



SACRS
Legislative Committee Agenda
Friday, 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
Conference Call Phone Number: (916) 874-3537, Code: 601015
SCERS Phone (916) 874-9119

1. Minutes of November 11, 2009 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
 - **AB 1355 (Fong)**
Santa Barbara County Employees' Retirement System # 1
Minor Update to Code References in Article 15.6
Chapter 9, Statutes of 2009
3. Proposed 2010 SACRS-sponsored Legislation
 - Tulare County ERA # 1: Qualifications for Reciprocal Membership
4. Other '37 Act Legislation
5. Other Retirement Legislation
6. Anti-Spiking Legislation

7. SIRS Update
8. Fiduciary Duties and Government Code Section 31522
9. Orange County Lawsuit Update
10. Other
11. Adjournment

Minutes

November 11, 2009 Meeting

**Draft Minutes
SACRS Legislative Committee
November 11, 2009 Meeting
San Diego/Pedro Room
Westin South Coast Plaza Hotel
686 Anton Blvd.
Costa Mesa, CA**

Committee Members in Attendance

Richard Stensrud, Chair
Jerry Allen
Chanel Benner
Art Goulet
Lance Kjeldgaard
Bill Pollacek
Gregg Rademacher
Andy Yeung

Others in Attendance

Andrew Antwih
Cynthia Lau
Jim Lites
Bob Palmer
Sulema Peterson
Mike Robson
Trent Smith
Rich White
Jerry Woodham

Mr. Stensrud welcomed Trent Smith and Mike Robson as the newly hired legislative advocates for SACRS.

1. Minutes

September 18, 2009 Meeting
October 5, 2009 Supplemental Conference Call re Tulare County # 1

Mr. Stensrud called for a motion to approve the minutes of the September 18, 2009 meeting. Motion by Mr. Rademacher, second by Mr. Allen. Motion carried with abstention by Mr. Pollacek.

The Chairman requested a motion for the minutes of the telephone meeting of October 5, 2009. Motion by Mr. Rademacher, second by Mr. Allen. Motion carried with abstention by Mr. Goulet.

2. 2009 SACRS Legislation

Mr. Antwih explained that we will begin next year with two bills, AB 609 (Conway) and AB 1354 (Fong).

AB 609 (Conway) – Administrative Expenditure Cap

With respect to AB 609 and proposed modifications to the administrative expenditure cap, negotiations stalled with labor representatives as SACRS sought to move to a liability based formula. Discussions will continue to attempt to reach an agreement in 2010.

Mr. Stensrud asked Mr. Robson and Mr. Smith if they had thoughts on AB 609. Mr. Robson indicated they have discussed this issue with the legislative staff and key labor lobbyists and there is some sense that the issue does indeed need to be resolved.

Mr. Stensrud asked if there should be a similar or distinct approach versus 2009. Mr. Robson said it is possible a change is warranted, but they wanted to consider the question further.

Mr. Goulet asked if SEIU still wanted to exempt the special district systems from any relief provisions. Mr. Stensrud confirmed that is the case. Mr. Goulet indicated that he heard SEIU had changed their position on special districts. Other committee members had not heard of a possible change as of that time.

AB 1354 (Fong) – Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008/Compliance with Final IRS Regulation on Section 415 Limits

Mr. Antwih explained that AB 1354 was voluntarily held in order to add more IRS conformity issues. However, development of the necessary IRS language appears to be more complicated than expected and is now subject to a process involving '37 Act stakeholders. AB 1354 may be used for the 2010 legislative proposal.

Mr. Kjeldgaard asked about the existing provisions or other options for compliance. Mr. Stensrud explained that in a recent discussion of the issue, the notion was expressed that there may be some need to express

in declaratory language the intent to comply and prepare systems for adoption of regulations.

Mr. Rademacher expressed support for this approach and asked if more specific legislation would be needed. Mr. Kjeldgaard responded that might be necessary, but we would work with the IRS to craft the language or incorporate by reference.

Mr. Allen asked if there would be a concern from the Legislature that the compliance effort is not specific enough and may desire more explicit direction. Mr. Goulet suggested the language can be crafted to imply limited discretion at the system level.

Mr. Kjeldgaard suggested in addition, that domestic partners elements may be resolved at the federal level.

Mr. Stensrud indicated the HEART Act is a portion that requires compliance.

Mr. Antwih indicated the new proposal could be included in AB 1354 as long as the information is made available early and clearly.

Mr. Lites suggested that the legislative options available to SACRS are greater with a new bill.

3. Proposed 2010 SACRS-sponsored Legislation

With respect to the Tulare #1 proposal related to reciprocity, Mr. Kjeldgaard expressed concern for backdating 12 weeks on contributions. Mr. Goulet questioned how this is more of a problem. Mr. Kjeldgaard indicated that the member could be faced with an unexpected tax liability problem on contributions that are refunded.

Mr. Stensrud indicated that there is a work-around for this problem that the employer can refund to the employee excess contributions and the system can apply a credit.

Mr. Stensrud indicated we need to find an author for the tax measure and keep the issues separate.

Mr. Lites mentioned a series of Sacramento Bee articles about gifts to CalPERS trustees and that State Treasurer Bill Lockyer and State Controller John Chiang are considering new legislation to make placement agents subject to lobbyist registration.

Mr. Stensrud said labor and PERS are discussing anti-spiking legislation. The Chair suggested engagement in the discussion to attempt to avoid responding to an ill-advised approach as it relates to '37 act systems.

Mr. Palmer elaborated more about the task force and indicated all labor groups are involved and have asked CalPERS staff to perform an analysis of the elements of final compensation. The primary difference between the '37 act and the statewide systems is the Ventura decision for '37 Act systems. It is not what the final proposal will contain. Mr. Palmer also suggests an independent SACRS solution or bill. Labor has already agreed that a 3-year average is appropriate. After the San Ramon case, Mr. Palmer suggested that benefits cannot exceed base salary in highest year.

Mr. Stensrud suggested researching how spiking is addressed in other areas of the county. He suggested checking with NASRA on what data they may have.

The Committee was unsure how the county plan sponsors will respond to this effort.

4. Other '37 Act Legislation

SB 414 (Correa) – County employee retirement: boards
Status: Senate PER
SACRS Position: Watch
Sponsor: CRCEA

Mr. Goulet indicated that issues of concern on SB 414 have been resolved and will be presented for hearing in 2010.

5. Other Retirement Legislation

Mr. Rademacher indicated LACERA will run legislation to address issues facing their non-contributory plan.

6. Orange County Lawsuit Update

There was no discussion on this item.

7. Edelstein, Gilbert, Robson & Smith

The lobbying firm of Edelstein, Gilbert, Robson & Smith was recently hired as the legislative advocates for SACRS.

8. Other

There were no other discussion items.

9. Adjournment

With no additional business before the committee, the meeting adjourned at 4:57 P.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 $\frac{18}{100}$ of 1% of the total assets of the retirement system.

This bill would ~~increase that percentage to $\frac{19}{100}$ of 1%~~ *instead prohibit expenses incurred in any year from exceeding $\frac{18}{100}$ 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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**Draft Language Re: Heroes Earnings Assistance and Relief Tax (HEART)
Act of 2008**

New section 31780.3 (Article 12)

“Notwithstanding any provision to the contrary, a member who obtained a leave of absence from county service, to enter and did enter the Armed Forces of the United States on a voluntary or involuntary basis, and who then dies during that qualified military service shall be considered to have resumed employment the day before the death.

Survivors of a deceased member described in this section shall not be entitled to service-connected death benefits.

This section shall apply to deaths occurring on or after January 1, 2007.”

Assembly Bill No. 1355

CHAPTER 9

An act to amend Sections 31855.5, 31855.6, 31855.7, and 31855.9 of the Government Code, relating to county employees' retirement.

[Approved by Governor June 29, 2009. Filed with
Secretary of State June 29, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1355, Fong. County employees' retirement: survivor's allowances.

