

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
BOARD OF RETIREMENT
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA**

**NOTICE AND AGENDA OF SPECIAL MEETING
of the OCERS BOARD OF RETIREMENT**

**Wednesday, August 24, 2022
1:00 P.M.**

or upon adjournment of the Investment Committee meeting, whichever is later

Pursuant to Assembly Bill 361, signed into law on September 16, 2021 as urgency legislation; Governor Newsom’s Proclamation of a State of Emergency on March 4, 2020, which Proclamation is still in effect; and Board of Retirement Resolution 2022-08, this meeting will be conducted by video/teleconference, in compliance with Government Code section 54953 as amended by Assembly Bill 361. In addition, members of the Board and the public are welcome to participate in the meeting via Zoom from the OCERS Boardroom located at 2223 E. Wellington Ave., Santa Ana, CA. However, none of the other locations from which the Board members participate by teleconference will be open to the public.

Members of the public who wish to observe and/or participate in the meeting may do so (1) from the OCERS Boardroom or (2) via the Zoom app or telephone from any location. Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. Members of the public who participate in the meeting from the OCERS Boardroom and who wish to provide comment during the meeting may do so from the podium located in the OCERS Boardroom.

OCERS Zoom Meeting Video/Teleconference Information	
Join Using Zoom App (Video & Audio) https://ocers.zoom.us/j/81425007192 Meeting ID: 814 2500 7192 Passcode: 594082 Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.	Join by Telephone (Audio Only) Dial by your location +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US (Tacoma) +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York) +1 301 715 8592 US (Germantown) Meeting ID: 814 2500 7192 Passcode: 594082

A [Zoom Meeting Participant Guide](#) is available on OCERS website [Board & Committee meetings page](#)

AGENDA

The Orange County Board of Retirement welcomes you to this meeting. This agenda contains a brief general description of each item to be considered. The Board may take action on any item included in the agenda; however, except as otherwise provided by law, no action shall be taken on any item not

appearing on the agenda. The Board may consider matters included on the agenda in any order, and not necessarily in the order listed.

CALL MEETING TO ORDER AND ROLL CALL

OPEN SESSION

PUBLIC COMMENTS

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda. **Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad.** Persons attending the meeting in person and wishing to provide comment at this time should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary’s box located near the back counter. When addressing the Board, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

ACTION ITEMS

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Board’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9, at the time the item is called. Persons attending the meeting in person and wishing to provide comment on a matter listed on the agenda should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary’s box located near the back counter.**

A-1. CONSIDER TAKING A POSITION ON AB 2493

Recommendation: Consider taking a position with regard to AB 2493 (Chen).

BOARD MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETING

PERSONNEL COMMITTEE MEETING

August 31, 2022

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

All supporting documentation is available for public review in the retirement office during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and 8:00 a.m. – 4:30 p.m. on Friday.

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.



Memorandum

DATE: August 24, 2022
TO: Members of the Board of Retirement
FROM: Steve Delaney, Chief Executive Officer
SUBJECT: **CONSIDER TAKING A POSITION ON AB 2493**

RECOMMENDATION

Consider taking a position with regard to AB 2493 (Chen).

BACKGROUND

Assembly Bill 2493 (AB 2493) was introduced in February of this year for the purpose of compensating CERL system safety members whose current and future pension benefits are reduced due to the California Supreme Court decision in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (the "Alameda Decision"). AB 2493 also applies to future instances of pension reductions unrelated to the Alameda Decision.

The current proposed bill language is unclear, raising the specter of protracted litigation. Implementation of AB 2493 will be administratively burdensome and will also erase much of the work OCERS and other systems have already undertaken over the last two years to administer the requirements of the Alameda Decision. For those reasons, a number of County Employee Retirement Associations/Systems, including Sacramento, San Bernardino, Marin and Sonoma among others, have recently held public meetings of their respective boards, leading to their taking an opposed position to AB 2493.

