that must be set aside and applied toward retiring key liabilities in accordance with the recommendations contained in the report. The bill

further would restrict the Governor from including in the budget as estimated revenues those revenues estimated to be generated from laws, programs, or executive actions not in effect or effectuated at the time the budget is submitted to the Legislature.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

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 13337 of the Government Code is
2 amended to read:

3 13337. (a) (1) The budget required by the State California
4 Constitution to be submitted by the Governor at each regular
5 session of the Legislature shall be submitted within the first 10
6 days thereof and shall contain a complete plan and itemized
7 statement of all proposed expenditures of the state provided by
8 existing law or recommended by him or her, and all of its
9 institutions, departments, boards, bureaus, commissions, officers,
10 employees, and other agencies, and of all estimated revenues, for
11 the ensuing fiscal year, together with a comparison, as to each item
12 of revenues and expenditures, with the actual revenues and
13 expenditures for the last completed fiscal year, the estimated
14 revenues, and expenditures for the existing fiscal year and the
15 budgeted revenue and expenditures for the next fiscal year.

16 (2) *Estimated revenues, for purposes of paragraph (1), shall*
17 *not include revenues estimated to be generated from laws,*
18 *programs, or executive actions not in effect or effectuated at the*
19 *time the budget is submitted to the Legislature.*

20 (b) The budget shall, ~~in accordance~~ *include the following:*

21 (1) *In accordance with Chapter 2 (commencing with Section*
22 *41200) of Part 24 of Division 3 of Title 2 of the Education Code,*
23 ~~include~~ *a section that specifies the percentages and amounts of*

1 General Fund revenues that must be set aside and applied for the
2 support of school districts, as defined in Section 41302.5 of the
3 *Education Code*, and community college districts, as required by
4 subdivision (b) of Section 8 of Article XVI of the California
5 Constitution.

6 (2) *A section that specifies the percentages and amounts of*
7 *General Fund revenues that must be set aside and applied toward*
8 *retiring key liabilities in accordance with the recommendations*
9 *contained in the report set forth in paragraph (2) of subdivision*
10 *(i).*

11 (c) The Governor, or the Department of Finance acting on his
12 or her behalf, shall make appropriate changes in the budget request
13 to reflect any modification in the organization or functions of state
14 government proposed under Article 7.5 (commencing with Section
15 12080) of Chapter 1 of *Part 2* prior to the passage of the budget.

16 (d) The Governor's Budget shall be prepared in accordance with
17 guidelines and instructions adopted by the Department of Finance.

18 (e) In order to provide meaningful comparisons, the Governor's
19 Budget shall be prepared in such a manner that the information
20 presented provides for such comparisons between the fiscal years.

21 (f) The Department of Finance shall submit to the committee
22 in each house which considers appropriations and to the Joint
23 Legislative Budget Committee copies of budget material submitted
24 to it by agencies pursuant to the provisions of Article 2
25 (commencing with Section 13320).

26 (g) The Governor's Budget shall also include a coding structure
27 which indicates for each budget entity the categorization of
28 expenditures and revenues.

29 (h) Prior to the submission of the Governor's Budget to the
30 Legislature, the Department of Finance may conduct public
31 hearings regarding any portion of any budget.

32 (i) The Governor, or the Department of Finance acting on his
33 or her behalf, shall, at the same time the Governor's Budget is
34 submitted to the Legislature, submit *the following* to the Legislature
35 copies:

36 (1) *Copies of the material for the purposes of subdivision (j).*

37 (2) *A report setting forth a list of the state's key liabilities, in*
38 *the nature of debt, deferred payments, and other liabilities that*
39 *will affect the state's financial health in the future. The report shall*
40 *include a discussion of budget-related liabilities,*

1 *infrastructure-related liabilities, and retirement-related liabilities,*
2 *as well as recommendations for the retirement of those liabilities.*

3 (j) The Department of Finance shall develop a fiscal information
4 system which will provide timely and uniform fiscal data needed
5 to formulate and monitor the budget, including, but not limited to,
6 ~~on-line~~ *online* inquiry capacity and the ability to simulate budget
7 expenditures and forecast revenues. This system may include,
8 among other things, data on encumbrances and expenditures by
9 line item, governmental unit, and fund source. The system shall
10 also include expenditures and encumbrances by program, as
11 required. This system shall also include a coding structure which
12 indicates the categorization of expenditures and revenues. This
13 system and the data shall be available to both the legislative and
14 executive branches. The system may contain separate programs
15 accessible by only one branch, designed to provide for distinct
16 application of the data, but the basic system data shall be available
17 on an equal basis to both the legislative and executive branches of
18 government.

19 SEC. 2. This act addresses the fiscal emergency declared by
20 the Governor by proclamation on January 8, 2010, pursuant to
21 subdivision (f) of Section 10 of Article IV of the California
22 Constitution.

O

Introduced by Senator HollingsworthFebruary 1, 2010

An act to amend Section 22000 of the Government Code, relating to public retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 919, as introduced, Hollingsworth. Public retirement: social security.

The Board of Administration of the Public Employees' Retirement system is required, upon application by a public agency, as defined, to execute an agreement with the federal government for the coverage of the public employees of the agency under the federal Social Security Act in conformity with specified regulations.

Existing law expresses the Legislature's policy that protection afforded to employees in positions covered by a public retirement system on the date that an agreement for coverage for those employees under the federal Social Security Act is made applicable to the service performed, or to the benefits received, under the retirement system and that those protections are not impaired as a result of the agreement or as a result of a legislative enactment made in anticipation of the agreement.

This bill would make technical, nonsubstantive changes to that provision.

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

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

1 SECTION 1. Section 22000 of the Government Code is
2 amended to read:

1 22000. It is the policy of the Legislature that the protection
2 afforded *to* employees in positions covered by a retirement system
3 on the date an agreement under this part is made applicable to
4 service performed in ~~such~~ *those* positions, or ~~receiving~~ *to* periodic
5 benefits *received* under ~~such~~ *that* retirement system ~~at such time~~,
6 will not be impaired as a result of making the agreement ~~so~~
7 ~~applicable~~ or as a result of *a* legislative enactment *made* in
8 anticipation ~~thereof~~ *of the agreement*.

O

Introduced by Senator Ashburn

February 1, 2010

An act relating to the Public Employees' Medical and Hospital Care Act.

LEGISLATIVE COUNSEL'S DIGEST

SB 921, as introduced, Ashburn. Public Employees' Medical and Hospital Care Act: employer contributions: Shasta County.

Existing law requires the Board of Administration of the Public Employees' Retirement System to administer the Public Employees' Medical and Hospital Care Act. Existing law permits a contracting agency to elect to be subject to the act for its employees and annuitants, provided that the contracting agency and each employee or annuitant contribute a portion of the cost of providing the benefit coverage afforded under the health benefit plan approved or maintained by the board in which the employee or annuitant may be enrolled. Existing law specifies that the employer contribution of a contracting agency begins on the effective date of enrollment and is the amount fixed from time to time by resolution of the governing body of the agency.

This bill would declare the intent of the Legislature to enact legislation that would enable Shasta County and a collective bargaining unit, by agreement in a memorandum of understanding, to permit the county, a contracting agency under the Public Employees' Medical and Hospital Care Act, to make an employer contribution for employees first hired on or after the effective date of the memorandum of understanding at a rate that may differ from the employer contribution rate for current employees and annuitants.

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

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

1 SECTION 1. It is the intent of the Legislature to enact
2 legislation that would enable Shasta County and a collective
3 bargaining unit, by agreement in a memorandum of understanding,
4 to permit the county, a contracting agency under the Public
5 Employees' Medical and Hospital Care Act, to make an employer
6 contribution for employees first hired on or after the effective date
7 of the memorandum of understanding at a rate that may differ from
8 the employer contribution rate for current employees and
9 annuitants.

O

Introduced by Senator Ashburn

February 1, 2010

An act relating to the Public Employees' Medical and Hospital Care Act.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as introduced, Ashburn. Public Employees' Medical and Hospital Care Act: employer contributions: Placer County.

Existing law requires the Board of Administration of the Public Employees' Retirement System to administer the Public Employees' Medical and Hospital Care Act. Existing law permits a contracting agency to elect to be subject to the act for its employees and annuitants, provided that the contracting agency and each employee or annuitant contribute a portion of the cost of providing the benefit coverage afforded under the health benefit plan approved or maintained by the board in which the employee or annuitant may be enrolled. Existing law specifies that the employer contribution of a contracting agency begins on the effective date of enrollment and is the amount fixed from time to time by resolution of the governing body of the agency.

This bill would declare the intent of the Legislature to enact legislation that would enable Placer County and a collective bargaining unit, by agreement in a memorandum of understanding, to permit the county, a contracting agency under the Public Employees' Medical and Hospital Care Act, to make an employer contribution for employees first hired on or after the effective date of the memorandum of understanding at a rate that may differ from the employer contribution rate for current employees and annuitants.

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

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

1 SECTION 1. It is the intent of the Legislature to enact
2 legislation that would enable Placer County and a collective
3 bargaining unit, by agreement in a memorandum of understanding,
4 to permit the county, a contracting agency under the Public
5 Employees' Medical and Hospital Care Act, to make an employer
6 contribution for employees first hired on or after the effective date
7 of the memorandum of understanding at a rate that may differ from
8 the employer contribution rate for current employees and
9 annuitants.

O

Introduced by Senator HollingsworthFebruary 8, 2010

An act to amend Section 4660 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 989, as introduced, Hollingsworth. Workers' compensation: permanent disability rating schedule.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law requires the administrative director to formulate a rating schedule for determining the percentage of an injured employee's permanent disability in accordance with certain criteria.

This bill would make a technical, nonsubstantive change to the above-described provisions.

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

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

- 1 SECTION 1. Section 4660 of the Labor Code is amended to
- 2 read:
- 3 4660. (a) In determining the percentages of permanent
- 4 disability, account shall be taken of the nature of the physical injury
- 5 or disfigurement, the occupation of the injured employee, and his
- 6 or her age at the time of the injury, consideration being given to
- 7 an employee's diminished future earning capacity.

1 (b) (1) For purposes of this section, the “nature of the physical
2 injury or disfigurement” shall incorporate the descriptions and
3 measurements of physical impairments and the corresponding
4 percentages of impairments published in the American Medical
5 Association (AMA) Guides to the Evaluation of Permanent
6 Impairment (5th Edition).