The County Employees Retirement Law of 1937 (CERL) authorizes a county to provide specified optional survivor's allowances to members who receive retirement benefits pursuant to both CERL and federal social security on a nonintegrated basis. CERL provides that these survivor's allowances shall be calculated according to one of 2 alternative methods.

This bill would appropriately cross-reference an alternative method of calculating survivor's allowances, as described above. The bill would also make technical changes.

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

SECTION 1. Section 31855.5 of the Government Code is amended to read:

31855.5. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death, the member's surviving spouse shall be paid a monthly survivor's allowance equal to the sum, based upon the appropriate factual circumstances, specified in Section 31855.8 or 31855.12.

SEC. 2. Section 31855.6 of the Government Code is amended to read:

31855.6. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death and who is survived by one or more children but no surviving spouse, the child or children shall be entitled to a monthly survivor's allowance as specified in Section 31855.8 or 31855.12. The monthly survivor's allowance of two or more children shall be divided equally as to those children.

SEC. 3. Section 31855.7 of the Government Code is amended to read:

31855.7. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to the member's death, the member's surviving parent or parents shall be entitled to a monthly survivor's allowance as specified in Section 31855.8 or 31855.12.

SEC. 4. Section 31855.9 of the Government Code is amended to read:
31855.9. Upon the death of a member prior to retirement who was a member continuously for not less than 18 months immediately prior to his death who is survived by a spouse with whom the member was living at the time of death, the retirement system shall pay to the surviving spouse, in addition to all other payments due, if any, a lump sum supplemental survivorship benefit of two hundred fifty-five dollars (\$255), as set forth in Section 31855.8 or 31855.12. If the member is not survived by a spouse with whom the member was living, the retirement system shall apply a lump sum supplemental survivorship benefit to reimburse the person who paid the funeral expenses of the member in an amount not to exceed two hundred fifty-five dollars (\$255).

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**Proposed 2010
SACRS-sponsored Legislation**

YEAR 2010 SACRS LEGISLATIVE PLATFORM WORKSHEET

Title of Issue: Qualifications for Reciprocal Membership

Association: Tulare CERA

Contact Person: Dave Kehler

Phone #: (559) 733-6576

Fax #: (559) 730-2631

Email: dkeehler@tcera.org

Please answer the following questions as fully as possible:

1. Description of issue.

Section 31830 of the California Government Code states in part that it is the intent of the State Legislature to encourage career public service by granting reciprocal retirement benefits to members who are entitled to retirement rights or benefits from two or more qualified retirement systems.

Section 31840.4 states that, “[w]herever in this chapter the rights of a member, because of membership in another retirement system, are conditioned upon reemployment within 90 days of termination of employment covered by a system under this chapter or another retirement system, with respect to such reemployment which occurs on and after January 1, 1976, such period shall be six months rather than 90 days.”

Varying interpretations of the statutes have created difficulty among the ‘37 Act plans in determining if reciprocity should be granted in those cases in which a plan member has not terminated from one plan but has gone on to work for an employer covered by another retirement system. These periods of overlapping or “concurrent” service mostly commonly occur when a plan member intends to terminate employment with a current employer but has vacation or other forms of compensation that can be used for a period of time after leaving the position. The individual may go on to work for a new employer during the interim period thereby establishing dual or concurrent membership in two separate retirement plans for overlapping periods.

The ‘37Act systems have come to different conclusions as to how this issue should be resolved. Some refuse to allow members the benefit of reciprocity. Others adjust their entry or termination dates for plan membership in order to allow the member to qualify for reciprocity. This practice is followed even though it may be without any specific sections of the government code that allow for it to occur. The problem is magnified by the existence of other non-’37 Act reciprocal systems that follow their own statutes and/or procedures for determining eligibility for reciprocity.

2. **Recommended solution.**

It is proposed that the Government Code be modified to allow retirement boards the ability to adjust either the entrance date or the termination date of a member who has overlapping service between the current retirement system and some otherwise qualified reciprocal plan.

Allowing plans to adjust dates of membership and/or termination for individual plan members is not without some precedence in the '37 Act. Section 31527(h) allows retirement boards to set regulations determining the date on which a person entering employment becomes a member of the retirement association. This section limits, however, the entrance date to no more than six weeks following the employee's entrance into service. This six-week limitation does not allow for a sufficient adjustment period to be workable in all situations regarding overlapping service. It is suggested, therefore, that a new code section be adopted.

3. **Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.**

Proposed Section 31833.2 would read:

(a) Unless otherwise declared at time of hire, members meeting the criteria set forth in sections 31833 and 31833.1 shall be granted the rights and privileges of reciprocity.

(b) Notwithstanding Section 31527 (h) a member claiming reciprocity shall allow the Board to coordinate with the member's previous retirement association in establishing the dates of membership and termination so that there is no overlap of membership between the two systems.

4. **Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?**

It is of importance to all reciprocal systems within California, not just Tulare CERA.

5. **Do you anticipate that the proposed legislation would create any major problems, such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?**

Only for those systems that may wish to limit reciprocity and/or the liabilities associated with reciprocal agreements.

6. **Who will support or oppose this proposed change in the law?**

Those systems that value reciprocity for their plan members will likely support this legislation or something similar. Those that do not may oppose this proposal.

7. **Who will be available from your association to testify before the Legislature?**

Dave Kehler

SACRS 2010 Legislative Proposal

Tulare #1 Proposed Language

"The day upon which each person becomes a member of the association if it is to be other than the first day of the calendar month after his/her entrance into service, provided that said day shall be no later than twelve weeks after his/her entrance into service; or the day upon which each member terminates service credited by the association, provided that said day shall be no earlier than 12 weeks prior to his/her termination from service."

Other 1937 Act Legislation

AB 1034 (Huffman) – County employees' retirement
Status: Asm PERSS
Last Amended: 1/4/10

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Huffman

February 27, 2009

An act to amend Sections 31468 and 31522.5 of the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Huffman. County employees' retirement.

(1) Under existing law, counties and districts, as defined, may provide retirement benefits to their employees pursuant to the County Employees Retirement Law of 1937.

This bill would include the retirement system established in Marin County within the definition of a "district" for purposes of providing retirement benefits to that system's employees, subject to resolution by the board of retirement making that provision applicable to the county.

(2) The County Employees Retirement Law of 1937 authorizes the board of retirement of Orange County to appoint specified management, investment, and legal personnel. These appointees are not classified as county employees and are therefore not subject to the civil service system, but are employees of that retirement system, subject to the terms of employment determined by the board of retirement. Existing law authorizes the board of retirement of San Bernardino County to adopt, by resolution, those provisions classifying specified personnel of their respective systems as employees of the retirement system.

This bill would additionally authorize the board of retirement of Marin County to adopt these provisions by resolution, *but would limit to*

specified management positions those personnel who may be classified as employees of the retirement system.

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 31468 of the Government Code is
2 amended to read:

3 31468. (a) "District" means a district, formed under the laws
4 of the state, located wholly or partially within the county other
5 than a school district.

6 (b) "District" also includes any institution operated by two or
7 more counties, in one of which there has been adopted an ordinance
8 placing this chapter in operation.

9 (c) "District" also includes any organization or association
10 authorized by Chapter 26 of the Statutes of 1935, as amended by
11 Chapter 30 of the Statutes of 1941, or by Section 50024, which
12 organization or association is maintained and supported entirely
13 from funds derived from counties, and the board of any retirement
14 system is authorized to receive the officers and employees of that
15 organization or association into the retirement system managed
16 by the board.

17 (d) "District" also includes, but is not limited to, any sanitary
18 district formed under Part 1 (commencing with Section 6400) of
19 Division 6 of the Health and Safety Code.

20 (e) "District" also includes any city, public authority, public
21 agency, and any other political subdivision or public corporation
22 formed or created under the constitution or laws of this state and
23 located or having jurisdiction wholly or partially within the county.

24 (f) "District" also includes any nonprofit corporation or
25 association conducting an agricultural fair for the county pursuant
26 to a contract between the corporation or association and the board
27 of supervisors under the authority of Section 25905.