Other systems continue to take a neutral position, in particular Los Angeles and Santa Barbara counties, deferring to their individual County government legislative offices to take the lead in opposing AB 2493. That is the approach OCERS has taken to date. The statewide CSAC has formally opposed the bill for reason that most of the financial burden falls on the Counties and not their retirement systems.

DISCUSSION

With Chair Eley's approval, a special meeting of the OCERS Board of Retirement has been called for Wednesday, August 24, immediately following the already scheduled meeting of the Board's Investment Committee.

Harvey Leiderman and Gina Ratto will be present to provide a verbal summary of AB 2493 and assist in the Board's discussion, with the possibility of OCERS taking a position regarding the bill.

Representatives of the Association of Orange County Deputy Sheriffs (AOCDS) have also been invited to provide their insight into AB 2493. Representatives of the County of Orange Legislative Office have also been invited.

OCERS staff's monthly Legislative Updates to the Board have included a summary of AB 2493, as the language evolved through amendments since the bill's introduction in February. Below is the summary provided in the August 15, 2022 Legislative Update, with amendments introduced on August 17, 2022 indicated in redline:

AB 2493 (Chen)

This bill would require a retirement system established under CERL, upon determining that the compensation reported for a sworn peace officer or firefighter is disallowed compensation, to require the employer to discontinue reporting the disallowed compensation.

The bill would require, for an active sworn peace officer or firefighter, the retirement system to credit all contributions made on the disallowed compensation against future contributions to the benefit of the employer-that reported the disallowed compensation, and return any contribution paid by, or on behalf of, that member,-to the member by the employer that reported the disallowed compensation, except in certain circumstances in which a system has already initiated a process, as defined, to recalculate ~~recalculating~~ compensation.

“Initiated a process” means a system has begun collecting any portion of an overpayment from any affected retired member, survivor, or beneficiary or adjusted the retirement allowance of any affected retired member, survivor, or beneficiary due to a determination of disallowed compensation.

The bill would require the system, for a retired sworn peace officer or firefighter, survivor, or beneficiary whose final compensation was predicated upon the disallowed compensation, to credit the contributions made on the disallowed compensation against future contributions, to the benefit of the employer that reported the disallowed compensation, and to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation. The bill would establish other conditions required to be satisfied with respect to a retired sworn peace officer or firefighter, survivor, or beneficiary when final compensation was predicated upon disallowed compensation, including, among others, requiring a specified payment to be made by the employer that reported contributions on the disallowed compensation to the retired member, survivor, or beneficiary, as appropriate. The bill would authorize a retirement system that has initiated a process prior to July 1, 2022, to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation to use that system in lieu of specified provisions that the bill would enact. The bill would also require certain information regarding the relevant retired member, survivor, or beneficiary needed for purposes of these provisions to be kept confidential by the recipient.

The bill would authorize an employer to submit to a retirement system for review a compensation item proposed to be included in an agreement, as specified, on and after January 1, 2022, that is intended to form the basis of a pension benefit calculation and would require the system to provide guidance on the matter. The bill would prescribe a process in this regard. The bill would specify that it does not affect or otherwise alter a party’s right to appeal any determination regarding disallowed compensation made by the system after July 30, 2022.

CERL defines “compensation earnable” by a member, for the purpose of calculating benefits, to mean the average compensation, as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and the same rate of pay, subject to certain exceptions. This bill would authorize a retirement system, to the extent it has not defined “grade,” in the above-described circumstances, to

mean a number of employees considered together because they share similarities in job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or other logical work-related grouping.

The bill would specify that its provisions are not to be interpreted to alter certain existing laws, including PEPRA and the holding in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032.

(STATUS: Introduced 02/17/22. Passed out of the Assembly on 05/02/22. In Senate, read first time on 05/03/22. Referred to Coms. on L, P.E & R and JUD on 05/11/22. From committee: Do pass and re-referred to Com. on JUD on 06/23/22. From committee: Amend, and do pass as amended on 06/29/22. Read second time, amended; ordered to third reading on 06/30/22. Read third time; amended; ordered to second reading on 08/17/22. Read second time; ordered to third reading on 08/18/22.)

