

Memorandum

DATE: June 12, 2017
TO: Members of the Board of Retirement
FROM: Gina M. Ratto, General Counsel
SUBJECT: LEGISLATIVE UPDATE

Recommendation

Receive and file.

Background/Discussion

The California Legislature reconvened on January 4, 2017 to commence the first year of the 2017-2018 legislative session. A comprehensive list and description of the bills that staff is monitoring is attached. Below is a brief summary of the bills that may be of greater interest to the Board. **Updates and new additions to the previous report are indicated in underlined, bold text.**

SACRS Support Bills

SACRS is currently supporting two bills:

- **SB 671 (Moorlach)** would make technical amendments to clarify the section of the CERL that permits a county and district to make an advance payment of all or part of the county's or district's estimated annual contributions to the retirement fund (including OCERS); **(STATUS: Passed the Senate; forwarded to the Assembly.)**
- **AB 526 (Cooper)** would make the Sacramento County Employees Retirement System a district under the CERL. **(STATUS: Passed the Assembly; forwarded to the Senate; referred to Committee.)**

Bills That Would Amend the CERL or Other Laws That Apply to OCERS

- **ACA 15 (Brough) – NEWLY ADDED TO REPORT – ACA 15 would prohibit a government employer from enhancing employee pension benefits, as defined, without approval by the voters of the jurisdiction, and would prohibit a government employer from enrolling a new government employee, as defined, in a defined benefit pension plan without approval by the voters of the jurisdiction. The measure also would prohibit a government employer from paying more than 1/2 of the total cost of retirement benefits, as defined, for new government employees without approval by the voters of the jurisdiction. The measure would prohibit retirement boards from imposing charges or other financial conditions on a government employer that proposes to close a defined benefit pension plan to new members unless the voters or the sponsoring government employer approve those charges or conditions. The measure would require challenges to the legality of actions taken by a government employer or a retirement board to comply with its provisions to be brought in state or federal courts.**

The measure would prohibit its provisions from being interpreted to modify or limit disability benefits provided for government employees or death benefits for families of government employees, even if provided as part of a retirement benefits system, or from requiring voter approval of disability or death benefits. The measure would prescribe various requirements and prohibitions regarding its interpretation and the effect of any other competing measures, among other things. (STATUS: In Committee.)

- **AB 283 (Cooper)** would amend the CERL to require, for purposes of determining permanent incapacity of certain peace officers, that those members be evaluated by the existing procedure established by the retirement system to determine if they can perform all of the usual and customary duties of a peace officer. **(STATUS: Passed the Assembly; forwarded to the Senate; referred to Committee.)**
- **AB 1310 (Travis Allen)** would require the retirement board of a public retirement system, including county systems under the CERL, to disclose the unfunded liability and healthcare debt of the system on each member statement provided to members of the system. **(STATUS: Died in Committee; will be deleted from future reports.)**
- **SCA 8 (Moorlach)** would amend the State Constitution to permit a government employer to reduce retirement benefits that are based on work not yet performed by an employee regardless of the date that the employee was first hired. **(STATUS: In Committee.)**
- **SCA 10 (Moorlach)** would prohibit a government employer from providing public employees any retirement benefit increase until that increase is approved by a $2/3$ vote of the electorate of the applicable jurisdiction and that vote is certified. **(STATUS: In Committee.)**