28 (g) "District" also includes the Regents of the University of
29 California, but with respect only to employees who were employees
30 of a county in a county hospital, who became university employees
31 pursuant to an agreement for transfer to the regents of a county
32 hospital or of the obligation to provide professional medical
33 services at a county hospital, and who under that agreement had

1 the right and did elect to continue membership in the county's
2 retirement system established under this chapter.

3 (h) "District" also includes the South Coast Air Quality
4 Management District, a new public agency created on February
5 1, 1977, pursuant to Chapter 5.5 (commencing with Section 40400)
6 of Part 3 of Division 26 of the Health and Safety Code.

7 (1) Employees of the South Coast Air Quality Management
8 District shall be deemed to be employees of a new public agency
9 occupying new positions on February 1, 1977. On that date, those
10 new positions are deemed not to have been covered by any
11 retirement system.

12 (2) No retirement system coverage may be effected for an
13 employee of the South Coast Air Quality Management District
14 who commenced employment with the district during the period
15 commencing on February 1, 1977, and ending on December 31,
16 1978, unless and until the employee shall have elected whether to
17 become a member of the retirement association established in
18 accordance with this chapter for employees of Los Angeles County
19 or the retirement association established in accordance with this
20 chapter for employees of San Bernardino County. The election
21 shall occur before January 1, 1980. Any employee who fails to
22 make the election provided for herein shall be deemed to have
23 elected to become a member of the retirement association
24 established in accordance with this chapter for the County of Los
25 Angeles.

26 (3) The South Coast Air Quality Management District shall
27 make application to the retirement associations established in
28 accordance with this chapter for employees of Los Angeles County
29 and San Bernardino County for coverage of employees of the South
30 Coast Air Quality Management District.

31 (4) An employee of the South Coast Air Quality Management
32 District who commenced employment with the district during the
33 period commencing on February 1, 1977, and ending on December
34 31, 1978, and who has not terminated employment before January
35 1, 1980, shall be covered by the retirement association elected by
36 the employee pursuant to paragraph (2). That coverage shall be
37 effected no later than the first day of the first month following the
38 date of the election provided for in paragraph (2).

39 (5) Each electing employee shall receive credit for all service
40 with the South Coast Air Quality Management District. However,

1 the elected retirement association may require, as a prerequisite
2 to granting that credit, the payment of an appropriate sum of money
3 or the transfer of funds from another retirement association in an
4 amount determined by an enrolled actuary and approved by the
5 elected retirement association's board. The amount to be paid shall
6 include all administrative and actuarial costs of making that
7 determination. The amount to be paid shall be shared by the South
8 Coast Air Quality Management District and the employee. The
9 share to be paid by the employee shall be determined by good faith
10 bargaining between the district and the recognized employee
11 organization, but in no event shall the employee be required to
12 contribute more than 25 percent of the total amount required to be
13 paid. The elected retirement association's board may not grant that
14 credit for that prior service unless the request for that credit is
15 made to, and the required payment deposited with, the elected
16 retirement association's board no earlier than January 1, 1980, and
17 no later than June 30, 1980. The foregoing shall have no effect on
18 any employee's rights to reciprocal benefits under Article 15
19 (commencing with Section 31830).

20 (6) An employee of the South Coast Air Quality Management
21 District who commenced employment with the district after
22 December 31, 1978, shall be covered by the retirement association
23 established in accordance with this chapter for employees of San
24 Bernardino County. That coverage shall be effected as of the first
25 day of the first month following the employee's commencement
26 date.

27 (7) Notwithstanding paragraphs (2) and (4) above, employees
28 of the South Coast Air Quality Management District who were
29 employed between February 1, 1977, and December 31, 1978, and
30 who terminate their employment between February 1, 1977, and
31 January 1, 1980, shall be deemed to be members of the retirement
32 association established in accordance with this chapter for the
33 employees of Los Angeles County commencing on the date of
34 their employment with the South Coast Air Quality Management
35 District.

36 (i) "District" also includes any nonprofit corporation that
37 operates one or more museums within a county of the 15th class,
38 as described by Sections 28020 and 28036 of the Government
39 Code, as amended by Chapter 1204 of the Statutes of 1971,
40 pursuant to a contract between the corporation and the board of

1 supervisors of the county, and that has entered into an agreement
2 with the board and the county setting forth the terms and conditions
3 of the corporation's inclusion in the county's retirement system.

4 (j) "District" also includes any economic development
5 association funded in whole or in part by a county of the 15th class,
6 as described by Sections 28020 and 28036 of the Government
7 Code, as amended by Chapter 1204 of the Statutes of 1971, and
8 that has entered into an agreement with the board of supervisors
9 and the county setting forth the terms and conditions of the
10 association's inclusion in the county's retirement system.

11 (k) "District" also includes any special commission established
12 in the Counties of Tulare and San Joaquin as described by Section
13 14087.31 of the Welfare and Institutions Code, pursuant to a
14 contract between the special commission and the county setting
15 forth the terms and conditions of the special commission's
16 inclusion in the county's retirement system with the approval of
17 the board of supervisors and the board of retirement.

18 (l) (1) "District" also includes the retirement system established
19 under this chapter in Orange County.

20 (2) "District" also includes the retirement system established
21 under this chapter in San Bernardino County at such time as the
22 board of retirement, by resolution, makes this section applicable
23 in that county.

24 (3) "District" also includes the retirement system established
25 under this chapter in Marin County at such time as the board of
26 retirement, by resolution, makes this section applicable in that
27 county.

28 SEC. 2. Section 31522.5 of the Government Code is amended
29 to read:

30 31522.5. (a) In a county in which the board of retirement has
31 appointed personnel pursuant to Section 31522.1, the board of
32 retirement may appoint an administrator, an assistant administrator,
33 a chief investment officer, senior management employees next in
34 line of authority to the chief investment officer, subordinate
35 administrators, senior management employees next in line of
36 authority to subordinate administrators, and legal counsel.

37 (b) Notwithstanding any other provision of law, the personnel
38 appointed pursuant to this section may not be county employees
39 but shall be employees of the retirement system, subject to terms
40 and conditions of employment established by the board of

1 retirement. Except as specifically provided in this subdivision, all
2 other personnel shall be county employees for purposes of the
3 county's employee relations resolution, or equivalent local rules,
4 and the terms and conditions of employment established by the
5 board of supervisors for county employees, including those set
6 forth in a memorandum of understanding.

7 (c) Except as otherwise provided by Sections 31529.9 and
8 31596.1, the compensation of personnel appointed pursuant to this
9 section shall be an expense of administration of the retirement
10 system, pursuant to Section 31580.2.

11 (d) The board of retirement and board of supervisors may enter
12 into any agreements as may be necessary and appropriate to carry
13 out the provisions of this section.

14 (e) Section 31522.2 is not applicable to any retirement system
15 that elects to appoint personnel pursuant to this section.

16 (f) Except as provided in subdivisions (g) and (h), this section
17 shall apply only in Orange County.

18 (g) This section shall apply to the retirement system established
19 under this chapter in San Bernardino County at such time as the
20 board of retirement, by resolution, makes this section applicable
21 in that county.

22 (h) This section shall apply to the retirement system established
23 under this chapter in Marin County at such time as the board of
24 retirement, by resolution, makes this section applicable in that
25 county. *This subdivision shall apply to only the following*
26 *management positions, or the equivalent thereof:*

- 27 (1) *Retirement administrator.*
- 28 (2) *Assistant retirement administrator.*
- 29 (3) *Chief investment officer.*

O

Other Retirement Legislation

AB 1603 (Solorio) – Workers' compensation: temporary partial disability

Status: Introduced 1/5/10

Last Amended:

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

Status: Sen PER

Last Amended: 1/6/10

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

Status: Senate Floor

Last Amended: 12/17/09

ASSEMBLY BILL

No. 1603

Introduced by Assembly Member Solorio

January 5, 2010

An act to add Section 4655.5 to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as introduced, Solorio. Workers' compensation: temporary partial disability.

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, including medical treatment, 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 total disability, temporary partial disability, permanent total disability, permanent partial disability, and in case of death.