You will also find attached a very detailed summary, presenting both pros and cons of the bill as considered by the Judiciary Committee in late June 2022.

The OCERS Board has a number of outcomes possible from this discussion. Options include providing no comment and taking no position; to “oppose” or “oppose unless amended”; or to “support” or “support if amended”; or directing staff to send a letter of concern. The Board may also choose to send a letter to the Governor if AB 2493 is passed by the Legislature.

Attachments:

1. Senate Judiciary Report
2. California State Association of Counties Letter of Opposition
3. Sacramento County Employees Retirement Association Letter of Opposition
4. San Bernardino County Employees Retirement Association Letter of Opposition
5. Sonoma, Marin, Mendocino County Employee Retirement Associations/Systems Joint Letter of Opposition

Submitted by:



SD - Approved

Steve Delaney
Chief Executive Officer

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2493 (Chen)
Version: April 5, 2022
Hearing Date: June 28, 2022
Fiscal: No
Urgency: No
TSG

DIGEST

This bill requires counties operating employee retirement systems under the County Employees Retirement Law (CERL) to reimburse those systems for pension overpayments made to legacy peace officer and firefighter retirees and also pay those retirees a lump sum amount equal to 20 percent of the actuarial equivalent present value of a retiree's "lost" pension going forward due to the benefit recalculation.

EXECUTIVE SUMMARY

Changes in California public laws and subsequent court rulings have shifted how public employers are supposed to calculate the benefits available to their employees in the case of death, disability, or retirement. As a result, some public employers have recalculated or will soon recalculate the benefits owed to their retirees and other beneficiaries. Where an overpayment is found, the public employers may seek to clawback some of the benefits that the retiree or other beneficiary has received. But, of course, the retirees and other beneficiaries have often organized their lives and their finances relying on the benefits they expected to receive before the recalculation. This bill would, with respect to peace officers and firefighter retirees, significantly blunt the impact of these recalculations and clawbacks by requiring counties to: (1) to reimburse their employee retirement systems for pension overpayments; and (2) pay those retirees a lump sum amount equal to 20 percent of the actuarial equivalent present value of a retiree's "lost" pension going forward.

The bill is sponsored by the Association of Orange County Sheriff's Department and the California Professional Firefighters. Support comes from local firefighter and law enforcement unions who assert that the bill is essential to preserving benefits that their members relied on when choosing to take on difficult and dangerous work on behalf of the public. Opposition comes primarily from counties, who argue that the bill unfairly burdens them with paying for changes in the law. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

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PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, among other things under the California Constitution that, "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 administrating the system." (Cal. Const., art. XVI, § 17.)
- 2) Establishes the County Employees Retirement Law (CERL) that governs 20 independent county retirement associations and provides for retirement systems for county and district employees in those counties adopting its provisions. Currently, 20 counties operate retirement systems under the CERL and these systems are commonly referred to as "1937 Act system" or "'37 Act systems." These systems are regulated by, and administer the CERL, that is also commonly referred to as the "'37 Act." (Gov. Code § 31450 *et seq.*)
- 3) Establishes that the purpose of the CERL is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of public service without prejudice and without inflicting a hardship upon the employees removed. (Gov. Code § 31451.)
- 4) Establishes the Public Employees' Pension Reform Act of 2013 (PEPRA) – a comprehensive reform of public employee retirement that, among other things, increased contributions towards retirement, decreased benefit formulas, and increased the age of retirement that apply to new members of the system first hired on or after January 1, 2013, and made changes that apply to all members towards resolving unfunded liabilities, the manipulation of compensation for purposes of calculating a retirement allowance (i.e., pensions spiking), double-dipping, and other prescribed best practice measures. (Gov. Code § 7522.02 *et seq.*)
- 5) Defines, under the CERL, "compensation" to mean the remuneration paid in cash out of county or district funds, plus any amount deducted from a member's wages for participation in a deferred compensation plan, as provided, but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to the member. (Gov. Code § 31460.)