Other Bills of Interest

- **AB 530 (Cooper)** would expand the jurisdiction of the Public Employment Relations Board to include resolving disputes and statutory duties and rights of persons who are peace officers, as defined. **(STATUS: Passed Committee.)**
- **AB 551 (Levine)** would extend the prohibition of the Political Reform Act, which prevents elected and other local officials, for a period of one year after they leave their positions, from appearing before their former local government agencies for the purpose of influencing administrative or legislative action, to independent contractors of the local government agency. **(STATUS: Passed the Assembly, forwarded to the Senate; referred to Committee.)**
- **AB 1025 (Rubio)** would repeal Government Code section 1099 which currently prohibits a public officer, including an appointed or elected member of a governmental board, from simultaneously hold two public offices that are incompatible. **(STATUS: In Committee.)**
- **AB 1479 (Bonta)** would require state and local agencies to designate a person or office to act as the agency's custodian of records who is responsible for responding to any request made pursuant to the California Public Records Act (CPRA) and any inquiry from the public about a decision by the agency to deny a request for records. It would also authorize a court to assess a civil penalty against the agency in an amount not less than \$1,000, nor more than \$5,000, for violations of the CPRA. **(STATUS: In Assembly.)**
- **SB 302 (Mendoza)** would clarify existing law to specifically require all property tax revenues of Orange County attributable to a rate imposed for fire protection purposes prior to June 6, 1978 (the effective

date of Proposition 13) to be allocated by Orange County to the Orange County Fire Authority. (**STATUS: In Assembly.**)

Bills that apply to CalPERS and/or CalSTRS Only:

- **AB 679 (Cooley)** would require CalPERS to take a security interest in specific types of collateral of at least 102% to secure CalPERS' securities lending agreements. (**STATUS: In Committee.**)
- **SB 32 (Moorlach)** would create the Citizens' Pension Oversight Committee to serve in an advisory role to the CalPERS and CalSTRS Boards of Administration, and would require the committee to annually review and report to the public the actual pension costs and obligations of CalPERS and CalSTRS. (**STATUS: Failed passage in Committee; reconsideration granted.**)
- **SB 525 (Pan)** would redefine the terms "disability" and "incapacity for performance of duty" as used in the Public Employees Retirement Law to specify that the duration of the disability or incapacity must be expected to last at least 12 consecutive months or result in death. (**STATUS: Passed the Senate; forwarded to the Assembly; referred to Committee.**)
- **SB 560 (Allen)** would require CalPERS and CalSTRS to consider financial climate risk, as defined, in their management of any funds they administer, and to include in their CAFRs the financial climate risks of their investments. (**STATUS: In Committee.**)

Divestment Proposals (CalPERS and CalSTRS Only)

- **AB 20 (Kalra)** would prohibit CalPERS and CalSTRS from investing in companies constructing or funding the construction of the Dakota Access Pipeline. (**STATUS: In Assembly.**)
- **AB 946 (Ting)** would prohibit new investments and require liquidation of existing investments of CalPERS and CalSTRS in border wall construction companies. (**STATUS: In Committee.**)
- **AB 1597 (Nazarian)** would prohibit new investments and require liquidation of existing investments of CalPERS and CalSTRS in investment vehicles issued, owned, controlled or managed by the government of Turkey. (**STATUS: In Assembly.**)

Attachment

Submitted by:

Gina M. Ratto
General Counsel

**2017-2018 LEGISLATIVE SESSION BILLS OF INTEREST
LEGISLATIVE UPDATE (JUNE 12, 2017) – ATTACHMENT**

ACA 15 (Brough) would prohibit a government employer from enhancing employee pension benefits, as defined, without approval by the voters of the jurisdiction, and would prohibit a government employer from enrolling a new government employee, as defined, in a defined benefit pension plan without approval by the voters of the jurisdiction. The measure also would prohibit a government employer from paying more than 1/2 of the total cost of retirement benefits, as defined, for new government employees without approval by the voters of the jurisdiction. The measure would prohibit retirement boards from imposing charges or other financial conditions on a government employer that proposes to close a defined benefit pension plan to new members unless the voters or the sponsoring government employer approve those charges or conditions. The measure would require challenges to the legality of actions taken by a government employer or a retirement board to comply with its provisions to be brought in state or federal courts. The measure would prohibit its provisions from being interpreted to modify or limit disability benefits provided for government employees or death benefits for families of government employees, even if provided as part of a retirement benefits system, or from requiring voter approval of disability or death benefits. The measure would prescribe various requirements and prohibitions regarding its interpretation and the effect of any other competing measures, among other things. **This bill has been added to the June 2017 report.**

AB 20 (Kalra): *This bill applies only to CalPERS and CalSTRS.* This bill would prohibit the boards of administration of CalPERS and CalSTRS on or after January 1, 2018, from making additional investments or renewing investments in a company constructing or funding the construction of the Dakota Access Pipeline, and would require the boards to liquidate their investments in these companies on or before July 1, 2018.