7 (2) For purposes of this section, an employee’s diminished future
8 earning capacity shall be a numeric formula based on empirical
9 data and findings that aggregate the average percentage of
10 long-term loss of income resulting from each type of injury for
11 similarly situated employees. The administrative director shall
12 formulate the adjusted rating schedule based on empirical data and
13 findings from the Evaluation of California’s Permanent Disability
14 Rating Schedule, Interim Report (December 2003), prepared by
15 the RAND Institute for Civil Justice, and upon data from additional
16 empirical studies.

17 (c) The administrative director shall amend the schedule for the
18 determination of the percentage of permanent disability in
19 accordance with this section at least once every five years. This
20 schedule shall be available for public inspection and, without
21 formal introduction in evidence, shall be prima facie evidence of
22 the percentage of permanent disability to be attributed to each
23 injury covered by the schedule.

24 (d) The schedule shall promote consistency, uniformity, and
25 objectivity. The schedule and any amendment thereto or revision
26 thereof shall apply prospectively and shall apply to and govern
27 only those permanent disabilities that result from compensable
28 injuries received or occurring on and after the effective date of the
29 adoption of the schedule, amendment or revision, as the fact may
30 be. For compensable claims arising before January 1, 2005, the
31 schedule as revised pursuant to changes made in legislation enacted
32 during the 2003–04 Regular and Extraordinary Sessions shall apply
33 to the determination of permanent disabilities when there has been
34 either no comprehensive medical-legal report or no report by a
35 treating physician indicating the existence of permanent disability,
36 or when the employer is not required to provide the notice required
37 by Section 4061 to the injured worker.

38 (e) On or before January 1, 2005, the administrative director
39 shall adopt regulations to implement the changes made to this

1 section by the act that added this subdivision *Chapter 34 of the*
2 *Statutes of 2004.*

O

**Introduced by Senator Hancock
(Coauthors: Senators DeSaulnier, Denham, Liu, and Strickland)**

February 10, 2010

An act to amend Sections 82023, 82024, 82036, 82036.5, 84101, 84200.5, 84215, and 85204 of, to add Section 84200.9 to, and to repeal and add Section 84225 of, the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

SB 1007, as introduced, Hancock. Political Reform Act of 1974: retirement system boards.

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and requires candidates for elective office, candidates for elective state office, and committees formed or existing primarily to support or oppose those candidates to file specified reports disclosing contributions and independent expenditures made in connection with the campaigns of those candidates.

Existing law further establishes the Board of Administration of the Public Employees' Retirement System to administer the Public Employees' Retirement System and the Teachers' Retirement Board to administer the State Teachers' Retirement System. Existing law specifies the composition of those boards and requires that designated positions on the boards be filled by election. With limited exception, as specified, candidates for election to those boards are not required to comply with the various reporting requirements imposed by the Political Reform Act of 1974.

This bill would revise the definitions of "elective office" and "elective state office" for purposes of the Political Reform Act of 1974 to include membership on the boards described above and would repeal the

provision that exempts from the act candidates for election to those boards, thereby subjecting those candidates, and committees formed or existing primarily to support or oppose those candidates, to the reporting requirements of the act. The bill would further make conforming changes to provisions of the act relating to the reporting of late contributions, the reporting of late independent expenditures, the filing of committee organization statements, and the filing of campaign statements and preelection statements. In addition, the bill would give the Fair Political Practices Commission the authority to adopt regulations to tailor the act's reporting and disclosure requirements for those candidates and committees consistent with the purposes and provisions of the act.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 82023 of the Government Code is
 2 amended to read:
 3 82023. "Elective office" means any state, regional, county,
 4 municipal, district or judicial office ~~which~~ *that* is filled at an
 5 election. "Elective office" also includes membership on a county
 6 central committee of a qualified political party, and ~~members~~
 7 ~~elected to membership through election on~~ *membership through election on* the Board of
 8 Administration of the Public Employees' Retirement System *or*
 9 *the Teachers' Retirement Board.*

1 SEC. 2. Section 82024 of the Government Code is amended
2 to read:

3 82024. "Elective state office" means the office of Governor,
4 Lieutenant Governor, Attorney General, Insurance Commissioner,
5 Controller, Secretary of State, Treasurer, Superintendent of Public
6 Instruction, Member of the Legislature, member elected to the
7 Board of Administration of the Public Employees' Retirement
8 System, *member elected to the Teachers' Retirement Board*, and
9 member of the State Board of Equalization.

10 SEC. 3. Section 82036 of the Government Code is amended
11 to read:

12 82036. "Late contribution" means any of the following:

13 (a) Any contribution, including a loan, that totals in the
14 aggregate one thousand dollars (\$1,000) or more ~~that~~ *and* is made
15 to or received by a candidate, a controlled committee, or a
16 committee formed or existing primarily to support or oppose a
17 candidate or measure before the date of the election at which the
18 candidate or measure is to be voted on but after the closing date
19 of the last campaign statement required to be filed before the
20 election. *For purposes of the Board of Administration of the Public*
21 *Employees' Retirement System and the Teachers' Retirement*
22 *Board, "the date of the election" is the deadline to return ballots.*

23 (b) Any contribution, including a loan, that totals in the
24 aggregate one thousand dollars (\$1,000) or more ~~that~~ *and* is made
25 to or received by a political party committee, as defined in Section
26 85205, before the date of any state election, but after the closing
27 date of the last campaign statement required to be filed before the
28 election.

29 SEC. 4. Section 82036.5 of the Government Code is amended
30 to read:

31 82036.5. "Late independent expenditure" means any
32 independent expenditure ~~which~~ *that* totals in the aggregate one
33 thousand dollars (\$1,000) or more and is made for or against any
34 specific candidate or measure involved in an election before the
35 date of the election but after the closing date of the last campaign
36 statement required to be filed prior to the election by a candidate
37 or committee participating in ~~such~~ *the* election. *For purposes of*
38 *the Board of Administration of the Public Employees' Retirement*
39 *System and the Teachers' Retirement Board, "the date of the*
40 *election" is the deadline to return ballots.*

1 SEC. 5. Section 84101 of the Government Code is amended
2 to read:

3 84101. (a) A committee that is a committee by virtue of
4 subdivision (a) of Section 82013 shall ~~file with the Secretary of~~
5 ~~State a statement of organization within 10 days after it has~~
6 ~~qualified as a committee.~~ The committee shall file the original of
7 the statement of organization with the Secretary of State and shall
8 also file a copy of the statement of organization with the local
9 filing officer, if any, with whom the committee is required to file
10 the originals of its campaign reports pursuant to Section 84215.
11 The original and copy of the statement of organization shall be
12 filed within 10 days after the committee has qualified as a
13 committee. The Secretary of State shall assign a number to each
14 committee that files a statement of organization and shall notify
15 the committee of the number. The Secretary of State shall send a
16 copy of statements filed pursuant to this section to the county
17 elections official of each county ~~which~~ *that* he or she deems
18 appropriate. A county elections official who receives a copy of a
19 statement of organization from the Secretary of State pursuant to
20 this section shall send a copy of the statement to the clerk of each
21 city in the county that he or she deems appropriate.

22 (b) In addition to filing the statement of organization as required
23 by subdivision (a), if a committee qualifies as a committee under
24 subdivision (a) of Section 82013 before the date of an election in
25 connection with which the committee is required to file preelection
26 statements, but after the closing date of the last campaign statement
27 required to be filed before the election pursuant to Section 84200.7
28 ~~or~~, 84200.8, *or* 84200.9, the committee shall file, by facsimile
29 transmission, guaranteed overnight delivery, or personal delivery
30 within 24 hours of qualifying as a committee, the information
31 required to be reported in the statement of organization. The
32 information required by this subdivision shall be filed with the
33 filing officer with whom the committee is required to file the
34 originals of its campaign reports pursuant to Section 84215.

35 (c) If an independent expenditure committee qualifies as a
36 committee pursuant to subdivision (a) of Section 82013 during the
37 time period described in Section 82036.5 and makes independent
38 expenditures of one thousand dollars (\$1,000) or more to support
39 or oppose a candidate or candidates for office, the committee shall
40 file, by facsimile transmission, online transmission, guaranteed

1 overnight delivery, or personal delivery within 24 hours of
2 qualifying as a committee, the information required to be reported
3 in the statement of organization. The information required by this
4 section shall be filed with the filing officer with whom the
5 committee is required to file the original of its campaign reports
6 pursuant to Section 84215, and ~~to file~~ *shall be filed* at all locations
7 required for the candidate or candidates supported or opposed by
8 the independent expenditures. The filings required by this section
9 are in addition to filings that may be required by Sections 84203.5
10 and 84204.

11 (d) For purposes of this section, in calculating whether one
12 thousand dollars (\$1,000) in contributions has been received,
13 payments for a filing fee or for a statement of qualifications to
14 appear in a sample ballot shall not be included if these payments
15 have been made from the candidate's personal funds.

16 SEC. 6. Section 84200.5 of the Government Code is amended
17 to read:

18 84200.5. In addition to the campaign statements required by
19 Section 84200, elected officers, candidates, and committees shall
20 file preelection statements as follows:

21 (a) During an even-numbered year, all candidates for elective
22 state office being voted upon in the statewide direct primary
23 election or the statewide general election, their controlled
24 committees, and committees primarily formed to support or oppose
25 an elected state officer or a state candidate being voted upon, shall
26 file the applicable preelection statements specified in Section
27 84200.7 or 84200.8. All elected state officers who, during the
28 applicable reporting periods covered by Section 84200.7 or
29 84200.8, contribute to any committee required to report receipts,
30 expenditures, or contributions pursuant to this title, or make an
31 independent expenditure, shall file the applicable preelection
32 statements specified in Section 84200.7 or 84200.8. However, a
33 candidate ~~who for an office that~~ is not being voted upon in the
34 November election, his or her controlled committee, and any
35 committee primarily formed to support or oppose that candidate
36 is not required to file statements in connection with the November
37 election pursuant to subdivision (b) of Section 84200.7 unless,
38 during the reporting periods covered by Section 84200.7, the
39 candidate, his or her controlled committee, or any committee
40 primarily formed to support or oppose that candidate contributes

1 to any committee required to report receipts, expenditures, or
2 contributions pursuant to this title or makes independent
3 expenditures.