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- 6) Defines, pursuant to the CERL, "compensation earnable" by a member to mean the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and the same rate of pay. Among other things, "compensation earnable" expressly does not include certain types or forms of compensation paid to, and when they were paid that, enhance a member's retirement benefit under the system. (Gov. Code § 31461.)
- 7) Establishes that when a county or district reports compensation to the system, it must identify the pay period in which the compensation was earned regardless of when it was reported or paid, and prescribes the reporting requirements and limitations on compensation earnable. (Gov. Code § 31542.5.)
- 8) Establishes that "compensation earnable" must not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under federal law, as specified, and provides that the definition of "compensation earnable" must not apply to a PEPRA member. (Gov. Code § 31461.6.)
- 9) Defines "final compensation" to mean the average annual compensation earnable by a member during any three years elected by a member at or before the time they file an application for retirement, or, if they fail to elect, during the three years immediately preceding their retirement. If a member has less than three years of service, their final compensation must be determined by dividing their total compensation by the number of months of service credited to them and multiplying by 12. In addition, for these purposes, the definition of final compensation here does not apply to a PEPRA member. (Gov. Code § 31462.)
- 10) Prescribes how a '37 Act system determines final compensation, including final compensation based on compensation for one year (if adopted by a county), and in relation to intermittent members, subject to certain conditions where applicable. (Gov. Code §§ 31462.05, 31462.1, and 13462.2)

This bill:

- 1) Defines "disallowed compensation" to mean compensation reported for a sworn peace officer or firefighter of the retirement system that the system subsequently determines is not in compliance with the Public Employees' Pension Reform Act (PEPRA) of 2013, existing law relating to compensation earnable, or the administrative regulations of the retirement system, through no fault of the sworn peace officer or firefighter.

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- 2) Provides that if the retirement system determines that the compensation reported for a sworn peace officer or firefighter of the system is disallowed, the system must require the county employer or agency to discontinue reporting the disallowed compensation, and retroactively applies the bill's provisions to determinations made on or after July 30, 2020, if an appeal has been filed and the sworn or retired peace officer or firefighter, their survivors or beneficiaries have not exhausted their administrative or legal remedies.
- 3) Provides that for active peace officer or firefighters, all contributions made on disallowed compensation must be credited against future contributions to the benefit of the employer or agency that reported the disallowed compensation, and any paid by, or on behalf of, that member must be returned to the member by the employer or agency that reported the disallowed compensation.
- 4) Provides that for retired sworn peace officers or firefighters, their survivors, or beneficiaries, whose final compensation at the time of retirement was predicated upon the disallowed compensation, the contributions made on the compensation must be credited against future contributions, to the benefit of the employer or agency that reported the disallowed compensation and the retirement system must permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation, and includes repayment and notice requirements provided that certain conditions are satisfied.
- 5) Requires the retirement system to provide notice to the employer or agency that reported contributions on disallowed compensation, if certain conditions are satisfied.
- 6) Requires the employer or agency that reported contributions on the disallowed compensation to pay a penalty to the system and restitution to an affected retiree, survivor, or beneficiary who was impacted by the disallowed compensation in a lump sum equal to 20 percent of the actuarial equivalent present value of the difference between the member's pension calculated with the disallowed compensation and their adjusted pension calculated without the disallowed compensation.
- 7) Requires the system to, upon request, provide the employer or agency with contact information or data in its possession of a retired member, their survivors, or beneficiaries, so that the employer or agency can fulfill its obligations to those individuals, and that the contact information remain confidential.
- 8) Authorizes an employer or agency to submit an additional compensation item proposed or included in a memorandum of understanding or collective bargaining agreement entered into on or after January 1, 2022, that is intended to form the basis of a pension benefit calculation to the system for review for purposes of consistency

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of the proposal with PEPRA, existing law relating to compensation earnable, the retirement system, and administrative regulations of the system, to the system for review.

- 9) Establishes that these provisions do not affect or alter a party's right to appeal any determination regarding disallowed compensation made to the system.