Existing case law provides that temporary disability payments cease when: (1) the employee returns to work, (2) the employee is deemed medically able to return to work, or (3) the employee's medical condition becomes permanent and stationary.

This bill would require that an employee be deemed to be 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 his or her disability is permanent and stationary, the employer has not offered the employee regular,

modified, or alternative work, and the employer has not informed the employee that it will not offer the employee regular, modified, or alternative work.

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. (a) The Legislature finds and declares all of the
2 following:

3 (1) An injured employee should not be deprived of both earnings
4 and disability benefits when the employee has recovered from the
5 disability, but the employer delays the return to work for any
6 reason, including, but not limited to, requiring an additional
7 medical opinion to clear the employee for return to work.

8 (2) An employee continues to experience the effects of
9 temporary disability until the employee is informed that he or she
10 is medically able to return to work in some capacity and the
11 employee is informed whether the employer will accommodate
12 the disability.

13 (b) It is the intent of the Legislature in this act to extend
14 eligibility for temporary disability benefits for a limited period
15 when an employee's disability benefits end upon receiving a
16 doctor's release to return to work, but the employee is neither
17 immediately permitted to return to work nor informed that work
18 will not be available to the employee.

19 SEC. 2. Section 4655.5 is added to the Labor Code, to read:

20 4655.5. (a) An employee shall be deemed to be temporarily
21 partially disabled during the period when all of the following
22 conditions exist:

23 (1) The employee's disability is permanent and stationary.

24 (2) No more than 60 days have elapsed after the date the
25 employee was informed that his or her disability is permanent and
26 stationary.

27 (3) The employer has not offered the employee regular work,
28 modified work, or alternative work.

29 (4) The employer has not informed the employee that the
30 employer will not offer the employee regular work, modified work,
31 or alternative work.

1 (b) For purposes of implementing subdivision (a), all of the
2 following shall apply:

3 (1) The effective date of an offer of work shall be the first day
4 the employee would be working if the offer is accepted by the
5 employee immediately upon receipt of the offer.

6 (2) The date an employee is informed that the disability is
7 permanent and stationary, or the date the employee is informed
8 that the employer will not offer the employee regular work,
9 modified work, or alternative work, shall be the earlier of the date
10 the employee is actually so informed or five days after the date
11 notice so informing the employee is mailed to the employee at his
12 or her last known address.

13 (3) The weekly loss of wages shall be determined as provided
14 in Section 4657, except that it shall not be computed from the
15 proportionate loss of physical ability or earning power caused by
16 the injury.

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AMENDED IN SENATE JANUARY 6, 2010

SENATE BILL

No. 593

Introduced by Senator Romero

February 27, 2009

~~An act relating to community colleges. An act to amend Section 21623 of the Government Code, relating to public employees' retirement, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 593, as amended, Romero. ~~Community colleges. Public employees' retirement: postretirement death benefits.~~

The Public Employees' Retirement Law requires that, upon the death of any state or school member after retirement and while receiving a retirement allowance, the sum of \$2,000 be paid to the member's designated beneficiary, as specified. Existing law provides that the additional employer contributions required to fund this benefit be computed as a level percentage of member compensation, and these are deposited in the Public Employees' Retirement Fund, a continuously appropriated fund.

This bill would increase the amount of that payment to \$6,163 with respect to those school members. By providing for funds in the Public Employees' Retirement Fund to be spent for a new purpose, and by increasing contributions to that fund, this bill would make an appropriation.

~~Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law also authorizes the establishment of community college districts, and further authorizes the operation, by~~

~~these districts, of community college campuses that offer instructional services throughout the state.~~

~~This bill would express the intent of the Legislature to enact legislation to ensure that the instruction in the California Community Colleges prepares students for alternative pathways in the workforce and in higher education.~~

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

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

- 1 SECTION 1. Section 21623 of the Government Code is
 2 amended to read:
 3 21623. (a) In lieu of benefits provided by Section 21620 or
 4 21622, upon the death of any retired state ~~or school~~ member, after
 5 retirement and while receiving a retirement allowance from this
 6 system, there shall be paid to the beneficiary whom he or she shall
 7 nominate by written designation duly executed and filed with the
 8 board, the sum of two thousand dollars (\$2,000), to be provided
 9 from contributions by the employer.
 10 (b) *In lieu of benefits provided by Section 21620 or 21622, upon*
 11 *the death of a retired school member, after retirement and while*
 12 *receiving a retirement allowance from this system, there shall be*
 13 *paid to the beneficiary whom he or she shall nominate by written*
 14 *designation duly executed and filed with the board, the sum of six*
 15 *thousand one hundred sixty-three dollars (\$6,163), to be provided*
 16 *from contributions by the employer.*
 17 ~~(b)~~
 18 (c) For the purposes of this section, all contributions, liabilities,
 19 actuarial interest rates, and other valuation factors shall be
 20 determined on the basis of actuarial assumptions and methods that,
 21 in the aggregate, are reasonable and that, in combination, offer the
 22 actuary's best estimate of anticipated experience under this system.
 23 ~~(e)~~
 24 (d) The additional employer contributions required under this
 25 section shall be computed as a level percentage of member
 26 compensation.
 27 ~~(d)~~
 28 (e) This section shall apply to a school employer and a retired
 29 school member whose death after retirement occurs on or after

1 January 1, 2001. This section shall not apply to any contracting
2 agency or local member, except those contracting agencies that
3 are school employers and those school districts or community
4 college districts as defined in subdivision (i) of Section 20057.

5 ~~SECTION 1. It is the intent of the Legislature to enact~~
6 ~~legislation to ensure that the instruction in the California~~
7 ~~Community Colleges prepares students for alternative pathways~~
8 ~~in the workforce and in higher education.~~

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AMENDED IN SENATE DECEMBER 17, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 711

Introduced by Senator Leno

February 27, 2009

An act to amend Sections 54954.5, 54957.1, and 54957.6 of the An act to amend Section 54957.6 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 711, as amended, Leno. Public meetings: closed sessions: labor negotiations.

(1) The Ralph M. Brown Act requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Under the act, the legislative body of a local agency may hold a closed session with the local agencies' designated representatives regarding negotiations concerning employee compensation, *among other things*, but is required, in an open and public session prior to those closed sessions, to disclose specified information identifying the agency's designated representatives. ~~Existing law prohibits a closed session from including any final action on the proposed compensation of unrepresented employees. The act also requires the legislative body of a local agency to publicly report any action taken in closed session, as prescribed, including the approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party. The act provides a legislative body or elected official is not in violation of certain provisions of the act if the agenda that describes~~

~~a closed session item is in substantial compliance by including specified information.~~

~~This bill would additionally require a local agency, before holding a closed session regarding employee compensation, to identify the employee or class of employees that are the subject of the negotiations, the representatives of the employees, and to provide an oral report by its designated representative on the current status of the negotiations. The bill would additionally require any action of the legislative body on the collective bargaining agreement or initial proposal to be taken at an open and public session.~~

~~The bill would revise the prohibition against a closed session for these purposes and require any final action taken pursuant to a closed session to be conducted during an open and public regular meeting of the legislative body, but only after specified public disclosures. The bill would also make a conforming change to delete the requirement that the legislative body publicly report the action taken in closed session after the agreement is final. The bill would also make conforming changes to the information required to be included in an agenda describing a closed session, for purposes of compliance with the act.~~

~~The bill would impose a state-mandated local program by imposing new duties upon local agencies:~~

~~This bill would additionally require a local agency, before holding a closed session, as described above, for the purpose of having designated representatives report on a collectively bargained agreement with represented employees, to make the agreement publicly available at least 15 calendar days before the meeting at which the agreement is to be reported, thus imposing a state-mandated local program.~~

(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. 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 54957.6 of the Government Code is
2 amended to read:

3 54957.6. (a) (1) Notwithstanding any other ~~provision of law,~~
4 a legislative body of a local agency may hold ~~a closed session~~
5 *session pursuant to this section* with the local agency’s designated
6 representatives regarding the salaries, salary schedules, or
7 compensation paid in the form of fringe benefits of its represented
8 and unrepresented employees, and, for represented employees,
9 any other matter within the statutorily provided scope of
10 representation.