4 (b) During an even-numbered year, all candidates not specified
5 in subdivision (a) who are *running for offices* being voted upon
6 on the first Tuesday after the first Monday in June or November,
7 their controlled committees, and committees primarily formed to
8 support or oppose those candidates or a measure being voted upon
9 on the first Tuesday after the first Monday in June or November
10 of an even-numbered year shall file the preelection statements
11 specified in subdivision (a) of Section 84200.7 in the case of a
12 June election, or subdivision (b) of Section 84200.7 in the case of
13 a November election.

14 (c) All candidates *for offices* being voted upon on a date other
15 than the first Tuesday after the first Monday in June or November
16 of an even-numbered year, their controlled committees, and
17 committees primarily formed to support or oppose a candidate or
18 a measure being voted upon on a date other than the first Tuesday
19 after the first Monday in June or November of an even-numbered
20 year shall file the preelection statements specified in Section
21 84200.8.

22 (d) *During an election period for the Board of Administration*
23 *of the Public Employees' Retirement System or the Teachers'*
24 *Retirement Board, all candidates for these boards, their controlled*
25 *committees, and committees primarily formed to support or oppose*
26 *the candidates shall file the preelection statements specified in*
27 *Section 84200.9.*

28 (d)

29 (e) In an even-numbered year in which the statewide direct
30 primary election is held on the first Tuesday after the first Monday
31 in June, a state or county general purpose committee formed
32 pursuant to subdivision (a) of Section 82013, other than a political
33 party committee as defined in Section 85205, shall file the
34 preelection statements specified in Section 84200.7 if it makes
35 contributions or independent expenditures totaling five hundred
36 dollars (\$500) or more during the period covered by the preelection
37 statement. A state or county general purpose committee formed
38 pursuant to subdivision (b) or (c) of Section 82013 is not required
39 to file the statements specified in Section 84200.7.

40 (e)

1 (f) During an even-numbered year in which the statewide direct
2 primary election is held on a date other than the first Tuesday after
3 the first Monday in June, a state or county general purpose
4 committee formed pursuant to subdivision (a) of Section 82013,
5 other than a political party committee as defined in Section 85205,
6 shall file the preelection statements specified in Section 84200.8
7 if it makes contributions or independent expenditures totaling five
8 hundred dollars (\$500) or more during the period covered by the
9 preelection statement. A state or county general purpose committee
10 formed pursuant to subdivision (b) or (c) of Section 82013 is not
11 required to file the statements specified in Section 84200.8.

12 (g) *During an election period for the Board of Administration*
13 *of the Public Employees' Retirement System or the Teachers'*
14 *Retirement Board, a state or county general purpose committee*
15 *formed pursuant to subdivision (a) of Section 82013 shall file the*
16 *preelection statements specified in Section 84200.9 if it makes*
17 *contributions or independent expenditures totaling five hundred*
18 *dollars (\$500) or more during the period covered by the preelection*
19 *statement. A state or county general purpose committee formed*
20 *pursuant to subdivision (b) or (c) of Section 82013 is not required*
21 *to file the statements specified in Section 84200.9.*

22 (f)

23 (h) A political party committee as defined in Section 85205
24 shall file the applicable preelection statements specified in Section
25 84200.7 or 84200.8 in connection with a state election if the
26 committee receives contributions totaling one thousand dollars
27 (\$1,000) or more, or if it makes contributions or independent
28 expenditures totaling five hundred dollars (\$500) or more, during
29 the period covered by the preelection statement.

30 (g)

31 (i) City general purpose committees shall file statements as
32 follows:

33 (1) City general purpose committees in a city ~~which~~ *that* has an
34 election on the first Tuesday after the first Monday in June or
35 November of an even-numbered year shall file the statements
36 specified in subdivision (a) or (b) of Section 84200.7 for the
37 six-month period in which the city election is held, if they make
38 contributions or independent expenditures totaling five hundred
39 dollars (\$500) or more during the period covered by the preelection
40 statement.

1 (2) City general purpose committees in a city ~~which~~ *that* has an
2 election on a date other than the first Tuesday after the first Monday
3 in June or November of an even-numbered year shall file the
4 preelection statements specified in Section 84200.8 if they make
5 contributions or independent expenditures totaling five hundred
6 dollars (\$500) or more during the period covered by the preelection
7 statement.

8 SEC. 7. Section 84200.9 is added to the Government Code, to
9 read:

10 84200.9. Preelection statements for an election period for the
11 Board of Administration of the Public Employees' Retirement
12 System or the Teachers' Retirement Board shall be filed as follows:

13 (a) For the period ending five days before the beginning of the
14 ballot period, as determined by the relevant board, a statement
15 shall be filed no later than two days before the beginning of the
16 ballot period.

17 (b) For the period ending five days before the deadline to return
18 ballots, as determined by the relevant board, a statement shall be
19 filed no later than two days before the deadline to return ballots.

20 (c) In the case of a runoff election, for the period ending five
21 days before the deadline to return runoff ballots, as determined by
22 the relevant board, a statement shall be filed no later than two days
23 before the deadline to return runoff ballots.

24 (d) All candidates being voted upon, their controlled committees,
25 and committees primarily formed to support or oppose a candidate
26 being voted upon in that election shall file the statements specified
27 in subdivisions (b) and (c) by guaranteed overnight delivery service
28 or by personal delivery.

29 SEC. 8. Section 84215 of the Government Code is amended
30 to read:

31 84215. All candidates and elected officers and their controlled
32 committees, except as provided in ~~subdivision~~ *subdivisions* (e)
33 *and* (f), shall file one copy of the campaign statements required
34 by Section 84200 with the elections official of the county in which
35 the candidate or elected official is domiciled, as defined in
36 subdivision (b) of Section 349 of the Elections Code. In addition,
37 campaign statements shall be filed at the following places:

38 (a) Statewide elected officers and candidates for these offices
39 other than the Board of Equalization, supreme court justices, their
40 controlled committees, committees formed or existing primarily

1 to support or oppose these candidates, elected officers, supreme
2 court justices, or statewide measures, or the qualification of state
3 ballot measures, and all state general purpose committees and filers
4 not specified in subdivisions (b) to ~~(e)~~ (f), inclusive:

- 5 (1) The original and one copy with the Secretary of State.
- 6 (2) One copy with the Registrar-Recorder of Los Angeles
7 County.
- 8 (3) One copy with the Registrar of Voters of the City and County
9 of San Francisco.

10 (b) Members of the Legislature or Board of Equalization, court
11 of appeal justices, superior court judges, candidates for those
12 offices, their controlled committees, and committees formed or
13 existing primarily to support or oppose these candidates or
14 officeholders:

- 15 (1) The original and one copy with the Secretary of State.
- 16 (2) One copy with the elections official of the county with the
17 largest number of registered voters in the districts affected.

18 (c) Elected officers in jurisdictions other than legislative
19 districts, Board of Equalization districts, or appellate court districts
20 that contain parts of two or more counties, candidates for these
21 offices, their controlled committees, and committees formed or
22 existing primarily to support or oppose candidates or local
23 measures to be voted upon in one of these jurisdictions shall file
24 the original and one copy with the elections official of the county
25 with the largest number of registered voters in the jurisdiction.

26 (d) County elected officers, candidates for these offices, their
27 controlled committees, committees formed or existing primarily
28 to support or oppose candidates or local measures to be voted upon
29 in any number of jurisdictions within one county, other than those
30 specified in subdivision (e), and county general purpose committees
31 shall file the original and one copy with the elections official of
32 the county.

33 (e) City elected officers, candidates for city office, their
34 controlled committees, committees formed or existing primarily
35 to support or oppose candidates or local measures to be voted upon
36 in one city, and city general purpose committees shall file the
37 original and one copy with the clerk of the city. These elected
38 officers, candidates, and committees need not file with the elections
39 official of the county in which they are domiciled.

1 (f) Elected members of the Board of Administration of the Public
 2 Employees' Retirement System, elected members of the Teachers'
 3 Retirement Board, candidates for these offices, their controlled
 4 committees, and committees formed or existing primarily to support
 5 or oppose these candidates or elected members shall file the
 6 original and one copy with the Secretary of State, and a copy shall
 7 be retained at the relevant board's office in Sacramento. These
 8 elected officers, candidates, and committees need not file with the
 9 elections official of the county in which they are domiciled.

10 (f)

11 (g) Notwithstanding the above any other provision of this
 12 section, a committee, candidate, or elected officer is not required
 13 to file more than the original and one copy, or one copy, of a
 14 campaign statement with any one county elections official or city
 15 clerk or with the Secretary of State.

16 (g)

17 (h) If a committee is required to file campaign statements
 18 required by Section 84200 or 84200.5 in places designated in
 19 subdivisions (d) and (e), it shall continue to file these statements
 20 in those places, in addition to any other places required by this
 21 title, until the end of the calendar year.

22 SEC. 9. Section 84225 of the Government Code is repealed.

23 84225. (a) For the purposes of this section only, "board" means
 24 the Board of Administration of the Public Employees' Retirement
 25 System, as established under Article 1 (commencing with Section
 26 20090) of Chapter 2 of Part 3 of Division 5 of Title 2 of the
 27 Government Code.

28 (b) Except as provided in this section, the provisions of this
 29 article do not apply to candidates for the board, including
 30 incumbent board members running for reelection, as such
 31 candidates are described in subdivision (g) of Section 20090.

32 (c) Candidates for board seats described in subdivision (g) of
 33 Section 20090, including incumbent board members running for
 34 reelection, shall file campaign statements with the Secretary of
 35 State no later than two days before the beginning of the ballot
 36 period, as determined by the board, for the period ending five days
 37 before the beginning of the ballot period, and no later than January
 38 10, for the period ending December 31.

39 (1) The campaign statements shall contain an itemized report
 40 that is prepared on a form prescribed by the commission, with the

1 assistance of the board, that provides the information contained in
2 campaign statements required under Section 84211 to the extent
3 that the information is applicable to a board election.

4 ~~(2) The original of a campaign statement shall be filed with the~~
5 ~~Secretary of State and a copy shall be retained at the board's office~~
6 ~~in Sacramento and is a public record.~~

7 SEC. 10. Section 84225 is added to the Government Code, to
8 read:

9 84225. The provisions of this title apply to candidates for
10 election to the Board of Administration of the Public Employees'
11 Retirement System or the Teachers' Retirement Board, and to
12 committees formed or existing primarily to support or oppose those
13 candidates. The Commission may adopt regulations to tailor the
14 reporting and disclosure requirements for these candidates and
15 committees consistent with the purposes and provisions of this
16 title.

