

Memorandum

DATE: October 16, 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 convened on January 4, 2017 to commence the first year of the 2017-2018 legislative session. The last day for bills to pass out of their house of origin was June 2, 2017, and the last day for policy committees to meet and report bills was July 21, 2017. October 15, 2017 is the last day for the Governor to sign or veto bills passed by the Legislature on or before September 15, 2017.

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 text. Information included herein is current as of October 2, 2017.**

SACRS Support Bills

SACRS is supporting three bills:

- **AB 995 (Limón)** Existing law, the County Employees Retirement Law of 1937, authorizes counties to establish retirement systems, as specified, in order to provide pension benefits to county, city, and district employees. Existing law defines a district for these purposes and includes the retirement system established in Ventura County within the definition. The law authorizes the board of retirement in Ventura County to appoint specified personnel who, subsequent to their appointments, become employees of the retirement system subject to the terms of employment determined by the board of retirement. This bill would require any leave balance accrued by a county employee prior to his or her appointment as a Ventura County retirement system employee, as described above, to be transferred from the county to the retirement system and would require the county to pay to the retirement system an amount equal to the value of the accrued leave, as specified. **(STATUS: Signed by Governor.)**
- **SB 671 (Moorlach)** The CERL requires a county auditor to certify to the retirement board, at the end of each month or pay period, the compensation earnable paid to members of the retirement association and to transfer the applicable percentage of the county's annual contribution to the retirement fund, as specified. The CERL also authorizes the board of supervisors to authorize the county auditor to make an

advance payment of all or part of the county's estimated annual contribution if the payment is made *within 30 days after the county's fiscal year begins*. Finally, the CERL authorizes a district that is a member of the retirement system in the County of San Bernardino to make advance payments, as described above. This bill would (1) 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 the estimated annual county or district contributions for an additional year or partial year if certain requirements are satisfied; (2) make the provisions of the statute applicable to districts that are members of county retirement systems outside of San Bernardino County; and (3) make a variety of technical and conforming changes, including changing the deadline for the advance payment from the current language of "*within 30 days after the county's fiscal year begins*" to "*no later than 30 days after the commencement of the county fiscal year for which the advance payment is made.*" **(STATUS: Signed by Governor.)**

- **AB 526 (Cooper)** would make the Sacramento County Employees Retirement System a district under the CERL. **(STATUS: Held over to January 2018.)**

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

- **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: Held over to January 2018.)**
- **SB 112 (Budget Trailer Bill)** The California Public Employees' Pension Reform Act of 2013 (PEPRA) establishes various limits on retirement benefits generally applicable to specified public employee retirement systems in the state and, among other things, prescribes limits on service after retirement without reinstatement. Under the law applicable to CalPERS, a retired person is permitted to serve as an elective officer without reinstatement from retirement, provided that any portion of his or her retirement allowance based on service in that elective office is suspended during incumbency, which provisions prevail over those of PEPRA. This bill would amend the CERL to similarly permit a person retired from a CERL system to serve as an elective officer without reinstatement from retirement or loss or interruption of benefits, provided that his or her retirement allowance is suspended to the extent that it is based on service in that elective office. **(STATUS: Signed by Governor.)**

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: On Governor's desk to be signed (as of October 2, 2017).)**
- **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: Signed by Governor.)**

- **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: On Governor's desk to be signed (as of October 2, 2017).)**
- **SB 302 (Mendoza)** Existing law requires property tax revenues of the County of Orange that are allocated by that county to a joint powers authority formed for the purpose of providing fire protection to be used by that authority for fire protection purposes, as defined. Existing law authorizes a local agency to transfer any portion of its property tax revenues that is allocable to one or more tax rate areas within the local agency to one or more other local agencies that have the same tax rate areas, as specified, subject to specified conditions, including that the transfer will not impair the ability of the transferring agency to provide existing services. This bill would additionally require, with regard to transfers of structural fire fund property tax revenues allocated by the County of Orange to a joint powers agency and required by existing law to be used to provide fire protection, that the transfer be approved by the county, a majority of member cities, and the agency currently receiving the funds. **(STATUS: On Governor's desk to be signed (as of October 2, 2017).)**

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% or an amount consistent with market practice, whichever is greater, to secure CalPERS' securities lending agreements. The bill would also prohibit the total market value of loan securities collateralized by marketable public equities and marketable international government bonds from exceeding 25% of the assets of the retirement fund. **(STATUS: Signed by Governor.)**
- **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: Signed by Governor.)**

Divestment Proposals (CalPERS and CalSTRS Only)

- **AB 20 (Kalra)** This bill would require the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System to make a specified report, on or before April 1, 2018, to the Legislature and the Governor regarding investments in the Dakota Access Pipeline, as defined. The bill would declare the intent of the Legislature that the boards, on or before April 1, 2018, review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the boards' investment policies related to environmental, social, and governance issues. The bill would provide that it does not require a board to take any action unless the board determines in good faith

that the action is consistent with the board's fiduciary responsibilities established in the constitution.
(STATUS: On Governor's desk to be signed (as of October 2, 2017).)