11 ~~However, prior to the~~

12 (2) *Before holding a closed session pursuant to paragraph (1),*
13 *the legislative body of the local agency shall hold an open and*
14 *public session in which it identifies its designated representatives.*

15 (3) *If the closed session held pursuant to paragraph (1) is held*
16 *for the purpose of having designated representatives report on a*
17 *collectively bargained agreement with represented employees, the*
18 *local agency shall make the agreement publicly available at least*
19 *15 calendar days before the meeting at which the agreement is to*
20 *be reported.*

21 ~~Closed sessions of a legislative body of a local agency, as~~
22 ~~permitted in this section;~~

23 (b) *A closed session of a legislative body of a local agency*
24 *authorized pursuant to this section is subject to all of the following*
25 *conditions:*

26 (1) *The closed session shall be only for the purpose of reviewing*
27 *its the position of the local agency and instructing the local*
28 *agency’s designated representatives.*

29 ~~Closed sessions, as permitted in this section;~~

30 (2) *The closed session may only take place prior to and during*
31 *consultations and discussions with representatives of employee*
32 *organizations and unrepresented employees.*

33 ~~Closed sessions~~

34 (3) *The closed session with the local agency’s designated*
35 *representative regarding the salaries, salary schedules, or*
36 *compensation paid in the form of fringe benefits may include*
37 *discussion of an agency’s available funds and funding priorities,*

1 but only insofar as these discussions relate to providing instructions
2 to the local agency's designated representative.

3 ~~Closed sessions~~

4 (4) *The closed session* held pursuant to this section shall not
5 include final action on the proposed compensation of one or more
6 unrepresented employees.

7 ~~For~~

8 (c) *For* the purposes enumerated in this section, a legislative
9 body of a local agency may also meet with a state conciliator who
10 has intervened in the proceedings.

11 ~~(b)~~

12 (d) For the purposes of this section, ~~the term "employee" shall~~
13 ~~include~~ *includes* an officer or an independent contractor who
14 functions as an officer or an employee, but shall not include ~~any~~
15 *an* elected official, member of a legislative body, or other
16 independent ~~contractors~~ *contractor*.

17 *SEC. 2. If the Commission on State Mandates determines that*
18 *this act contains costs mandated by the state, reimbursement to*
19 *local agencies and school districts for those costs shall be made*
20 *pursuant to Part 7 (commencing with Section 17500) of Division*
21 *4 of Title 2 of the Government Code.*

22 ~~SECTION 1. Section 54954.5 of the Government Code is~~
23 ~~amended to read:~~

24 ~~54954.5. For purposes of describing closed session items~~
25 ~~pursuant to Section 54954.2, the agenda may describe closed~~
26 ~~sessions as provided below. No legislative body or elected official~~
27 ~~shall be in violation of Section 54954.2 or 54956 if the closed~~
28 ~~session items were described in substantial compliance with this~~
29 ~~section. Substantial compliance is satisfied by including the~~
30 ~~information provided below, irrespective of its format.~~

31 ~~(a) With respect to a closed session held pursuant to Section~~
32 ~~54956.7:~~

33 ~~LICENSE/PERMIT DETERMINATION~~

34 ~~Applicant(s): (Specify number of applicants)~~

35 ~~(b) With respect to every item of business to be discussed in~~
36 ~~closed session pursuant to Section 54956.8:~~

37 ~~CONFERENCE WITH REAL PROPERTY NEGOTIATORS~~

38 ~~Property: (Specify street address, or if no street address, the~~
39 ~~parcel number or other unique reference, of the real property under~~
40 ~~negotiation)~~

1 Agency negotiator: (Specify names of negotiators attending the
2 closed session) (If circumstances necessitate the absence of a
3 specified negotiator, an agent or designee may participate in place
4 of the absent negotiator so long as the name of the agent or
5 designee is announced at an open session held prior to the closed
6 session.)

7 Negotiating parties: (Specify name of party (not agent))

8 Under negotiation: (Specify whether instruction to negotiator
9 will concern price, terms of payment, or both)

10 (e) With respect to every item of business to be discussed in
11 closed session pursuant to Section 54956.9:

12 ~~CONFERENCE WITH LEGAL COUNSEL—EXISTING~~
13 ~~LITIGATION~~

14 (Subdivision (a) of Section 54956.9)

15 Name of case: (Specify by reference to claimant's name, names
16 of parties, case or claim numbers)

17 or

18 Case name unspecified: (Specify whether disclosure would
19 jeopardize service of process or existing settlement negotiations)

20 ~~CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED~~
21 ~~LITIGATION~~

22 Significant exposure to litigation pursuant to subdivision (b) of
23 Section 54956.9: (Specify number of potential cases)

24 (In addition to the information noticed above, the agency may
25 be required to provide additional information on the agenda or in
26 an oral statement prior to the closed session pursuant to
27 subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision
28 (b) of Section 54956.9.)

29 Initiation of litigation pursuant to subdivision (c) of Section
30 54956.9: (Specify number of potential cases)

31 (d) With respect to every item of business to be discussed in
32 closed session pursuant to Section 54956.95:

33 ~~LIABILITY CLAIMS~~

34 Claimant: (Specify name unless unspecified pursuant to Section
35 54961)

36 Agency claimed against: (Specify name)

37 (e) With respect to every item of business to be discussed in
38 closed session pursuant to Section 54957:

39 ~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

- 1 Consultation with: (Specify name of law enforcement agency
2 and title of officer, or name of applicable agency representative
3 and title)
- 4 PUBLIC EMPLOYEE APPOINTMENT
5 Title: (Specify description of position to be filled)
- 6 PUBLIC EMPLOYMENT
7 Title: (Specify description of position to be filled)
- 8 PUBLIC EMPLOYEE PERFORMANCE EVALUATION
9 Title: (Specify position title of employee being reviewed)
- 10 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
11 (No additional information is required in connection with a
12 closed session to consider discipline, dismissal, or release of a
13 public employee. Discipline includes potential reduction of
14 compensation.)
- 15 (f) With respect to every item of business to be discussed in
16 closed session pursuant to Section 54957.6:
- 17 CONFERENCE WITH LABOR NEGOTIATORS
18 Agency designated representatives: (Specify names of designated
19 representatives attending the closed session) (If circumstances
20 necessitate the absence of a specified designated representative,
21 an agent or designee may participate in place of the absent
22 representative so long as the name of the agent or designee is
23 announced at an open session held prior to the closed session.)
- 24 The employee or class of employees that are the subject of the
25 negotiations
26 Representative of the employees
27 Employee organization: (Specify name of organization
28 representing employee or employees in question)
- 29 or
30 Unrepresented employee: (Specify position title of unrepresented
31 employee who is the subject of the negotiations)
- 32 Oral reports by agency's designated representative on the current
33 status of the negotiations
- 34 (g) With respect to closed sessions called pursuant to Section
35 54957.8:
- 36 CASE REVIEW/PLANNING
37 (No additional information is required in connection with a
38 closed session to consider case review or planning.)
- 39 (h) With respect to every item of business to be discussed in
40 closed session pursuant to Sections 1461, 32106, and 32155 of the

1 ~~Health and Safety Code or Sections 37606 and 37624.3 of the~~
2 ~~Government Code:~~

3 ~~REPORT INVOLVING TRADE SECRET~~

4 ~~Discussion will concern: (Specify whether discussion will~~
5 ~~concern proposed new service, program, or facility)~~

6 ~~Estimated date of public disclosure: (Specify month and year)~~

7 ~~HEARINGS~~

8 ~~Subject matter: (Specify whether testimony/deliberation will~~
9 ~~concern staff privileges, report of medical audit committee, or~~
10 ~~report of quality assurance committee)~~

11 ~~(i) With respect to every item of business to be discussed in~~
12 ~~closed session pursuant to Section 54956.86:~~

13 ~~CHARGE OR COMPLAINT INVOLVING INFORMATION~~
14 ~~PROTECTED BY FEDERAL LAW~~

15 ~~(No additional information is required in connection with a~~
16 ~~closed session to discuss a charge or complaint pursuant to Section~~
17 ~~54956.86.)~~