17 SEC. 11. Section 85204 of the Government Code is amended
18 to read:

19 85204. "Election-eyelet² cycle," for purposes of Sections 85309
20 and 85500, means the period of time commencing 90 days prior
21 to an election and ending on the date of the election. *For purposes*
22 *of the Board of Administration of the Public Employees' Retirement*
23 *System and the Teachers' Retirement Board, "the date of the*
24 *election" is the deadline to return ballots.*

25 SEC. 12. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 SEC. 13. The Legislature finds and declares that this bill
35 furthers the purposes of the Political Reform Act of 1974 within
36 the meaning of subdivision (a) of Section 81012 of the Government
37 Code.

O

SECTION 1 - <findings and declarations>

The Legislature finds and declares that:

State and local public retirement boards have been authorized under the law to administer retirement systems that provide adequate, secure retirement benefits for beneficiaries who dedicate their life's work to public service.

Employees partner with their public agency employers to fund this benefit.

Any manipulation of those benefits creates harm for the employees, beneficiaries, employers and taxpayers and should not be permitted.

The legislature further finds and declares that the efficacy of the systems is threatened by the behavior of those who seek to unfairly and unjustifiably enhance or "spike" their pensions.

The legislature or the courts never anticipated a circumstance where the application of the retirement law would result in a method that permits inequitable application of compensation rules in order to enhance an individual's retirement allowance.

It is the responsibility of the Legislature to provide guidance to every retirement system so they can determine the proper elements that go into calculating a member's retirement benefit as recognized by the laws governing the retirement system.

Retirement systems must employ sound principals that provide consistent treatment of compensation throughout a member's career and consistent treatment of compensation among a class of employees.

In order to provide that consistent treatment across the systems, the reporting system between the retirement system and each participating employer must be sufficiently precise so as to enable the retirement system to distinguish between items of remuneration that are and are not properly included in a member's final compensation

SEC 2. Section 7509 is added to the Government Code, to read:

7509 (a) In order to safeguard the integrity and soundness of all public retirement systems, assure prompt delivery of benefits and related services to the participants and their beneficiaries and minimize employer expenses thereto, all state and local public retirement systems shall administer their systems in compliance with the provisions of this section.

(b) The Board of each state and local public retirement system shall establish, by regulation, accountability provisions applicable to participating employers. Those accountability provisions shall include an ongoing audit process to validate compliance with the provisions of this section and penalty provisions for non-compliance with the provisions of this section, including, but not limited to untimely or inaccurate submissions of any information the board may require in the administration of the system.

(c) Any payrate, salary, special compensation or other remuneration determined by the board of a state or local public retirement system to have been paid for the principal purpose of enhancing a member's benefits under that system shall not be included in any calculation of compensation earnable. Any presumption by the board that salary or other remuneration was paid for the principle purpose of

enhancing a member's benefit under the system may be rebutted by the member or by the employer on behalf of the member. Upon receipt of sufficient evidence to the contrary, a presumption by the board that salary or other remuneration was paid for the principal purpose of enhancing a member's benefits under that system may be reversed.

(d) Cash conversions of accrued employee benefits in amounts that exceed that which is both earned and payable to the member during a pay period shall not be credited to or included in any calculation of compensation earnable by any state or local public retirement system.

(e) Final settlement or termination pay or similar payment that is received by a member in anticipation of retirement, upon retirement, or separation from employment shall not be credited to or included in any calculation of compensation earnable by any state or local public retirement system.

(f) A retired person, whether or not he or she has attained the normal retirement age, shall have a bona fide separation in service before performing service for any employer covered by the retirement system as an employee, through a third party, or as an independent contractor. A board of a state or local retirement system shall establish, by regulation, the criteria under which a bona fide separation is satisfied. In no case, shall a bona fide separation, established by the system be less than 6 months.

(g) In no case shall compensation credited to or included in any calculation of compensation earnable for an employee who is not in a group or class exceed, during the final compensation period as well as two years immediately preceding the final compensation period, the weighted average increase in compensation earnable during the same period for all employees of that same employer who are in the closest related group or class.

(h) For the purposes of this section, the following definitions shall apply:

(1) A group or class of employees means a number of employees of the same employer considered together because they share job similarities, work location, collective bargaining unit or other logical work grouping. Under no circumstance shall one employee be considered a group or class.

(2) Payrate or salary means the normal monthly rate of pay or monthly base pay of the member paid in cash and pursuant to publicly available pay schedules to similarly situated members of the same group or class of employment for services rendered on a full time basis during normal working hours.

(3) Payrate or salary for a member who is not in a group or class means the monthly rate of pay or monthly base pay or salary of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full time basis during normal working hours, subject to the limitations subdivision (g).

(4) Special compensation means a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(5) Compensation earnable means the salary or payrate, special compensation, or other remuneration of the member used in the determination of final compensation for the purposes of calculation a members retirement benefit.

SEC. 3. It is the intent of the Legislature to enact changes in the 1937 Act – County Employees Retirement Law to implement the provisions established by Government Code Section 7509.

<further define compensation, compensation earnable, payrate, special compensation, validation procedures for special compensation, reporting requirements and penalty provisions, errors and omissions provisions, audit processes>

SEC. 4. It is the intent of the Legislature to enact changes in the Education code applicable to the California Teachers Retirement System to implement the provisions established by Government Code Section 7509.

<further define compensation, compensation earnable, creditable compensation, validation procedures for compensation, reporting requirements and penalty provisions, errors and omissions provisions, audit processes>

SEC. 5. It is the intent of the Legislature to enact changes in the California Public Employees Retirement Law to implement the provisions established in Government Code Section 7509.

<further define compensation, compensation earnable, payrate, special compensation, validation procedures for special compensation, reporting requirements and penalty provisions, errors and omissions provisions, audit processes>

SEC. 6. It is the intent of the Legislature to enact changes in to Ch2 of Division 5 of Title 4 governing the retirement plan established by cities to implement the provisions established in Government Code Section 7509.

<further define compensation, compensation earnable, payrate, special compensation, validation procedures for special compensation, reporting requirements and penalty provisions, errors and omissions provisions, audit processes>

SEC. 7. It is the intent of the Legislature to enact changes to Ch 4, of part 1 of Div 1 of Title 5 of the GC governing police officers' pension fund and firemen's pension fund law in to implement the provisions established in Government Code Section 7509.

<further define compensation, compensation earnable, payrate, special compensation, validation procedures for special compensation, reporting requirements and penalty provisions, errors and omissions provisions, audit processes>

SEC. 8. The amendments and additions enacted as a result of this act shall be effective as to all active and future members of the applicable retirement systems on July 1, 2011

Spiking Notes

The Wisconsin Comparative Study of PERS provides information on the final average salary methodology used by 85 large statewide retirement plans. That study is accessible here:

<http://www.nasra.org/resources/Wisconsin%20Study%202006.pdf>

An excerpt from the 2004 report:

Since the 2002 Report, there has been little change in how any of the plans calculate final average salary. The most common method is to use a 3-year average, which may be required to be consecutive years or may be required to be years that fall within a given period. (For example, the 3 highest years within a 10-year period.) 55 of the 85 plans in the report use a 3-year final average salary. The next most prevalent calculation of final average salary is a 5-year period--18 of the 85 plans used a 5-year period in 2004.

* * *

2009

Georgia. Act 83 of 2009 (HB 476) addresses spiking. It provides that an employing unit shall pay the retirement system the actuarial cost of granting an employee a salary increase in excess of 5 percent during the 12 months before an employee's retirement and that the computation of a retirement benefit for persons who become members on or after July 1, 2009, shall not include a compensation increase in the last 12 months of employment which exceeds 5 percent.

Nevada. Chapter 426, Laws of 2009 (SB 427) For those who join PERS after 1/1/2010, the calculation of average final compensation will exclude increases in compensation to 10% per year for the 60-month period that begins 24 months before the 36 months used in the calculation of final average compensation. Employees so limited are entitled to a prorated refund of their contributions to PERS for the appropriate period.

Rhode Island. Article 7, Chapter 68, Laws of 2009 Bases average final compensation for pension calculation on 5 years rather than 3 years (as under previous law) for members who become eligible to retire on or after October 1, 2009.

Texas. Chapter 1308, Laws of 2009 (HB 2559), The base for calculating final average salary will change from the highest 36 to the highest 48 months. Similar provisions apply to newly-hired law enforcement and custodial officers. FAS will be based on the highest 48 months.

2008

New Hampshire. Chapter 300, Laws of 2008 (HB 1645), revises the definition of earnable compensation for the purpose of calculating retirement benefits to exclude end-of-career payments and a number of work-related reimbursements. Allows inactive members to leave their contributions in the system indefinitely (or request they be returned 30 days after leaving membership) and earn interest at 2 percentage points less than the rate of return on system investments for the previous fiscal year (down from actual return, as provided in previous law).

The act also provides that if compensation in the final year of service exceeds 125% of final average compensation, the retirant's last employer will be assessed the cost of the excess benefit. Annual retirement benefits are capped at \$120,000.

NCSL 2007

Missouri. SB 406 provides that within the Teacher and School Employee Retirement Systems, the maximum percentage of increase in the annual compensation in the final average salary period shall not exceed ten percent. This limit will not apply to increases due to changes in position or employer, that are required by state statute, or that are due to district-wide salary schedule adjustments for previously unrecognized education related service. Section 169.010.

Currently, certain alternative retirement allowance provisions, commonly referred to as "25 and out" and the "31st year factor" of the Teacher and School Employee Retirement Systems, terminate on July 1, 2008. This act extends the termination dates to July 1, 2013. Section 169.070.

Provides that the board of trustees for the public school retirement system in districts of 700,000 or over is authorized to increase retirement benefits for the system and to adopt additional retirement benefits for persons who have retired, including cost-of-living adjustments, as long as the board of trustees finds that the additional benefit will not require an increase in the contribution rate required by members or the board of education and is actuarially sound. Sections 169.466 and 169.471.

Legislation approved in 2006:

Iowa: HF 729 also provided a "spiking control" that limits how much of a wage increase applies when calculating pensions. IPERS will compare the average of the highest three years, or the final average salary, to the fourth highest year's salary. If the final average salary is more than 121 percent of the fourth highest wage, the final average wage is adjusted. This approach allows for a wage increase of approximately 10 percent in each of the highest three years.

Louisiana. Act 647 of 2006 (SB 88) provides that for members of the School Employees' Retirement System hired after June 30, 2006, the period used for calculating final average compensation is extended from 36 months to 60 months. It also provides an anti-spiking measure: for the calculation of final average salary, the figure used for a 12-month period after the first 12-month period cannot increase by more than 10 percent from the previous period, except for legislatively-enacted increases.