AB 168 (Eggman): Existing law imposes various restrictions on employers with respect to applicants for employment. This bill would prohibit an employer, including state and local government employers, from seeking salary history information about an applicant for employment, except as otherwise provided.

AB 241 (Dababneh): Existing law requires a person or business conducting business in California and any state or local agency, as defined, that owns or licenses computerized data that includes personal information, as defined, to disclose a breach in the security of the data to a resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person in the most expedient time possible and without unreasonable delay, as specified. Existing law requires a person or business, if it was the source of the breach, to offer to provide appropriate identity theft prevention and mitigation services at no cost to the person whose information was or may have been breached if the breach exposed or may have exposed the person's social security number, driver's license number, or California identification card number. This bill would require a state or local agency, if it was the source of the breach, to also offer to provide appropriate identity theft prevention and mitigation services at no cost to a person whose

information was or may have been breached if the breach exposed or may have exposed the person's social security number, driver's license number, or California identification card number.

AB 283 (Cooper): The CERL currently provides that a member who is permanently incapacitated shall be retired for disability despite age if, among other conditions, the member's incapacity is a result of injury or disease arising out of and in the course of the member's appointment, and that employment contributes substantially to that incapacity or the member has completed five years of service and not waived retirement in respect to the particular incapacity or aggravation thereof, as specified. The bill would amend the CERL to require, for purposes of determining permanent incapacity of certain peace officers, that those members be evaluated by the existing procedure established by the retirement system to determine if they can perform all of the usual and customary duties of a peace officer.

AB 512 (Rodriguez): *This bill applies only to CalPERS.* Existing law, until January 1, 2018, provides a state safety member of CalPERS who retires for industrial disability a retirement benefit equal to the greatest amount resulting from three possible calculations. In this regard, the benefit amount is based on an actuarially reduced service retirement, a service retirement allowance, if the member is qualified, or 50% of his or her final compensation, plus an annuity purchased with his or her accumulated contributions, if any. This bill would delete the repeal of these provisions and make them indefinite.

AB 526 (Cooper). This bill would make the Sacramento County Employees Retirement System a district under the CERL.

AB 530 (Cooper): Current law requires the Public Employment Relations Board (PERB) to enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections. It also requires specified complaints to be processed as an unfair practice charge by the PERB. Current law does not apply these provisions to persons who are peace officers, as defined. AB 530 would expand the jurisdiction of the PERB to include resolving disputes and statutory duties and rights of persons who are peace officers, as defined.

AB 551 (Levine). The Political Reform Act of 1974 prohibits, for a period of one year after an official leaves his or her position, elected and other local officials who held positions with a local government agency from acting as agents or attorneys for, or otherwise representing, for compensation, any other person, by appearing before, or communicating with, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. This bill would specify that the one-year prohibition also applies to independent contractors of a local government agency or a public agency who are appearing or communicating on behalf of that agency.

AB 679 (Cooley). *This bill applies only to CalPERS.* Existing law authorizes CalPERS to enter into securities loan agreements whereby a legal owner (lender) agrees to lend specific marketable corporate or government

securities for no more than one year, and the lender retains the right to collect from the borrower all dividends, interest, premiums, rights and other distributions. This bill would require a borrower with respect to any security loan agreement to provide CalPERS with collateral in the form of cash, US government debt securities, or other specified forms of collateral, and would require that the amount of the collateral be at least 102% of the market value of the loaned securities.

AB 946 (Ting). *This bill applies only to CalPERS and CalSTRS.* This bill would prohibit the boards of administration of CalPERS and CalSTRS from making new investments or renewing existing investments in a border wall construction company, defined as any company that contracts or subcontracts to build, maintain, or provide material for President Trump's Border Wall. The bill would require the boards to liquidate investments in a border wall construction company within 12 months of the company contracting or subcontracting to provide work or material for a border wall, as defined.