COMMENTS

1. Background

This bill is an attempt to address part of the fallout from the Public Employees' Pension Reform Act of 2013, known as PEPRA. As explained by the Senate Labor, Public Employment and Retirement Committee:

PEPRA limited the types of compensation that public employers can include for purposes of calculating their employees' pension allowance. PEPRA, as upheld by the California Supreme Court in its 2020 *Alameda* decision,¹ excluded certain items of pay - *to legacy employees as well as PEPRA employees* - as part of efforts to end pension spiking (i.e., the practice of padding compensation at the end of the employee's career to inflate the life-long pension benefit the employee would get upon retirement). PEPRA provided express examples of remuneration that are excluded per se and also examples of remuneration that a retirement board may exclude if it determined the compensation was paid to enhance a member's pension benefit.

After PEPRA became law in 2013, some 37 Act systems, their members, unions, and employers believed that its provisions regarding the kinds of remuneration excludable from compensation earnable for *legacy* members were constitutionally infirm based on prior court holdings. They pursued litigation while their systems waited for the outcome of the litigation before unwinding the contested remuneration from their members' pension benefit calculations. They argued that PEPRA's provisions affecting legacy members violated their members' contract rights and their settlement agreements from previous litigation. However, the Supreme Court in *Alameda* upheld PEPRA's provisions. The court found, in part, that the pension systems' past practices and settlement agreements did not prevent the Legislature from revising the law to achieve the permissible purpose of conforming

¹ *Alameda County Deputy Sheriffs Association et al v. Alameda County Employees Retirement Association and Board of Retirement of ACERA* (2020) 9 Cal. 5th 1031.

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pension benefits to the theory underlying the 37 Act plans by closing loopholes and proscribing potentially abusive practices.

Thus, most of the PEPRA non-conforming 37 Act systems that continued to include disallowed compensation in their legacy members' pension calculations had to finally begin the laborious and unpopular task of reversing and recalculating those members' pension benefits, recovering from retirees up to 8 years of pension overpayments, and refunding contributions that those retirees and active members, and their employers, paid on the contested compensation. Some systems notified their members they were required to comply with the *Alameda* decision and would initiate PEPRA-required adjustments but, in practice, froze their adjustment process, automatically deemed that their members had appealed the determination that their compensation was disallowed, and pursued legislative solutions to provide monetary relief to their members.

This bill would essentially forgive the 37 Act legacy retirees any pension overpayments, collect those overpayments from the retirees' employers in the form of adjusted contribution rates, and require the counties to pay the retirees a lump sum of 20 percent of the actuarial equivalent present value of the difference between their old pension and their adjusted pension, i.e. the amount "lost" because of the required recalculation.

2. Public transparency limitations and privacy protection

The principal policy matter drawing this bill into the purview of the Senate Judiciary Committee is the inclusion of a provision that restricts public access to information.

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 6250.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide gen. elec.),² which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) Additionally, it required a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that

² Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004).)

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interest. (Cal. Const. art. I, § 3(b)(1).) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 6252(e).)

This bill mandates the public employment retirement systems in question to provide specified notices to affected retirees, survivors, and beneficiaries about the benefits adjustments and any lump sum payment that would result from enactment of this bill. For the purpose of facilitating this communication, the bill requires the retirement system to provide the public employers with any contact information for the affected retirees, survivors, or beneficiaries that the system has in its possession. These would be government records, but making them generally accessible to the public would put people's private contact information into the public domain without their consent. Accordingly, the bill requires the public employer to keep this contact information confidential.

Although this confidentiality requirement places a limitation on public access to information, in light of the important privacy issues implicated, this limitation appears to be justified in this instance.

3. Amendments proposed by the Senate Committee on Labor, Public Employment and Retirement to be taken in this Committee

The bill was heard in the Senate Labor, Public Employment and Retirement Committee on June 22 and must be heard by this Committee on June 28. Because of the scheduling constraints involved, the amendments accepted in the Senate Labor, Public Employment and Retirement Committee will be processed in this Committee.