Legislation approved in 2005:

Arkansas. Act 146 clarifies that for Teachers Retirement System benefit calculations, the salary used to calculate FAS cannot grow by more than 10% a year over the preceding year's salary.

Illinois, Louisiana and Nebraska enacted measures to limit the spiking of salaries in the years just before retirement. The **Illinois** law makes school districts and institutions of higher education liable for the present value of an increase in benefits that results from annual salary increases of more than 6 percent in the years used to determine final average salary (FAS). The **Louisiana** law caps increases in salary included in the FAS calculation at 15 percent a year, down from 25 percent in old law. The **Nebraska** law reduced its cap from 10 percent to 7 percent for the five years preceding retirement.

Louisiana. Act 75 (SB 311) provides that retirement benefits in the Louisiana State Employee Retirement System hired after July 1, 2005, will be based on the member's highest 60 months of service, and will stay at 36 months (as in existing law) for those hired before that date and certain specified classes of public employees (which include the governor, lieutenant governor, certain legislative officials and judges).

For existing employees the amount to be considered in the FAS calculation is capped for the second 12 months of the period at 125% of the amount in the first 12 months, and in the third 12 months at 125% of the second 12 months. New law reduces the anti-spiking percentage to 15% per 12-month period (from 25%) and provides an exception for pay increases that result from system-wide increases adopted by the Department of Civil Service or enacted by the legislature.

Nebraska. LB 503 (originally in LB 411) changes the definition of compensation in the School Employees Retirement System to provide that the amount of compensation which would be subject to retirement could increase no more than 7% per year (the current limit is 10%) during the five years before retirement unless certain conditions are met. The bill also stipulates the employer would report compensation which exceeds the limit to the Nebraska Public Employees Retirement System. Changes in pay that result from a collective bargaining agreement or from a substantial change in an employee's job position do not qualify as exceptions.

Legislation approved in 2004:

South Dakota. HB 1032 provides that beginning July 1, 2004, for the purposes of calculating benefits from the SD Retirement System, compensation in a person's last quarter cannot exceed 115% of any previous quarter and the average compensation of the last four quarters cannot exceed 110% of any previous quarter. Termination pay will not be considered as compensation for SDRS purposes and no employer or member contributions will be required. Beginning July 1, 2004, the percentages mentioned above will be reduced to 105%.

Legislation approved in 2003:

Alaska. HB 254 changes the number of years for calculation of average monthly compensation for peace officers and fire fighters from five years to three years.

Legislation approved in 2002:

Iowa. H.F. 2532 provides that the salary used to calculate a judge's retirement is the highest salary, or highest three years of salary, and not the salary the judge received just prior to retirement or the last three years of the judge's salary.

Legislation approved in 2001:

Kentucky. The definition of final compensation was changed for employees of the Kentucky Employee Retirement System and the County Employee Retirement System to the three fiscal years with the highest average monthly salaries (changed from five years) for retirement between August 1, 2001 and January 1, 2009, with a minimum 27 years of service and with age plus years of service totaling at least 75. [This definition previously applied only to employees in hazardous occupations.] HB 278.

From the WA DRS website:

However, there are several differences between the provisions of the Washington SPRS and LEOFF 2. The WSPRS retirement allowance is based on an average of the member's two highest paid years. LEOFF 2 and all other open state administered retirement plans use a five-year average. The use of a two-year average pay period permits very large increases in the retirement benefit close to retirement by inclusion of voluntary overtime and lump sum payments. This is sometimes referred to as "pension ballooning" or "pension spiking." Annual leave cash-outs are included in calculating WSPRS benefits, but not in LEOFF 2 or other open state retirement plans.

* * *

Girard Miller: Putting an end to pension spiking
How to Audit and Avoid Pension 'Spiking'
November 6, 2008 By GIRARD MILLER Governing Magazine

Flash the spotlight on OT and sick-leave payoffs. Then redesign the system.

While traveling across the country last month on speaking engagements in many states, I repeatedly encountered the issue of pension "spiking." The practice attracts more attention to abuses in public employee retirement systems than any other single issue.

For those unfamiliar with this term, pension spiking occurs when employees artificially inflate their final compensation just before retiring in order to game the system. Pension systems typically pay a lifetime annuity based on a percentage of "final average compensation," which is usually calculated using the last three years of pay. So when employees juice their final compensation by cashing out a lifetime of sick leave and conniving with their buddies to pile on the overtime in the final years, they can capture W-2 income with an actuarial value of 10 to 25 times the immediate take-home value. The present value of that cash compensation is a lifetime of pension benefits. If you are a public-safety worker finishing a working career of 20 years, that can mean 45 years of unwarranted pension benefits based on a few years of spiked-up final compensation. In some cases, that overtime work earns as much as \$1,000 an hour in present value.

In addition to the "greedy-gimmicky" feeling everybody has about pension spiking, it is unsound from a pension plan financial standpoint. Nationally, over 70 percent of mature pension fund revenues are derived from investment income on employer and employee contributions. When employees play the spiking game, they rob the system of the expected lifetime investment income on their contributions because they have back-loaded their compensation. Spiking is a something-for-nothing abuse of a system.

Conduct a pension-spiking actuarial audit. Elected officials and taxpayer groups should demand public audits of pension fund spiking. This can easily determine the rate by which contributions have already been increased in order to pay the system back for the unfunded liabilities created by past spiking practices, plus expected future payments that will likely occur going forward. If employee unions wish to defend the practice of spiking, then they should accept an increase in employee contributions sufficient to offset the actuarially measurable effect of this employee-driven abuse. Otherwise, they should cooperate to end this blight on the system through an alternative plan as outlined below.

Plan redesign alternatives. There is a simple solution to this problem, although it often requires collaborative labor negotiations if a union is involved. Public employers need to take overtime and sick leave out of the pension formula altogether. It doesn't belong there.

This is not to deny that overtime is a form of compensation. However, it is an irregular form of compensation subject to great fluctuations over a career, especially in work units that favor seniority, which makes it systematically unsuitable to a defined-benefit system.

Fortunately, there is a simple and fair way to give employees a deserved retirement benefit for their extra work: a separate defined contribution (DC) payment in lieu of pensions for overtime pay by the employer equal to the "normal cost contribution" to the pension fund. For example, if a city pays 7 percent of salary into the general employees' pension fund and 10 percent of salary into the police and fire pension fund, then equivalent contributions can be made into a sidecar DC plan for the overtime work.

(Technical note: The DC plan can be either a 401(a) money purchase plan or a 457 supplemental deferred compensation plan; the former often has greater tax advantages for higher-compensated employees; the latter may be preferred by certain public-safety workers eligible to withdraw money in retirement for health care expenses.)

For employees who have already paid into the pension system based on overtime, methods to fairly adjust for this were discussed in my prior column on pension spiking.

Sick leave bank reforms. Likewise, an employer can set up a defined-contribution retirement health savings plan for its employees as part of a redesigned OPEB ("other post-employment benefits") plan for retiree health benefits. Such OPEB-DC plans have the great advantage that the money is free from taxes when withdrawn for qualified retirement medical expenses. Unused "excess" sick leave accumulations can be paid in cash - using whatever formula the employer and employees agree on - into the employee's personal OPEB-DC account. Last year's column on the "Rx for Sick Leave" explained how.

By separating these extraordinary payments from the pension calculation, public officials and pension plan officials can do more to restore credibility to public pension plans than

any other action they can take. The media will no longer report cases of retirees getting lavish pensions they never really deserved because of this spiking abuse.

Perhaps as many as half of the state and local governments in America now need to redesign their OPEB (other post-retirement benefit) plans for retiree medical costs anyway. So this is a great time to "kill two birds with a single stone" and simultaneously eliminate the pension-spiking problem at the same time. As I noted last month in my September column on the benefits bargaining battlefield, these will be challenging labor negotiations, but the time for action has never been so obvious.

In multi-employer systems such as CalPERS in California, public employers will also need to work with the pension governance bodies to exclude these compensation items from the pension formula, or at least to permit employers to opt out of a formula they no longer approve.

Pension plans are already facing heightened scrutiny because of investment losses in the recent market meltdown. Some will be attacked for investment underperformance, fairly or not. The increased visibility caused by pension spiking could undermine confidence in otherwise sound and well-run plans. Let's not spoil the fruits of decades of progressive pension plan design and prudent management through spiking abuses that rot the good apples.

Opinion: Pension spiking will cost Californians

Pension spiking will cost Californians

Gary M. Galles Tuesday, September 9, 2008 San Francisco Chronicle

Pension spiking (e.g., retroactive increases in pension benefits or pre-retirement promotions that qualify workers for bigger pension benefits), has been a major trend in California since our dot-com boom. It has saddled state and local governments with serious fiscal problems ever since (e.g., Orange County has a \$2.7 billion pension deficit, and a 2005 review of California's biggest government agencies found pension, health care and workers' comp commitments more than \$100 billion under-funded), even leading to bankruptcy by the city of Vallejo.

In June, it was reported that San Pablo proposed reducing police officers' retirement age from 55 to 50, with members supposedly to contribute 3.3 percent of their payroll to partly cover the costs. But four days after the pension deal, San Pablo's new police contract included an additional 3.3 percent raise to offset the payroll deduction, making the pension spike free to employees. This is just one illustration of combining government union power with politicians' short-term bias, due to re-election campaigns that come before all the effects of their policies become apparent.

The logic for such a back-loaded compensation approach is obvious, despite its harm to citizens. Public employee groups are well-informed about their compensation packages, and do not hesitate to use their political clout to expand them. In contrast, citizens who know their votes won't alter election outcomes pay little attention. But mushrooming budgets, which become scandals, can get their interest. The political solution has been to reward the influential generously, but dodge public scrutiny by deferring the big bills until retirement. When those obligations come due, politicians will have moved on or be able to hide behind the *fait accompli* with "there's nothing we can do now."

That the pension obligation boom is a bonanza to public workers rather than a sensible policy is also revealed by the less-than-credible arguments offered in its defense, once spiking is uncovered.

The first line of defense is that public employees are underpaid compared to private-sector counterparts, so retirement benefits must be sweetened to compensate. That may

have been true once (although one would look in vain for similar job and income security in the private sector), but those days are past for most government workers, many of whose salaries now exceed those in the private sector.