AB 1025 (Rubio). This bill would repeal Government Code section 1099. Government Code section 1099 prohibits a public officer, including an appointed or elected member of a governmental board, from simultaneously holding two public offices that are incompatible, and prescribes certain circumstances that result in offices being incompatible, unless the simultaneous holding of the particular offices is compelled or expressly authorized by law.

AB 1310 (Travis Allen). This bill would require the retirement board of a public retirement system, including county systems under the CERL, to disclose the unfunded liability and healthcare debt of the system on each member statement provided to members of the system. **This bill died in Committee and will be deleted from subsequent reports.**

AB 1479 (Bonta). This bill would require state and local agencies to designate a person or office to act as the agency's custodian of records who is responsible for responding to any request made pursuant to the California Public Records Act and any inquiry from the public about a decision by the agency to deny a request for records. The bill would also authorize a court that finds that an agency or the custodian improperly withheld from the public, public records which were clearly subject to public disclosure, unreasonably delayed providing the contents of a record subject to disclosure in whole or in part, assessed an unreasonable or unauthorized fee upon a requester, or otherwise did not act in good faith to comply with these provisions, to assess a civil penalty against the agency in an amount not less than \$1,000, nor more than \$5,000.

AB 1597 (Nazarian). *This bill applies only to CalPERS and CalSTRS.* This bill would prohibit the boards of administration of CalPERS and CalSTRS from making additional or new investments, or renewing existing investments, in an investment vehicle in Turkey that is issued by the government of Turkey or that is owned, controlled, or managed by the government of Turkey. The bill would also require the boards to liquidate existing investments in Turkey in these types of investment vehicles within six months of the passage of a federal law imposing sanctions on Turkey.

SB 24 (Portantino). The Political Reform Act of 1974 requires persons holding specified public offices to file disclosures of economic interests, including investments, real property interests, and income within specified

periods of assuming or leaving office and annually while holding office. The act requires the disclosures to include a statement indicating, within a specified value range, the fair market value of investments or interests in real property and the aggregate value of income received from each reportable source. This bill would revise the dollar amounts associated with these ranges to provide for eight total ranges of fair market value of investments and real property interests and ten total ranges of aggregate value of income.

SB 32 (Moorlach): *This bill applies only to CalPERS and CalSTRS.* The bill would create the Citizens' Pension Oversight Committee to serve in an advisory role to the boards of administration of CalPERS and CalSTRS. It would require the committee, on or before January 1, 2019 and annually thereafter to review the actual pension costs and obligations of CalPERS and CalSTRS and report on these costs and obligation to the public.

SB 302 (Mendoza): This bill would clarify existing law to specifically require all property tax revenues of Orange County attributable to a rate imposed for fire protection purposes prior to June 6, 1978 (the effective date of Proposition 13) to be allocated by Orange County to the Orange County Fire Authority (as the agency formed for the purpose of providing fire protection in Orange County). These funds are also known as structural fire fund property taxes, and the bill would appear to codify the holding of the court in *Orange County Fire Authority v. County of Orange*, which stated that any use of structural fire funds for any purpose other than fire protection is prohibited. The bill is supported by the Orange County Professional Firefighters Association, Local 3631.

SB 371 (Moorlach): The Meyers-Milias-Brown Act requires the governing body of a local public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of a recognized employee organization. This bill would prohibit an individual who will be directly or indirectly affected by an MOU between a local public agency and a recognized public employee organization from representing the public agency in negotiations with the recognized public employee organization.

SB 525 (Pan): *This bill applies only to CalPERS.* Under existing law applicable CalPERS (the PERL), a member who is incapacitated is required to be retired for disability in accordance with certain provisions if that member meets specified requirements concerning service. Under the PERL, the terms "disability" and "incapacity for performance of duty" are defined, as a basis of retirement, to mean disability of permanent or extended and uncertain duration, as determined by the board, except with respect to certain local safety members. This bill would redefine those terms to specify that the duration of the disability or incapacity must be expected to last at least 12 consecutive months or result in death.