4. Arguments in support of the bill

According to the author:

AB 2493 will ensure that if a reporting error is to occur, through no fault of the employee, that the onus will be placed upon the employer to ensure that these retirees, who worked their careers in high-profile units such as homicide, bomb squad, officer-involved shootings, canine, and other specialized units within the Sheriff's Department and District Attorney's Office. Whom continuously gave up valuable family time during evenings, holidays, and weekends in order to remain readily available to immediately respond when called upon, are not the subject of a sudden claw back, and additionally receive a small portion of the future pension amounts that they were promised. AB 2493 would protect the retirement security of sworn peace officers and firefighters by

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ensuring that any compensation agreed to by their employer and paid for by the employer and the retiree cannot be subsequently and retroactively deducted from the retired member's pension allowance because of a disallowed pay item.

As one of the sponsors of the bill, the Association of Orange County Deputy Sheriffs writes:

AB 2493 (Chen), which is sponsored by the Association of Orange County Deputy Sheriffs, and will ensure that the financial security of retired sworn peace officers and firefighters, who have spent their careers protecting and serving, is not compromised when there has been a reporting error through no fault of the employee. [...] Oftentimes, retirees make the decision to retire based on the retirement dollar amount provided to them. Retirees should not bear the heavy burden from errors that, through no fault of their own, result in a clawback of retirement funds as well as significantly reduced monthly payments going forward. This creates a substantial hardship for retirees that budget based on a fixed income. AB 2493 would protect the retirement security of sworn peace officers and firefighters by ensuring that any compensation agreed to by their employer and paid

5. Arguments in opposition to the bill

For example, in opposition to the bill, California State Association of Counties, the California Special Districts Association, the Urban Counties of California, and the Rural County Representatives of California jointly write:

Assembly Bill 2493 [...] would place a significant financial burden on counties by requiring member agencies of county retirement systems to pay substantial penalties for decisions they did not make and over which they had no authority. [...] AB 2493 unfairly places the financial consequences of the Court's decision on counties and other agencies by requiring '37 Act system employers to pay a "penalty" equal to 20 percent of the current actuarial value of retiree benefits deemed unlawful. The penalty, which will result in affected agencies owing millions of unbudgeted dollars to retirees for what the Court found to be an illegal benefit, implies those agencies made the decision to misapply the law. In reality, they simply complied with the pension agreements established between employees, employers, and retirement systems.

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SUPPORT

Association of Orange County Sheriff's Department (sponsor)
California Professional Firefighters (sponsor)
Barstow Professional Firefighters Association Local 2325
California Fraternal Order of Police
Contra Costa County Professional Firefighters Local 1230
Kern County Firefighters Local 1301 Union
Lathrop-Manteca Firefighters Local 4317
Long Beach Police Officers Association
Marin Professional Firefighters Local 1775
Orange County Professional Firefighters Association, Local 3631
Peace Officers Research Association of California
Sacramento County Deputy Sheriffs' Association
San Bernardino County Firefighters Local 935
San Bernardino County Safety Employees' Benefit Association
San Bernardino County Sheriff's Employees' Benefit Association
Sheriff's Employees Benefit Association
Ventura County Professional Firefighters Association Local 1364

OPPOSITION

California Special Districts Association
California State Association of Counties
Kern County Board of Supervisors
Marin County Employees' Retirement Association
Rural County Representatives of California
Santa Barbara County Board of Supervisors
San Bernardino County Employees' Retirement Association
Sonoma County Employee' Retirement Association
Urban Counties of California

RELATED LEGISLATION

Pending Legislation: AB 1667 (Cooper) proposes a series of measures designed, together, to better protect public teachers against the possibility of losing retirement or other benefits due to miscalculation of the amount of benefits to which the teacher is entitled. Those measures include changes to how the teachers' retirement system, CalSTRS, may audit and adjust its members' pension allowances upon discovery of specified errors and changes in how adjustments related to disallowed compensation are applied. AB 1667 will be heard by this Committee on the same day as this bill.