The second rationale is that increased health care and pension commitments, despite costing millions, are essentially "free." All it takes is assuming an implausibly large return to pension fund investments, and by the time the rosy scenario proves false, taxpayers are responsible for any shortfalls.

The third common claim is that pension boosts are essential for public agencies to attract and retain quality employees. Of course, those agencies have no problem finding workers and few of their employees quit, clearly refuting that claim.

The pension spiking also violates the principle of pay for performance. Benefit boosts that apply to existing workers, who are often virtually tenured for life and who have revealed that they aren't going anywhere, making any added motivation minimal. And for older workers, the rich payouts are negotiated when they have only a few more years to work, so they do not even apply to most of their working life. But it builds in large incentives for pension spiking

As San Pablo's escapade illustrates, the public needs to understand the deferred compensation disaster they face, and punish those responsible. Dramatically accelerating what taxpayers will be forced to pay in the future with little benefit to the public does not advance our general welfare. The laughably inadequate defenses that have been used to justify such government largesse also make that clear. If Californians don't wake up, politicians will only make it worse, and our ignorance will be anything but bliss.

Gary M. Galles is an economics professor at Pepperdine University.

COLA revision and spiking limits lead list of factors improving Ft. Worth's funding level

Fort Worth's pension fund shortfall drops

Ft. Worth Star-Telegram April 28, 2008

The shortfall in the municipal pension fund dropped by 42 percent in a year, a new report says.

The gap between the fund's projected revenue and expenses went from \$410 million in 2007 to \$237.5 million at the beginning of 2008. That's good news for the city, which is ultimately responsible for making sure there is enough money to pay retired employees.

"Resolving this issue was a top priority of this council and our city staff," Mayor Mike Moncrief said in a statement.

The shortfall led the Texas State Pension Review Board to put Fort Worth's pension on its watch list.

The report issued this week by the actuarial firm Gabriel Roeder Smith & Co. showed that the shortfall decreased in large part because the City Council changed the way cost-of-living adjustments are calculated.

Also, employees received smaller raises last year, and the city hired a lot of younger employees who are farther from retirement, the report said.

The council also voted in October to increase the city's contribution to the pension fund and to put a limit on how much extra income would count toward a pension in an employee's last three years before retirement.

The limit was aimed at reducing "spiking," in which employees pump up their retirement pay by taking promotions or working lots of overtime before retiring. The Texas Attorney General's Office ruled that the anti-spiking rule violates the Texas Constitution.

The report showed that the cost-of-living change accounted for more than half the reduction in the shortfall.

But the fund earned only 5.3 percent on its investments in 2007, well below the fund's goal of 8.5 percent. Executive Director Ruth Ryerson pointed out that the fund averaged 11.9 percent over the three previous years. "We're still carrying actuarial gains" from previous years, she said. "It all depends on how good or bad the years are in the future."

Texas AG's opinion blocks Ft. Worth's effort to prevent spiking

Part of plan to shore up Fort Worth's retirement fund unconstitutional

Ft. Worth Star-Telegram April 9, 2008

FORT WORTH -- Part of the city's plan to fix the shortfall in its retirement fund is unconstitutional, according to an opinion issued Tuesday by the state attorney general's office.

Fort Worth faces a \$410 million gap between what it contributes to the pension fund and what it is projected to pay out over the next 30 years. A large part of the shortfall came from employees' "spiking" their pensions by working lots of overtime or taking promotions in their last few years before retirement, which are used to calculate pension payments.

In an effort to fix the problem, city officials and members of the pension board limited the increases in an employee's base salary during those years.

But the Texas Constitution says cities can't limit pension benefits that employees have already earned, Attorney General Greg Abbott said. So the salary cap can't be applied to employees who have already worked for the city long enough to be vested in the pension system.

State Rep. Phil King, R-Weatherford, a former Fort Worth police officer, requested the opinion. Opinions issued by the attorney general are considered correct statements of state law.

Assistant City Manager Karen Montgomery said it's unclear whether the opinion applies to newly hired employees or those who have not worked for the city long enough to be vested in the pension fund.

Other measures to fix the pension fund are still in effect, including a change in the way cost-of-living benefits are calculated and a boost in how much the city contributes. Those two items do more to reduce the shortfall than the cap on salary increases, Montgomery said.

Massachusetts court to rule whether car use is part of pension calculation

High court to decide if car use drives public pension boost

Eagle-Tribune (Haverhill) April 9, 2008

BEVERLY - When he retired at age 58 from his job as Beverly's public safety director and fire chief, Kenneth Pelonzi was counting on a pension of \$82,030 per year.

That figure was based on his three highest-earning years, but also on an additional figure - the estimated value of his use of a city-owned car.

Now, the state's highest court is using Pelonzi's case to decide once and for all an issue that has popped up all over the state - whether public employees who get to take home a vehicle at night are entitled to claim that as a form of compensation in order to boost their pensions.

On one side are cash-strapped local retirement boards and the state Contributory Retirement Appeals Board. On the other are retirees like Pelonzi and the Public Employee Retirement Administration Commission, which for several years was telling boards to include the value of vehicles in pension calculations.

When another state agency, the Division of Administrative Law Appeals, ruled that the practice was not legal, the Beverly Retirement Board cut Pelonzi's monthly check by \$327. The ruling triggered a flood of appeals - including Pelonzi's.

Pelonzi eventually appealed to Superior Court, and a judge sided with him, restoring the full pension. Yesterday's hearing before the Supreme Judicial Court was on the Retirement Appeals Board's appeal of that ruling.

"The bottom line is if you provide a public safety official with a car so they can do their job, it seems not to be compensation but a tool to do their job," Justice Robert Cordy said. "But if a car is provided as compensation ... where does this fall?"

Michael Sacco, a lawyer for the Beverly Retirement Board, argued it falls into the category of a fringe benefit - which under state law doesn't count toward a pension, just as overtime, bonuses or sick time buybacks don't count.

In fact, he argued, if the court rules that the use of a car is considered income (though it's not taxed as such), it would open the door to future retirees claiming pension increases based on their use of computers, or even for health benefits.

"You could have all kinds of things," Justice John Greaney said.

The justices raised several examples - including their own parking spaces, provided to them by the state, in a part of downtown Boston where parking can cost nearly \$40 a day.

Chief Justice Margaret Marshall pointed out that the judges' spots near the downtown courthouse are considered a form of compensation by the

Internal Revenue Service. But only five of the justices use the spaces. Would those justices receive a higher pension when they retire?

Judith Corrigan, a lawyer for the Public Employee Retirement Administration Commission, argued that Pelonzi and others like him are entitled to the extra money, noting that many retirees made contributions to their pension funds that were based on the assumption that the car was included.

Further, she argued, legislators have filed proposed amendments to the pension law that would specifically prohibit the practice - which suggests that the current law allows it.

The pension law does specifically allow a housing allowance to be considered compensation - an issue the Supreme Judicial Court faced recently when it decided that former Senate and University of Massachusetts President William Bulger was entitled to an enhanced pension based on money he was paid because he chose not to live in a college-owned home. But it says nothing about use of a vehicle.

Corrigan also argued that public employees who are granted personal use of a car often receive that benefit as the result of contract negotiations that treat the vehicle as compensation in lieu of a higher salary. It's a way for cities and towns to save money, she argued.

Marshall was still concerned about the precedent, however, suggesting that in the future, workers who are given cell phones or computers and allowed to use them for personal matters would have a claim.

Corrigan suggested that the cost of those types of items is minimal and would not make a difference in someone's pension the way the value of a car would.

Marshall disagreed. "A Blackberry is expensive, let me tell you. Would you like to see the monthly statement?" she asked.

The court is expected to issue its decision within four months.

California retirement commission deadlocks over pension spiking

Pension commission stumped by dispute over 'spiked' benefits

Capitol Weekly November 15, 2007

A commission created to suggest changes to the state's pension system was deeply divided over how to solve the issue of "pension spiking." In fact, the commission could not even agree whether pension spiking exists, or if it is a problem, let alone what the solution should be.

Earlier this year, Gov. Arnold Schwarzenegger issued an executive order creating the Post Employment Benefits Commission, charged with identifying problems and suggesting changes to the state's pension and retiree healthcare systems. For months, the commission has been holding meetings throughout the state, listening to hours of testimony from stakeholders in the pension debate.

But the most recent meeting of the commission in Sacramento this week underscores just how deep some of the divisions are on key issues, and just how difficult changing the pension system may be.

Tuesday's meeting started off with choruses of virtual anonymity, with all of the commissioners agreeing to ways to increase transparency and openness in the pension systems. But the morning's consensus on the panel quickly deteriorated when the subject of "pension spiking" was raised.

The term spiking is commonly used to refer to dramatic increases in an employee's pay shortly before retirement, for the primary purpose of boosting that employee's pension. In many retirement systems, particularly in city and county governments, a retiree's pension is calculated by taking a percentage of an employee's highest 12 months worth of salary.

Recently, through collective bargaining, the state has moved to using a three-year average of highest salary to determine an employee's pension. Many would like to see the three-year-average used on the local level as well. But the carefully worded recommendation from the commission staff, and the spirited dialogue that followed, showed just how difficult it will be to make those changes on the local level.

The commission will not suggest that a remedy for pension spiking be sought through legislation. The recommendation introduced this week from staff merely suggested that local agencies attempt to "bargain a return to a three-year" average through the collective bargaining process.

But even that suggestion was criticized by labor's representatives on the commission.

"I'm totally opposed to this," said Jim Hard, president of SEIU Local 1000. "I don't think this is an appropriate recommendation.

Robert Walton, who worked for CalPERS for more than 30 years, said the recommendation was "symbolic at best," but did say that the commission should try to find a way to address the pension spiking issue.

At one point, commission chairman Gerry Parsky summed up the discussion among committee members. "I gather that this commission is not inclined in that direction," he said.

But others on the commission, particularly Anaheim Mayor Curt Pringle, tried to keep the spiking discussion alive. In the end, after the meeting, Pringle held out hope that some common ground could be reached.

"I think that the goal here is to find common ground," said Commission spokeswoman Ashley Snee Giovannettone. "Hopefully staff will be able to come back with something that everyone on the commission can agree to."

The issue underscored why some say it will be difficult to get any meaningful changes to the pension system through the Legislature. Earlier in the day, there was wide agreement on a host of issues involving increased transparency and independent audits of state pension systems. But on core issues like pension spiking, which have been written about in the media, there are still deep divisions.