- **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: Held over to January 2018.)**

Attachment

Submitted by:



Gina M. Ratto
General Counsel



**2017-2018 LEGISLATIVE SESSION BILLS OF INTEREST
LEGISLATIVE UPDATE**

BILLS SIGNED INTO LAW OR ON GOVERNOR'S DESK FOR SIGNATURE AS OF OCTOBER 2, 2017

(Governor has until October 15, 2017 to sign or veto)

AB 20 (Kalra): This bill would require the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System to make a specified report, on or before April 1, 2018, to the Legislature and the Governor regarding investments in the Dakota Access Pipeline, as defined. The bill would declare the intent of the Legislature that the boards, on or before April 1, 2018, review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the boards' investment policies related to environmental, social, and governance issues. The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the constitution. **(STATUS: On Governor's desk to be signed.)**

AB 168 (Eggman): Existing law imposes various restrictions on employers with respect to applicants for employment. A violation of those restrictions is a misdemeanor. This bill would prohibit an employer from seeking salary history information about an applicant for employment and would require an employer, upon reasonable request, to provide the pay scale for a position to an applicant for employment. The bill would apply to all employers, including state and local government employers and the Legislature. The bill would specify that a violation of its provisions would not be subject to the misdemeanor provision. **(STATUS: On Governor's desk to be signed.)**

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. **(STATUS: On Governor's desk to be signed.)**

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. **(STATUS: On Governor's desk to be signed.)**

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. **(STATUS: Signed by Governor.)**

AB 679 (Cooley) would require CalPERS to take a security interest in specific types of collateral of at least 102% or an amount consistent with market practice, whichever is greater, to secure CalPERS' securities lending agreements. The bill would also prohibit the total market value of loan securities collateralized by marketable public equities and marketable international government bonds from exceeding 25% of the assets of the retirement fund. **(STATUS: Signed by Governor.)**

AB 995 (Limón) existing law, the County Employees Retirement Law of 1937, authorizes counties to establish retirement systems, as specified, in order to provide pension benefits to county, city, and district employees. Existing law defines a district for these purposes and includes the retirement system established in Ventura County within the definition. The law authorizes the board of retirement in Ventura County to appoint specified personnel who, subsequent to their appointments, become employees of the retirement system subject to the terms of employment determined by the board of retirement. This bill would require any leave balance accrued by a county employee prior to his or her appointment as a Ventura County retirement system employee, as described above, to be transferred from the county to the retirement system and would require the county to pay to the retirement system an amount equal to the value of the accrued leave, as specified. **(STATUS: Signed by Governor.)**

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. **(STATUS: On Governor's desk to be signed.)**

SB 112 (Budget Trailer Bill) The California Public Employees' Pension Reform Act of 2013 (PEPRA) establishes various limits on retirement benefits generally applicable to specified public employee retirement systems in the state and, among other things, prescribes limits on service after retirement without reinstatement. Under the law applicable to CalPERS, a retired person is permitted to serve as an elective officer without reinstatement from retirement, provided that any portion of his or her retirement allowance based on service in that elective

office is suspended during incumbency, which provisions prevail over those of PEPRA. This bill would amend the CERL to similarly permit a person retired from a CERL system to serve as an elective officer without reinstatement from retirement or loss or interruption of benefits, provided that his or her retirement allowance is suspended to the extent that it is based on service in that elective office. **(STATUS: Signed by Governor.)**

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. **(STATUS: On Governor's desk to be signed.)**

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. **(STATUS: Signed by Governor.)**

SB 671 (Moorlach) The CERL requires a county auditor to certify to the retirement board, at the end of each month or pay period, the compensation earnable paid to members of the retirement association and to transfer the applicable percentage of the county's annual contribution to the retirement fund, as specified. The CERL also authorizes the board of supervisors to authorize the county auditor to make an advance payment of all or part of the county's estimated annual contribution if the payment is made *within 30 days after the county's fiscal year begins*. Finally, the CERL authorizes a district that is a member of the retirement system in the County of San Bernardino to make advance payments, as described above. This bill would (1) 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 the estimated annual county or district contributions for an additional year or partial year if certain requirements are satisfied; (2) make the provisions of the statute applicable to districts that are members of county retirement systems outside of San Bernardino County; and (3) make a variety of technical and conforming changes, including changing the deadline for the advance payment from the current language of "*within 30 days after the county's fiscal year begins*" to "*no later than 30 days after the commencement of the county fiscal year for which the advance payment is made.*" **(STATUS: Signed by Governor.)**

BILLS HELD OVER

Bills that Passed Out of House of Origin and Held Over to January 2018

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. **(STATUS: Held over to January 2018.)**

AB 526 (Cooper). This bill would make the Sacramento County Employees Retirement System a district under the CERL. **(STATUS: Held over to January 2018.)**

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. **(STATUS: Held over to January 2018)**

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. **(STATUS: Held over to January 2018.**

Bills that did not Pass Out of House of Origin by Deadline and Which May be Acted Upon in January 2018

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. **(STATUS: Did not pass out of Assembly.)**

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. **(STATUS: Did not pass out of Assembly.)**

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. **(STATUS: Did not pass out of Assembly.)**

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. **(STATUS: Did not pass out of Assembly.)**

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. **(STATUS: Did not pass out of Senate.)**

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. **(STATUS: Did not pass out of Senate.)**

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. **(STATUS: Did not pass out of Senate.)**

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. **(STATUS: Did not pass out of Senate.)**

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-intensive industries, and other transition risks. **(STATUS: Did not pass out of Senate.)**

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. **(STATUS: Did not pass out of Senate.)**

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. **(STATUS: Did not pass out of Senate.)**