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Prior Legislation:

AB 826 (Irwin, 2021) would have amended the CERL definition of “compensation” and “compensation earnable” for legacy members of the Ventura County Employee Retirement Association (VCERA) to include an employee’s flexible benefit allowance, subject to specified criteria, and ensure that such compensation not be deemed disallowed compensation prohibited by PEPRA and the *Alameda* decision. AB 826 is currently on the Inactive File on the Senate Floor.

SB 278 (Leyva, Ch. 331, Stats. 2021) required CalPERS public employers to reimburse CalPERS for overpayments made to retirees whose pension allowances were eventually adjusted downward to reflect the disallowed compensation initially included in their pension calculation.

SB 266 (Leyva, 2019) would have required that, in the event of a CalPERS retiree having their pension reduced due to the inclusion of compensation by the relevant public employer that cannot be counted towards a final pension calculation, the public employer would have to cover the reduced benefit to the retiree, as specified. The Assembly held the bill at the Desk after being withdrawn from Engrossing and Enrolling.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)
Assembly Floor (Ayes 68, Noes 0)
Assembly Public Employment and Retirement Committee (Ayes 6, Noes 0)



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Graham Knaus

May 19, 2022

The Honorable Phillip Chen
California State Assembly
1021 O Street, Suite 4620
Sacramento, CA 95814

**RE: AB 2493 (Chen): County employees’ retirement: disallowed compensation: benefit adjustments.
As Amended 4/05/22 – OPPOSE
Location – Senate Labor, Public Employment and Retirement Committee**

Dear Assembly Member Chen:

On behalf of the California State Association of Counties, I regret to inform you of our opposition to Assembly Bill 2493, which would place a significant financial burden on counties by requiring member agencies of county retirement systems to pay substantial penalties for decisions they did not make and over which they had no authority.

Following the passage of the Public Employees’ Pension Reform Act of 2013 (PEPRA), county retirement systems took varying approaches to comply with the provisions of PEPRA related to which types of compensation may be included in retirement benefit calculations. On July 30, 2020, the California Supreme Court issued a decision in the case *Alameda County Deputy Sheriff’s Assn. v Alameda County Employees’ Retirement Assn.*, otherwise known as the “*Alameda decision*,” in which the Court upheld provisions PEPRA related to disallowed forms of compensation for retirement calculations. Over the last two years, the impacted ‘37 Act systems have been working to comply with *Alameda* and recalculate retirement benefits for members who retired after January 1, 2013.

AB 2493 unfairly places the financial consequences of the Court’s decision on counties by requiring ‘37 Act system employers to pay a “penalty” equal to 20 percent of the current actuarial value of retiree benefits deemed unlawful. The penalty, which will result in affected counties owing tens of millions of unbudgeted dollars to retirees for what the Court found to be an illegal benefit, implies counties made the decision to misapply the law. In reality, counties simply complied with the pension agreements established between employees, employers, and retirement systems.

For the reasons stated above, we must oppose AB 2493. The fiscal impact on affected counties will place a significant strain on general fund dollars, resulting in reductions to critical programs including public safety, transportation, and behavioral health. Please do not hesitate to contact me at gneill@counties.org with any questions about our position.

Respectfully,



Geoff Neill
Legislative Representative

Cc: Honorable Dave Cortese, Chair, Senate Labor, Public Employment and Retirement Committee
Honorable Members and Consultant, Senate Labor, Public Employment and Retirement Committee
Scott Seekatz, Senate Republican Caucus Consultant



August 19, 2022

Honorable Senator Richard Pan
VIA EMAIL: senator.pan@senate.ca.gov

Subject: **OPPOSE AB 2493**

Dear Senator Pan:

On behalf of the the Board of Retirement of the Sacramento County Employees' Retirement System (SCERS), I write to express our opposition to AB 2493.

This bill is intended to counteract the effects of a massive correction effort by SCERS and other county retirement systems triggered by a 2020 California Supreme Court decision, *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn.*, 9 Cal.5th 1032 (2020) ("*Alameda*"). However, this bill creates an administratively unworkable and convoluted process that will inevitably lead to litigation, costs to the retirement system, and additional harm and uncertainty to public employees and retirees over their pension benefits.