That poses a particular challenge for Parsky, who is charged with corralling the commission members into agreement. Giovannettone said there is "no formal procedure" for determining final recommendations of the commission. But, she said the chairman "is striving for consensus."

Also at Tuesday's meeting, the commission appeared to agree to new, independent financial audits of STRS and PERS every three years. The audits would be conducted by a new advisory panel within the office of the state auditor.

Both retirement systems hire independent auditors annually to review their financial portfolios, but the commission agreed that, because those independent auditors are still hired by the pension systems, an additional public audit could "promote transparency and public confidence" in the pension systems.

The staff also recommended the commission support the concepts in three Assembly bills aimed at cracking down on pension fraud. All three bills had been held in legislative committees until the commission finished its work.

Assembly Bill 36 by Roger Niello, R-Fair Oaks, would create jail sentences of up to one year for anyone who knowingly defrauds a state pension system. Assembly Bill 219 by Assemblyman Kevin Jefferies would require anyone collecting a disability pension to submit to a medical examination within the first three years of collecting the pension. Assembly Bill 545 by Mimi Walters, R-Laguna Niguel, would authorize PERS to contact a health insurance provider to help determine whether a person is eligible to collect disability benefits.

Tuesday's meeting was the third consecutive meeting in which the commission discussed recommendations from the staff. "The staff came up with some draft recommendations based on the hours of testimony that the commission has heard over the last several months," said Giovannettone.

It will be up to the commissioners to wade through those recommendations and formulate a comprehensive report, which is due to the Legislature and the governor by January 1.

Massachusetts takes measures to end teacher pension spiking

Boston Globe June 1, 2006

A union benefit that allowed public school teachers to boost their annual pensions by several thousand dollars has been killed by the state agency that oversees public pension funds.

The Public Employee Retirement Administration Commission's ruling means that the provision will not be allowed in future contracts, although the ban does not affect teachers already granted it.

The benefit -- often called the "Lexington plan" after the community where it began -- had been a hit with teachers west of Boston and was used in 28 school districts. It had been used in more than 50 school districts in Greater Boston and about 100 statewide.

In the communities covered by Globe NorthWest, the plan is in place in Billerica, Concord, Tyngsborough, Winchester, and, of course, Lexington.

The plan allowed veteran teachers to take a pay raise -- called "enhanced longevity pay" -- typically for three straight years. If the extra pay was taken during a teacher's last three years, when pensions are calculated, it boosted the pension total.

The growing popularity of the benefit, which began to take root in contracts in the late 1990s, alarmed public pension officials across the state, who worried about the cost.

They pointed to several school systems, like East Bridgewater's, where teachers could take raises that would increase their pensions by as much as about \$6,700 a year. The pension boost was more modest in many other communities, where the increases ranged from \$1,200 to about \$4,000 annually.

East Bridgewater was one of at least 18 school districts statewide taken to court by the Massachusetts Teachers' Retirement System, which considered the payments excessive.

The retirement system estimated the additional payments to teachers would cost the pension fund \$6 million to \$10 million a year. Within a few years, system officials feared that between half and three-quarters of school districts would have adopted similar plans, at an annual cost of \$18 million to \$30 million.

The Massachusetts Teachers Association, which represents most of the teachers in the state, had fought the proposed ban. But late last month, teachers said they were resigned to the change. "It's unfortunate it won't be an option," said Tom Hourihan, president of the Concord Teachers Association. "We were disappointed, but we were pleased they did grandfather in people who had counted on it for retirement," said Sarah T. Marples, the president of the Marshfield Education Association.

Pensions are funded by teachers, taxpayers, and investments. The additional payouts to teachers put financial strains on the pension funds and were not justified by the amounts the teachers had paid into the system, pension fund officials said.

Joan Schloss, executive director of the Massachusetts Teachers' Retirement System, the largest public pension fund in the state, said her board was satisfied with the new regulation. The system -- along with taking legal action against towns that had enabled the benefit -- had backed legislation to ban it.

Officials at the pension fund underscored their opposition to the benefit by refusing to pay the part of teacher pensions based on the longevity pay. To end the legal fight, the pension fund and MTA reached an agreement separate from the new regulation. The pair agreed that no more than \$6,500 in longevity pay will be counted toward calculating a pension.

Those teachers who were denied part of their pension by the teacher pension fund will now get retroactive payments reflecting that

agreement, although it will take months. The legal action upset teachers, who had argued that the benefit had been negotiated in good faith and that employees had given up other benefits -- such as increased pay -- in order to get it.

The change hurt people who had counted on boosting their pension, said Paul J. Phillips, president of the Quincy Education Association, which represents teachers and support staff. The end of the benefit, he said, means "you had to drop back 10 yards and punt with your life."

The new regulation does not end the practice of enhanced longevity pay. Teachers can also take the raises in mid-career, for instance to pay for their children's college costs. But the money cannot be counted when pensions are figured.

Ohio Police and Fire Pension Fund (OPFPF) The bill also eliminates the annual pension cap for those members who retired prior to July 24, 1986. These retirees were permitted to include various types of terminal pay (e.g., sick leave) in the calculation of their average annual salary, effectively boosting or "spiking" their annual pensions.

Provisions are intended to prevent an individual from spiking his retirement benefit by more than 15% per year in a 48 month period immediately prior to retirement.

AZ Public Safety Personnel Retirement System - The amount of monthly normal pension is based on credited service and average monthly compensation as follows: For retirement with twenty years of credited service but less than twenty-five years of credited service, 50% of average monthly compensation for the first twenty years of credited service.

Some methods to avoid spiking:

- Maximum pension as a % of final salary.
- eliminating overtime compensation from covered salary
- utilizing defined contribution plan coverage only for overtime compensation
- limiting end-of-career salary increases year to year to a specified percentage.

NV PERS: Overtime and terminal leave were removed from the calculation of a pension benefit to prevent "spiking"

California PERS received some media attention in early 2005 when it was discovered that it is the only plan for broad groups of general employees that uses a single year of salary to determine the pension benefit.

New Illinois law clamps down on spiking

Springfield Journal-Register June 26, 2005

As of the 1998-99 school year, Chatham Glenwood High School's band director, Don Udey, had been a teacher for nearly three decades. With extra compensation for a variety of activities, including directing the jazz band and working on a musical, his pay that year came to \$63,043.

When Udey retired at the end of the 2002-03 school year, he still had the same responsibilities. But his salary amounted to \$100,270 - a 59 percent increase from four years earlier.

People agree Udey was a fine teacher. Some even compare him to Richard Dreyfuss' inspiring music teacher in the movie "Mr. Holland's Opus."

But he got those big end-of-career raises under an early retirement incentive written into the Ball-Chatham School District's teachers contract. The deal allows up to four long-time district employees per year to receive 20 percent increases in gross salary for two years. And that, in turn, allows the employees to retire with significantly larger pensions.

Gov. Rod Blagojevich's administration challenged that system this spring because it is the state Teachers' Retirement System, not local school districts, that pay most public school teacher pensions statewide (the Chicago Public Schools have their own pension plan).

Teacher pensions are based on a teacher's top four years of pay during their final 10 years on the job. Maximum retirement pay, for people with at least about 35 years on the job, is 75 percent of their average pay for those four years.

"Now, I believe teachers are underpaid and under-appreciated," Blagojevich said in his budget address in February. "But rather than back-loading salaries as they're about to leave the profession, wouldn't it be better to pay them more money throughout their careers?"

"If a local school district or a university wants to award big end-of-career raises, they still can. But if they do, they should assume the majority of the costs. Taxpayers across Illinois shouldn't have to pay billions of dollars more in increased pension costs just to cover those end-of-career raises."

The governor proposed capping teacher pay raises to 3 percent per year, which he said would save \$17 billion over 40 years. By the time the pension reforms became law, such raises were limited to 6 percent annually. However, the new limits won't kick in until existing teacher contracts expire, which will be in August 2006 for Ball-Chatham.

Districts would still be able to give higher late-career raises, but any district that does so would have to pay the resulting extra pension costs.

Ball-Chatham School Superintendent Richard Voltz said the extra pension expense "certainly will have to be taken into account" the next time a teachers contract is negotiated.

"Obviously, we'd love to keep the (early retirement incentive), but we see that's not doable," said Bob Cox, president of the Ball-Chatham Education Association, the teachers union. "Hopefully, we can come up with a way to reward teachers over a longer period of time and still get the end result."

The early retirement incentive isn't the only late-career boost teachers can get in Ball-Chatham. As of the 2005-06 school year, teachers in their last year can get not only the average 5 percent annual increase in the contract, but a 17 percent bonus.

Linda Hittmeier, a former president of the Ball-Chatham Education Association, said many teachers are not eligible for Social Security or full Medicare benefits, increasing the importance of their pensions.

Hittmeier noted that Udey has a master's degree, "was there early and stayed late," oversaw jazz band and marching band, and, in that role, had to be at basketball and football games.

"He worked a lot harder than a lot of people making more money than he did," Hittmeier said. "No one in education works harder than classroom teachers, and they are not paid the most."

Hittmeier, 55, a high school math teacher, is retiring after the next school year and is one of the people who will benefit from the late-career pay raise option. Her salary was \$49,030 in 2001-02, but will climb to \$75,032 next year.

Others include Gary Goldasich, a high school driver's ed teacher, who made \$49,752 in 2001-02 and will make \$80,299 next year; Gary Funderburk, a fifth-grade teacher who over the same years will see his pay go from \$49,752 to \$80,299; and Michalene McAtee, a high school English teacher whose pay will be \$76,492, up from \$47,392 in 2001-02.

Udey declined to be interviewed for this article.

Charles McBarron, director of communications for the Illinois Education Association, the statewide union with which teachers in Chatham and Springfield are affiliated, said his association supported the state pension changes despite "grave reservations about reducing the moderate benefits that our members receive."

The 6 percent cap was a compromise, McBarron said.

"You work 30 years, you're essentially underpaid as a professional," McBarron said, saying that the top teacher pay in some rural districts is \$31,000 to \$35,000, with the state average about \$50,000. The end-of-career bonuses, he said, "didn't quite level out the playing field, but it did help a little bit."

In 2003-04, the highest-paid Ball-Chatham retiree was elementary school music teacher Maureen Best, who made \$87,206 in her final year, up from \$55,253 in 1999-2000.

"I think teachers deserve a little perk like that," said Best, 55, a former vice president of the district's teachers union. She said she taught for 33 years and has a master's degree and 40 credit hours beyond the master's, much of it paid for at her own expense. "I admit that I was in the right place at the right time," she said.