18 ~~(j) With respect to every item of business to be discussed in~~
19 ~~closed session pursuant to Section 54956.96:~~

20 ~~CONFERENCE INVOLVING A JOINT POWERS AGENCY~~
21 ~~(Specify by name)~~

22 ~~Discussion will concern: (Specify closed session description~~
23 ~~used by the joint powers agency)~~

24 ~~Name of local agency representative on joint powers agency~~
25 ~~board: (Specify name)~~

26 ~~(Additional information listing the names of agencies or titles~~
27 ~~of representatives attending the closed session as consultants or~~
28 ~~other representatives.)~~

29 ~~(k) With respect to every item of business to be discussed in~~
30 ~~closed session pursuant to Section 54956.75:~~

31 ~~AUDIT BY BUREAU OF STATE AUDITS~~

32 ~~SEC. 2. Section 54957.1 of the Government Code is amended~~
33 ~~to read:~~

34 ~~54957.1. (a) The legislative body of any local agency shall~~
35 ~~publicly report any action taken in closed session and the vote or~~
36 ~~abstention on that action of every member present, as follows:~~

37 ~~(1) Approval of an agreement concluding real estate negotiations~~
38 ~~pursuant to Section 54956.8 shall be reported after the agreement~~
39 ~~is final, as follows:~~

- 1 ~~(A) If its own approval renders the agreement final, the body~~
2 ~~shall report that approval and the substance of the agreement in~~
3 ~~open session at the public meeting during which the closed session~~
4 ~~is held.~~
- 5 ~~(B) If final approval rests with the other party to the negotiations,~~
6 ~~the local agency shall disclose the fact of that approval and the~~
7 ~~substance of the agreement upon inquiry by any person, as soon~~
8 ~~as the other party or its agent has informed the local agency of its~~
9 ~~approval.~~
- 10 ~~(2) Approval given to its legal counsel to defend, or seek or~~
11 ~~refrain from seeking appellate review or relief, or to enter as an~~
12 ~~amicus curiae in any form of litigation as the result of a~~
13 ~~consultation under Section 54956.9 shall be reported in open~~
14 ~~session at the public meeting during which the closed session is~~
15 ~~held. The report shall identify, if known, the adverse party or~~
16 ~~parties and the substance of the litigation. In the case of approval~~
17 ~~given to initiate or intervene in an action, the announcement need~~
18 ~~not identify the action, the defendants, or other particulars, but~~
19 ~~shall specify that the direction to initiate or intervene in an action~~
20 ~~has been given and that the action, the defendants, and the other~~
21 ~~particulars shall, once formally commenced, be disclosed to any~~
22 ~~person upon inquiry, unless to do so would jeopardize the agency's~~
23 ~~ability to effectuate service of process on one or more unserved~~
24 ~~parties, or that to do so would jeopardize its ability to conclude~~
25 ~~existing settlement negotiations to its advantage.~~
- 26 ~~(3) Approval given to its legal counsel of a settlement of pending~~
27 ~~litigation, as defined in Section 54956.9, at any stage prior to or~~
28 ~~during a judicial or quasi-judicial proceeding shall be reported~~
29 ~~after the settlement is final, as follows:~~
- 30 ~~(A) If the legislative body accepts a settlement offer signed by~~
31 ~~the opposing party, the body shall report its acceptance and identify~~
32 ~~the substance of the agreement in open session at the public~~
33 ~~meeting during which the closed session is held.~~
- 34 ~~(B) If final approval rests with some other party to the litigation~~
35 ~~or with the court, then as soon as the settlement becomes final,~~
36 ~~and upon inquiry by any person, the local agency shall disclose~~
37 ~~the fact of that approval, and identify the substance of the~~
38 ~~agreement.~~
- 39 ~~(4) Disposition reached as to claims discussed in closed session~~
40 ~~pursuant to Section 54956.95 shall be reported as soon as reached~~

1 in a manner that identifies the name of the claimant, the name of
2 the local agency claimed against, the substance of the claim, and
3 any monetary amount approved for payment and agreed upon by
4 the claimant.

5 ~~(5) Action taken to appoint, employ, dismiss, accept the~~
6 ~~resignation of, or otherwise affect the employment status of, a~~
7 ~~public employee in closed session pursuant to Section 54957 shall~~
8 ~~be reported at the public meeting during which the closed session~~
9 ~~is held. Any report required by this paragraph shall identify the~~
10 ~~title of the position. The general requirement of this paragraph~~
11 ~~notwithstanding, the report of a dismissal or of the nonrenewal of~~
12 ~~an employment contract shall be deferred until the first public~~
13 ~~meeting following the exhaustion of administrative remedies, if~~
14 ~~any.~~

15 ~~(6) Pension fund investment transaction decisions made pursuant~~
16 ~~to Section 54956.81 shall be disclosed at the first open meeting of~~
17 ~~the legislative body held after the earlier of the close of the~~
18 ~~investment transaction or the transfer of pension fund assets for~~
19 ~~the investment transaction.~~

20 ~~(b) Reports that are required to be made pursuant to this section~~
21 ~~may be made orally or in writing. The legislative body shall provide~~
22 ~~to any person who has submitted a written request to the legislative~~
23 ~~body within 24 hours of the posting of the agenda, or to any person~~
24 ~~who has made a standing request for all documentation as part of~~
25 ~~a request for notice of meetings pursuant to Section 54954.1 or~~
26 ~~54956, if the requester is present at the time the closed session~~
27 ~~ends, copies of any contracts, settlement agreements, or other~~
28 ~~documents that were finally approved or adopted in the closed~~
29 ~~session. If the action taken results in one or more substantive~~
30 ~~amendments to the related documents requiring retyping, the~~
31 ~~documents need not be released until the retyping is completed~~
32 ~~during normal business hours, provided that the presiding officer~~
33 ~~of the legislative body or his or her designee orally summarizes~~
34 ~~the substance of the amendments for the benefit of the document~~
35 ~~requester or any other person present and requesting the~~
36 ~~information.~~

37 ~~(c) The documentation referred to in subdivision (b) shall be~~
38 ~~available to any person on the next business day following the~~
39 ~~meeting in which the action referred to is taken or, in the case of~~
40 ~~substantial amendments, when any necessary retyping is complete.~~

1 ~~(d) Nothing in this section shall be construed to require that the~~
2 ~~legislative body approve actions not otherwise subject to legislative~~
3 ~~body approval.~~

4 ~~(e) No action for injury to a reputational, liberty, or other~~
5 ~~personal interest may be commenced by or on behalf of any~~
6 ~~employee or former employee with respect to whom a disclosure~~
7 ~~is made by a legislative body in an effort to comply with this~~
8 ~~section.~~

9 ~~(f) This section is necessary to implement, and reasonably within~~
10 ~~the scope of, paragraph (1) of subdivision (b) of Section 3 of~~
11 ~~Article I of the California Constitution.~~

12 ~~SEC. 3. Section 54957.6 of the Government Code is amended~~
13 ~~to read:~~

14 ~~54957.6. (a) (1) Notwithstanding any other law, a legislative~~
15 ~~body of a local agency may hold a closed session pursuant to this~~
16 ~~section with the local agency's designated representatives regarding~~
17 ~~the salaries, salary schedules, or compensation paid in the form of~~
18 ~~fringe benefits of its represented and unrepresented employees;~~
19 ~~and, for represented employees, any other matter within the~~
20 ~~statutorily provided scope of representation.~~

21 ~~(2) Before holding a closed session pursuant to paragraph (1),~~
22 ~~the legislative body of the local agency shall hold an open and~~
23 ~~public session in which it does all of the following:~~

24 ~~(A) Identifies the agency's designated representatives, the~~
25 ~~employee or class of employees that are the subject of the~~
26 ~~negotiations, and the representatives of the employees.~~

27 ~~(B) Provides an oral report by its designated representative on~~
28 ~~the current status of the negotiations.~~