SB 560 (Allen): *This bill applies only to CalPERS and CalSTRS.* This bill would require the boards of administration of CalPERS and CalSTRS to consider financial climate risk in their management of any funds they administer and to include in their comprehensive annual financial reports, starting on January 1, 2020, the financial climate risks of their investments, including alignment of their portfolios with a specified climate agreement and California climate policy goals, the value at risk if these goals are achieved, and the exposure of the portfolios to long-term risks. "Financial climate risk" is defined by the bill to mean material financial risk posed to an investment by the effects of the changing climate including but not limited to intense storms, rising sea levels, higher global temperatures, economic damages from carbon emissions, and other financial risks due

to public policies to address climate change, shifting consumer attitudes, changing economics of traditional carbon-intense industries, and other transition risks.

SB 571 (Pan). Existing federal law prescribes requirements for different types of tax-qualified retirement plans that permit employees to contribute portions of their pretax wages to individual retirement accounts or that provide for deferred compensation. This bill would authorize a state or local public employer participating in an employee supplemental retirement savings plan, defined to include specified deferred compensation plans and payroll deduction individual retirement account plans, to make a deduction from the wages or compensation of an employee for contributions attributable to automatic enrollment and automatic escalation in the employee retirement plan. The bill would require an employer that provides for automatic enrollment in a supplemental retirement savings plan to provide a default investment option and default investment plan that meets a variety of specified criteria, including providing employees an opportunity to opt out or withdraw. The bill would place other requirements and restrictions on these plans.

SB 657 (Bates). The California Public Records Act (CPRA) requires state and local agencies to make public records available for inspection, subject to certain exceptions. Under existing law, a person may seek injunctive or declaratory relief or a writ of mandate to enforce his or her right to inspect or receive a copy of a public record, as specified. In addition, an agency's decision to release a public record pursuant to the CPRA is reviewable by a petition for a writ of mandate on the basis that the public record was confidential, which is known as a reverse public records action. This bill would require a court in a reverse public records action to apply the provisions of the CPRA as if the action had been initiated by a person requesting disclosure of a public record; would require the requestor to be named as a real party of interest; and would require a court to allow the requestor to be heard on the merits of the action. This bill would provide that, if a court orders the public agency to disclose the records, the court shall order the person who initiated the action to pay the court costs and reasonable attorney's fees of the requestor; and would prohibit a court from requiring the requestor to pay court costs and attorney's fees to the person who initiated the reverse public records action or to the public agency if the court orders the public agency to not disclose the record.

SB 671 (Moorlach). SB 671 would clarify the section of the CERL that permits a county and district to make an advance payment of all or part of the county's or district's estimated annual contributions to the retirement fund. The bill would specify that the authority to make advance payments does not prevent the board of supervisors or governing body of a district from making advance payments for contributions for an additional year or years if certain requirements are satisfied, and would make the prepayment option available to all districts that are members of any county retirement systems.

SCA 8 (Moorlach): This measure would amend the State Constitution to permit a government employer to reduce retirement benefits that are based on work not yet performed by an employee regardless of the date that the employee was first hired, notwithstanding other provisions of the California Constitution or any other law. The measure would prohibit it from being interpreted to permit the reduction of retirement benefits that a public employee has earned based on work that has been performed, as specified. The measure would define government employer and retirement benefits for the purposes of its provisions.

SCA 10 (Moorlach). This measure would prohibit a government employer from providing public employees any retirement benefit increase until that increase is approved by a $\frac{2}{3}$ vote of the electorate of the applicable jurisdiction and that vote is certified. The measure would define retirement benefit to mean any postemployment benefit and would define benefit increase as any change that increases the value of an employee's retirement benefit. The measure would define a government employer to include, among others, the state and any of its subdivisions, cities, counties, school districts, special districts, the Regents of the University of California, and the California State University.