John Day, spokesman for the Teachers' Retirement System, said the system has 325,000 members and retirees.

The TRS had assets totaling \$33.1 billion as of March 1, but the state's contribution to the system will go from \$959 million last year to \$534 million because the same pension legislation that rolled back the size of pay raises also enacted a "holiday" for state contributions to public employee pension systems. Without the holiday, Day said, the state was scheduled to contribute more than \$1 billion in the fiscal year that begins July 1.

"It was essentially a 50 percent cut," he said of the pension bill. "The major long-term impact is that ultimately the taxpayers will have to spend more because we will not have been able to invest these dollars," Day said. The TRS estimates that for every dollar not received by the system over the two years of the pension "holiday," \$7 will have to be paid later.

The governor's office says long-term savings from the pension changes will make up for the money not paid into pension systems for the next two years.

The new legislation also increased pension contributions made by teachers from 9 percent of salary to 9.4 percent.

The IEA's McBarron said he thinks newspaper stories about highly paid superintendents who got "humongous pensions" after end-of-career bumps in pay helped lead to the new legislation. "That is certainly not what we see happening to Illinois teachers throughout the state," McBarron said.

The Chicago Sun-Times has reported that superintendents in the Palatine Township Elementary District and the New Trier Township High School district each got end-of-career bonuses that brought their final pay to more than \$345,000.

Fort Worth council adjusts pension formulas

BY MIKE LEE

STAR-TELEGRAM JULY 18, 2007

FORT WORTH -- New city employees will see a change in how their pensions are calculated and some current employees may get smaller payouts under a plan tentatively approved by the City Council on Tuesday.

Some members, however, said the proposal doesn't go far enough in controlling the effects of excessive overtime on the pension fund, which is facing a \$410 million shortfall over the next 30 years. The changes would save about \$8 million a year, officials said.

"I have some concerns about this proposal, not because of what it does but because of what it fails to do," Councilman Carter Burdette said.

New formulas

Council members voted 6-2, with Chuck Silcox absent, to limit annual salary increases to 12 percent in employees' "high three" years -- normally their last three -- which are used to calculate pension payouts. The cap would apply to all kinds of pay, including overtime and raises from promotions. Council members also changed the way cost-of-living adjustments are calculated for some employees.

The council must come back in October to formalize the plan after notifying the pension board that it plans to reduce benefits.

The council still must decide how much additional money to put into the fund and how much of the cost employees should bear. That is expected during budget discussions this summer.

Councilwoman Wendy Davis said the council should consider eliminating overtime from pension calculations and undoing some of the changes that made the pension such a rich benefit during the 1990s. During that time, the city reduced the number of years pensions are based on from five years to three, and increased the multiplier used to determine the payments.

Gaining control

Councilman Danny Scarth said it's a "fact of life that some employees are required to work overtime." He and other council members said the solution is more aggressively managing the hours worked.

"If our managers cannot control overtime, we need new managers," Councilman Jungus Jordan said.

About \$70 million of the pension shortfall has been attributed to employees' working lots of overtime in their last three years, which are used to determine pensions.

City Manager Charles Boswell had proposed eliminating overtime from the pension calculations, but that drew criticism from city police and fire employees.

Lee Jackson, president of the Fort Worth Police Officers Association, said he couldn't comment because he hadn't seen the details on how the 12 percent cap would work.

What's proposed

Cost-of-living adjustments

City retirees now get a cost-of-living increase equal to 2 percent of their base pay every year.

Under the plan tentatively approved Tuesday, new employees will get an increase from nothing to 4 percent, based on the pension fund's performance. Current employees and retirees will have the option to switch to the new system.

Base salaries

Any pay that an employee earns now counts toward his or her pension payment. Critics say some workers have taken advantage of the system by working lots of overtime in their last three years, which are used to determine their pension payment.

The council approved a 12 percent cap on salary increases in an employee's last three years. City staff said the system would still allow employees to pad their pensions with extra overtime.

Pension spiking legal in New Jersey, despite criticism

Monday, May 9, 2005 Cherry Hill Courier Post Gannett New Jersey

In the 10 years he served as a councilman and mayor of Bridgewater in the 1980s, Henry Walsh never made more than the traditional \$5,700 stipend.

But thanks to an inside track to one of the state's highest-paying municipal jobs, he landed a \$240,000 a year job with the township just two years before he retired. The stratospheric salary ultimately boosted his retirement pay by 22 times. How did he do it?

Walsh, then 69, was paid \$240,000 a year as township attorney between April 2002 and April 2004, a position he was appointed to by former Bridgewater Democratic Mayor James Dowden, a longtime friend and political colleague.

His new job paid him almost \$100,000 more than the New Jersey governor at the time, James E. McGreevey, was making - \$156,000 per year.

Walsh is an extreme example of a common but completely legal practice called pension boosting.

The State Commission on Investigations, the investigative arm of the Legislature and governor, criticized the practice in a 1998 report. The political reform group Common Cause New Jersey lists pension padding as one of its Ten Rules Against Political Profiteering.

But little has been done in the state Legislature to stop the practice.

This is how it works: A public official or employee works at a low salary for years to build up time in the state pension system. As he comes closer to retirement, his salary is boosted to six figures, usually with the help of friendly elected officials.

Since pensions are generally calculated on a formula based on the average of the highest three salary years, the boost has the effect of wiping out all the years the employee worked at a much lower salary.

The employee is then eligible for a pension few others can reach without such connections.

Walsh's final average municipal salary jumped from \$5,582 to more than \$136,000 per year because of the \$240,000 he was paid in the final two years of his government service. The 72-year-old retiree now receives an annual pension of \$24,240, according to township and state Department of Treasury data.

If he was never appointed to the township attorney position, Walsh's annual pension would have been less than \$1,100. Walsh did not return repeated phone calls to his Bridgewater home seeking comment.

According to the SCI's 1998 report, pension-boosting pay raises typically fall just below 15 percent - a threshold which, pursuant to state regulations,

would trigger a formal inquiry by the state Department of Treasury's pension committee.

But Walsh's salary may have skirted state scrutiny because he was placed in charge of the newly formed township legal department and given a \$400,000 annual budget from which to pay himself, a deputy township attorney and a \$50,000-a-year secretary.

Dowden said he did not appoint Walsh to in-house counsel to increase his retirement benefits. The move "made complete sense," because it reduced township legal costs by hundreds of thousands of dollars, he said.

"No one objected to (Walsh's salary) because everything we paid for was still much less than what we were paying in legal fees," Dowden said. But Dowden may not have saved as much money as he suggests.

According to Bridgewater municipal budget data, the township paid more than \$514,000 in legal fees in 2003, Walsh's last full year as township attorney and Dowden's final year as mayor. More than \$100,000 of that amount went toward employee health benefits and pension payments.

At the time, the township also was involved in a lawsuit with former Township Attorney William Lanigan, who was fired by Dowden after suffering a debilitating stroke. The suit was dropped in December 2002, when Lanigan voluntarily resigned in exchange for a \$150,000 settlement from the township.

When Republican Mayor Patricia Flannery took office in 2004, she removed the in-house legal department and hired Somerville attorney Bill Savo on a nonsalaried, professional-services contract at a cap of \$400,000 for the year.

As a result, the township actually spent less than \$400,000 in legal fees last year, and it no longer has to contribute to the state benefit system for its attorney, Flannery said.

A primer in pension padding

Boston Herald - Monday, February 28, 2005

I often begin the government class I teach to MBA students with a few tips. The first is that when government does something that seems to make no sense, always ask whether the move results in someone's pension getting a boost.

Invariably they look at me as if I've lost my mind, but public pensions have again been in the news with the Contributory Retirement Appeal Board's denial of former UMass President William Bulger's claim that a housing allowance and annuity payments totaling almost \$50,000 per year should be counted as income for the purpose of calculating his pension.

Bulger is expected to go to Superior Court to appeal the decision, which will cut his annual pension from \$179,148 to \$166,664. Had the board ruled in his favor, Bulger's pension would have increased to over \$208,000.

While Bulger's name is a lightning rod, his case hardly represents the worst abuse. Behold retired Brockton Police Lt. Charles Lincoln - a key supporter of former Plymouth County Sheriff Joseph McDonough, who was defeated last year after a tenure marred by nepotism, lawsuits and mismanagement.

In 2001, McDonough hired Lincoln as security director at more than \$70,000 per year. Lincoln kept his full-time police job while he took on the full-time position in the sheriff's department, working days at the jail and nights at the police department. Or so the story goes.

Today, Lincoln is the beneficiary of the biggest pension payout in Plymouth County history, more than \$130,000 per year.

Neither Bulger nor Lincoln broke any laws. They simply took advantage of a system that is too easily gamed.

Public pension calculations in Massachusetts are based on an employee's three highest earning years. Lincoln retired from the Brockton PD on Jan. 15, 2004 and from the sheriff's department on Jan. 23, three years to the day after he started.

Another common abuse of the three highest years rule is long-serving members of municipal boards and commissions, who are often paid annual stipends of \$500 or \$1,000, using their connections to get appointed to full-time public sector jobs for three years. After paying little into the system, they can become beneficiaries of a lifetime annual pension of 80 percent of what they earned during those three years.

The three highest earning years rule is just the tip of the iceberg.

Regular state employees get credit for one month's service if they work the first day of a new year; elected officials get credit for the whole year. This provision came to light a couple of years ago when then-state Sen. Cheryl Jacques accepted a new job but waited until January to tender her resignation.

Public safety workers, known in public pension parlance as Group 4 employees, are understandably entitled to more generous pensions than most of the state's work force. But which group a worker falls into for retirement purposes is determined entirely by his or her group on the last day of employment - yet another invitation for abuse.

Current law entitles elected officials under 55 who are not re-elected and 20-year employees who are terminated to an enhanced pension benefit. This provision made the papers a few years ago when Gov. Jane Swift's former chief of staff, Peter Forman, was supposedly fired. A subsequent article in CommonWealth magazine found an unusually high number of state employees who were fired upon reaching 20 years of service.

Last year the Romney administration proposed a set of reforms that addressed each of these provisions, including one that specifically excluded the housing allowances and other perks that Bulger is trying to claim from the compensation used to calculate pension benefits. Unfortunately, none of them passed.

Perhaps the Bulger case will again focus attention on these abuses and make real pension reform a possibility. I'm sure that by September, I could find a new opening for my course.