29 ~~(3) The notice required by subparagraph (A) of paragraph (2)~~
30 ~~may be given orally or as part of the meeting agenda.~~

31 ~~(b) A closed session of a legislative body of a local agency~~
32 ~~authorized pursuant to this section is subject to all of the following~~
33 ~~conditions:~~

34 ~~(1) The closed session shall be only for the purpose of reviewing~~
35 ~~the position of the local agency and instructing the local agency's~~
36 ~~designated representatives.~~

37 ~~(2) The closed session may only take place prior to and during~~
38 ~~consultations and discussions with representatives of employee~~
39 ~~organizations and unrepresented employees.~~

1 ~~(3) The closed session may include discussion of an agency's~~
2 ~~available funds and funding priorities, but only insofar as these~~
3 ~~discussions relate to providing instructions to the local agency's~~
4 ~~designated representative.~~
5 ~~(4) The closed session shall not include any final action.~~
6 ~~(c) Any final action on an agreement subject to this section shall~~
7 ~~be conducted during an open and public regular meeting of the~~
8 ~~legislative body. The proposed agreement and a summary of its~~
9 ~~major provisions, including, but not limited to, the costs that would~~
10 ~~be incurred by the local agency under the agreement for the current~~
11 ~~and subsequent fiscal years, shall be disclosed at a public meeting.~~
12 ~~Final action shall not take place on any proposal until a reasonable~~
13 ~~time has elapsed after disclosure of the proposal to enable the~~
14 ~~public to become informed and the public has the opportunity to~~
15 ~~express itself regarding the proposal at a meeting of the legislative~~
16 ~~body.~~
17 ~~(d) For the purposes enumerated in this section, a legislative~~
18 ~~body of a local agency may also meet with a state conciliator who~~
19 ~~has intervened in the proceedings.~~
20 ~~(e) For the purposes of this section, "employee" includes an~~
21 ~~officer or an independent contractor who functions as an officer~~
22 ~~or an employee, but shall not include an elected official, member~~
23 ~~of a legislative body, or other independent contractor.~~
24 ~~SEC. 4.—If the Commission on State Mandates determines that~~
25 ~~this act contains costs mandated by the state, reimbursement to~~
26 ~~local agencies and school districts for those costs shall be made~~
27 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
28 ~~4 of Title 2 of the Government Code.~~

O

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

1190 South Victoria Avenue, Suite 200
Ventura, CA 93003-6572

(805) 339-4250 • Fax: (805) 339-4269
<http://www.ventura.org/vcera>

January 4, 2010

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

Re: FIDUCIARY DUTIES AND GOVERNMENT CODE SECTION 31522

Dear Board Members:

Public fund fiduciaries, including all fiduciaries for '37 Act retirement systems, are held to the "Prudent Expert Rule/Standard". As a "Prudent Expert", fiduciaries are to "discharge their duties solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries...". Further, fiduciaries must act "With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims" (Government Code section 31595).

In order to adhere to the "Prudent Expert Rule/Standard", a fiduciary must acquire, and continue to obtain, the necessary education to effectively make decisions. Inherent in the commitment to fiduciary education is a corresponding time commitment to achieve an appropriate standard of education. Staff estimates that a fiduciary will spend some 15-25 hours per month, at a minimum, in service at Board meetings and participating in educational forums.

Over the last year, the subject of fiduciary responsibility, and the associated time commitment, for employee members on boards of retirement became a contentious issue at several retirement systems in the state. In an effort to address the subject, SACRS (State Association of County Retirement Systems) sent a memorandum to SACRS CAO's, '37 Act County Board of Supervisors, SACRS Trustees and CSAC reminding all parties of the dual role employee members serve to both the retirement board and the employer county or district (Attachment #1). In addition, articles on the subject were written (Attachment #2) and we witnessed the filing of a well publicized lawsuit involving an employee board member in another '37 Act county.

FIDUCIARY DUTIES

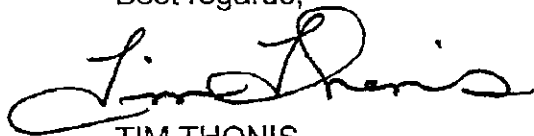
January 4, 2010

Page 2 of 2

The dual role of employee members is addressed in Government Code section 31522. In pertinent part, the section states "The official duties of elected board members who are employees of the county or a district shall be included as part of their county or district employment and their board duties shall normally take precedence over any other duties." Given that the phrases "official duties of elected board members" and "normally take precedence" are subject to interpretation, staff recommends that the Board consider having outside counsel review section 31522 and produce a written opinion that will serve as the foundation for VCERA's employee member trustees to follow in balancing their fiduciary duties and their duties as an employee of the County of Ventura and/or member district.

I would be pleased to respond to any questions you may have on this matter at the January 4, 2010 disability meeting.

Best regards,

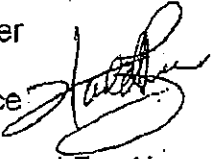
A handwritten signature in black ink, appearing to read "Tim Thonis", written in a cursive style.

TIM THONIS
Retirement Administrator

Attachments



County of Ventura County Executive Office

DATE: December 18, 2009
TO: Karen Becker
FROM: Harold Pierce 
SUBJECT: County Approval For Absences From Workplace

The purpose of this memorandum is to clarify and reinforce your obligations as a County employee to obtain approval from your supervisor before using County time to attend a conference, and to take annual leave when you attend a conference on your own time.

The need for this memorandum became apparent following our recent communications about your intention to attend a conference called the "Public Funds Conference through Opel Financial Group" on January 6 through 8, 2010. By e-mail, you notified me that you were going to attend the conference, but you did not request my permission to do so. When I reminded you of the need to obtain approval, you asserted that you do not need County approval to attend the conference, and do not need to use annual leave.

You claim that as an elected board member of the Ventura County Employees' Retirement Association (VCERA), Government Code section 31522 gives you the right to attend conferences on County time, and without seeking approval. I have consulted County Counsel, and have been advised that your legal opinion is incorrect. Your rights as a VCERA board member and your obligations as a County employee are not mutually exclusive. There is nothing about your board duties that precludes you from fulfilling your obligations as an employee.

Government Code section 31522 provides in full as follows:

"The official duties of elected board members who are employees of the county or a district shall be included as part of their county or district employment and their board duties shall normally take precedence over any other duties. The elected board members who are county or district employees shall not receive any additional compensation by virtue of their election to the board."

As indicated, your board duties will "normally" take precedence over your other duties. But there is nothing preventing you from seeking approval from your supervisor before using County time for board duties. In fact, the limitation "normally" implies that there will be situations where your employment duties will take precedence. In other words, you must seek approval in advance, even to attend regularly scheduled meetings of VCERA, and although approval normally will be granted, approval can be withheld if circumstances warrant.

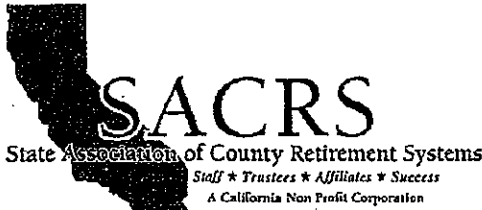
Moreover, only "board duties" may take precedence over your duties as an employee. We, and County Counsel, interpret this to mean the time necessary to attend meetings of the board, or meetings of authorized subcommittees as discussed in Government Code section 31521. Generally, conferences and seminars will not be considered a board duty. We don't believe that it is a board duty to attend an out of state three-day conference in January.

If you still wish to attend this conference you can request permission. Along with the request, please provide your explanation for why you believe it is an official duty as a VCERA Board Member to attend the conference or why you believe it is in the County's interest to allow the time off for you to attend.

Once we have received the request we'll consider whether or not to approve it in the context of the County's operational needs and the specific workload needs of the Deferred comp unit. It will also be considered in light of the time management issues that have been raised in your most recent evaluation.

The County supports the role you play as an elected member of the VCERA Board. However, as a County employee you are required to follow procedures for requesting permission for time spent out of the office. In conclusion, you are instructed to obtain approval in advance from your supervisor for any and all absences where it is possible to do so. If your supervisor determines that your duties as a VCERA board member require you to perform VCERA business during your normal work hours, you will normally be given permission to use County time for the period required. If your supervisor determines that, due to unusual circumstances your work as a County employee is needed at the same time as a VCERA function, he may deny your request to perform VCERA business on County time. If you have been denied the use of County time for a function you believe is necessary to your role as a VCERA board member, you may ask to use annual leave time to attend to that function. However, your request may be denied just as any other request to use annual leave is subject to supervisory approval.

cc: John Nicoll



RECEIVED
SEP 03 2009

September 1, 2009

VENTURA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

To: SACRS CAO's
37' Act County Board of Supervisors
SACRS Trustee's
CSAC
From: Robert Palmer, SACRS Interim Executive Director
Re: County Retirement Board Trustees

The State Association of County Retirement Systems, (SACRS) is a 55 year old association consisting of twenty counties whose retirement systems are governed by the 1937 Act. SACRS's systems assets totaling \$80 billion and provides benefits to 400,000 county employees.

It has come to our attention that some Board Trustees may be experiencing difficulties in carrying out their fiduciary responsibilities as a trustee, as well as, an employee of the county.

Consequently, we would like to take this opportunity to point out Government Code 31522 which states:

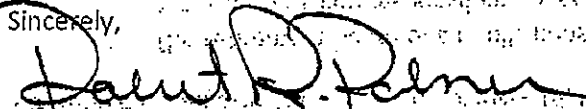
"The official duties of elected board member who are employees of the county or a district shall be included as part of their county or district employment and their board duties shall normally take precedence over any other duties."

Additionally, California's Constitution, Article 16, Section 17 (a) and (b) states:

- a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.
- b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

Thank you for your attention to this matter.

Sincerely,


Robert Palmer, SACRS
Interim Executive Director

THE APPLICATION OF GOVERNMENT CODE SECTION 31522

AS INTERPRETED BY SKIP MURPHY

Over the past years there has been on-going discussion about the time that is necessary and required to perform the duties of an elected retirement board trustee—specifically under the County Employees' Retirement Law of 1937 ('37 Act).

Since those elected trustees are, for the most part, working county employees, the time that they expend on retirement board business may be taking time away from the position that they were hired to do. So how is this resolved between department managers and the elected trustee?

First, there needs to be a basic understanding of the duties of the trustees of any retirement board. The current state of the law requires that ALL trustees, regardless of their "constituency" are required to act on behalf of the retirement system and its beneficiaries, not necessarily doing what might be wanted by his/her "electors." Simply doing what's right as set forth above is the easy part if the trustee is sincere about the job.

Directly related to doing the job and doing that job in an educated manner is the question that is out there about the time necessary to be a good trustee. The key word here is "time." Employers want an employee to work for them, but the time involved in retirement board business creates a conflict. In the '37 Act there is a specific section that speaks to that issue.

Clearly this involvement of employees, which took time away from their county job, was an issue that necessitated it to be addressed in law. In 1947, this language (or language very similar) was added to the '37 Act in order that employees would not be penalized or "docked" for the time they spent away from the county job while executing their function as a trustee on the retirement board. In 1998 the original language was modified into the current language setting forth the issue of not receiving added compensation for the duties of trustee.

Section 31522 of the California Government Code now states: "The official (retirement board) duties of elected board members who are employees of the county or a district shall be included as part of their county or district employment and their duties shall normally take precedence over any other duties. The elected board members who are county employees or district employees shall not receive any additional compensation by virtue of their election to the board. Thus, the basic framework of the duties, as well as how and when they are to be performed, is already set out. That should be the end of it.

If one has a supportive employer, the matter is, in fact, settled and the trustee does what is necessary to be a good retirement board member. However, it does not always end the debate from the supervisors of those employees that the retirement board member is

spending too much "work time" doing "retirement board business."

It is also clear that if both the supervisor and the employee have differing outlooks on the importance of retirement board business, including the need to become educated in both legal and investment aspects of retirement boards, major conflicts can arise. On occasion, both sides may tend to "dig their heels in" and try to force their individual position on the other. So what's a logical approach?

Let's start by looking at the job of the trustee. As stated at the outset, it is too look out for the long term well being of the fund to ensure that the pension benefit will be available and funded when employees retire. In order to do that the trustee will attend retirement board meetings and vote on how investments of the fund should be handled. They also deal with those injured and whether they meet the test to get a pension when they can no longer work. So far, so good. Most bosses have no problem with you attending those meetings. But, (here comes the issue) what about attending conferences, seminars or other educational meetings that will assist the trustee in making good, solid and legal decisions when dealing with the retirements and the investments of the retirement system?

A logical approach should be taken. First, the employee was trained in some manner to do the job that employee was →

hired to do. That training was done on "company time." Many county jobs also require regular or periodic update training on new procedures, law changes or proficiency level testing; again all completed on company time. The job of a trustee on a retirement board is no less important. In fact, much of the knowledge and understanding of matters in front of a retirement board is obtained by the trustee. The trustee must take an active role to become educated. This "trustee basic training" is necessary to get you to understand your role and the various aspects of your retirement board job. As a tenured trustee, one needs to continue to attend additional training in order to keep up to date on the changes in the law, changes in investments, best practices, etc., etc., etc.

There needs to be some middle ground between the county job and the retirement board job. It's far too tempting to want to go off to every conference that you get a flyer to. But in doing so, are you being fair to your employer? Yes, "fair" does enter into it. Periodic absences from the county job can be tolerated—even readily accepted if there is a discussion about the reality of the retirement duties along with the willingness of the trustee to do the county job to the best of their ability.

Fairness also is the responsibility of the trustee. Should there be some personal time given to the pursuit of this education and training? The quick answer is "yes." The added responsibility of being a retirement board trustee was taken on voluntarily. Theoretically one knew what they were getting in to. The statement in the law ("...shall be included as part of their...employment...") does not necessarily mean that all of the retirement board trustee training/education should be done on the back of the employer.

In conclusion, historically retirement board business was accepted as part of the county business due to its minimal interference with that county business. As the job of a trustee became more complex, the time commitment became more. The retirement law, Government Code Section 31522, simply spelled out the general intent that the employer should give the trustee the time necessary to competently be a trustee. It was never intended to be "carte blanc" for an employee to leave county employ to be a full time trustee.

Experience has shown that open and honest discussion can usually lead to a solution of most problems. This SHOULD be the approach when dealing with this issue.



Skip worked for the Sheriff's Department for 38 years and was a 20 year member of the San Diego County Board of Retirement. He is currently working on behalf of retirees as the President of CRCEA and as the 1st Vice-President of RESDC.

WITH THE RECOMMENDATION OF "THE EXECUTIVE DIRECTOR REVIEW & EVALUATION COMMITTEE" TO CREATE A POSITION, THE SACRS BOARD OF DIRECTORS TAKES THE NEXT STEP... **AND HIRES ME!**

BY ROBERT PALMER,
SACRS PAST PRESIDENT
& FORMER CEO SAN JOAQUIN CERA

To paraphrase General Douglas MacArthur...

Old Retirement Administrators never die they just reinvent themselves...

Tahiti, Maui, Mazatlan, Las Vegas, Seattle, Venice, Rome, and the Greek Isles... (All places my wife and I have taken our AMEX card and me during our first eighteen months of retirement).

...Wonderful places, beautiful places but not as intellectually stimulating as dealing with public sector defined benefit retirement systems!

So when I received a call from President Rich White asking for my thoughts on how an Executive Director could add real value to this great organization...the stimulation returned.

It is clear from the long history of SACRS that the twenty retirement associations are and always will be separate and independent entities held together by a common law—The County Employees Retirement Law (CERL).

The Board of Directors of SACRS takes its role and responsibilities seriously and serves as the policy setting body for the association.

The strong association structure with its sub-committees has served the association members well—volunteers for Legislative, Program, Education, Bylaws, Audit and Nomination Committees make the various processes very efficient. The Affiliate Committee has worked as an adjunct to the SACRS organization in providing services to the organization as well as controlling and