More than half of the 20 CERL retirement systems are now undertaking *Alameda* corrections, including Contra Costa, Kern, Los Angeles, Mendocino, Merced, Orange, Sacramento, San Bernardino, San Joaquin, Santa Barbara, Stanislaus, and Ventura. In total, an estimated 22,000 members are affected by these ongoing corrections.

SCERS initiated its correction effort in September 2020, with staff working diligently on processing corrections to a significant portion of the membership – more than 4,800 active and deferred members and nearly 2,000 retired members. While payroll records dating to 2013 were being gathered and evaluated, staff immediately began extracting newly excluded pay elements from retirement applications. Sacramento County also updated its payroll system to cease collecting retirement contributions on newly excluded pay elements.

The complexity of the effort to retroactively correct pay records and recalculate pensions has been time-consuming and extensive. Two years after the court ruling, SCERS is now processing contribution-refund notices to active and deferred members this month, in August 2022, and is targeting October 2022 to send notices to retirees with detailed pension adjustment information.

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August 19, 2022

Fundamentally, AB 2493 seeks to halt any *Alameda* correction process that is not completed, and force SCERS and other retirement systems to re-do corrections by following an even more complex process that conflicts with our tax counsel and fiduciary counsel's direction. The procedure detailed in AB 2493 would be enormously burdensome and expensive, and result in even longer timeframes to complete the correction process, adding uncertainty and frustration to our members.

If the Legislature desires to hold retirees harmless from repaying overpaid benefits, there are much simpler approaches that would not disrupt the current *Alameda* correction effort. Instead, this bill attempts to layer on a similar bill from last year that targeted rare pension corrections at CalPERS – SB 278 – by forcing a square peg through a round hole. Technical amendments offered by several county retirement systems to provide a workable path forward were not incorporated in the bill.

Furthermore, SCERS is already in active litigation with the Sacramento Deputy Sheriff's Association regarding the *Alameda* corrections. This bill almost certainly will fuel additional litigation and expense for all parties.

The *Alameda* ruling has created a difficult situation for SCERS and its members. We take no pleasure in cutting retirement benefits. However, SCERS has expended enormous time and resources into recalculating contributions and benefits in accordance with *Alameda*, with the goals of providing accuracy and finality to our members and maintaining the operational and actuarial stability of the system. Therefore, it is critical for SCERS and other impacted retirement systems to complete the court-mandated correction process we began in 2020.

For all of the foregoing reasons, the Board of Retirement of the Sacramento County Employees' Retirement system strongly opposes AB 2493 unless it is amended in accordance with the prior recommendations of the county retirement systems.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Stern".

Eric Stern
Chief Executive Officer, SCERS



August 22, 2022

The Honorable Phillip Chen
California State Assembly
1021 O Street, Suite 4620
Sacramento, CA 95814

**Re: AB 2493 – County Employees’ Retirement: Disallowed Compensation/Benefit Adjustments
As Amended 8/17/2022 – OPPOSE
Location: Senate Labor, Public Employment and Retirement Committee**

Dear Assembly Member Chen:

The San Bernardino County Employees’ Retirement Association (SBCERA) writes to express its continued opposition to Assembly Bill 2493. SBCERA reviewed the August 17, 2022, amendments to the bill. The amendments create further confusion and raise the likelihood of protracted litigation.

Amendments to Section 1 of the bill provides a definition of “grade” and allows a retirement system to use that definition. Retirement systems are not parties to labor negotiations between employers and their employees. Government Code section 25300 states, “The board of supervisors shall prescribe the compensation of all county officers, including the board of supervisors, and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees.” (*See also Stevenson v. Board of Retirement of the Orange County Employees’ Retirement System* (2010) 186 Cal.App.4th 498, 509.) The amendment would usurp the power granted by the Legislature to the board of supervisors to classify employees. Further, the proposed definition is vague and will undoubtedly lead to disputes and litigation regarding grade determinations.

Amendments to Section 2 of the bill provide a definition for “Initiated a process.” SBCERA took immediate action upon the publication of the California Supreme Court’s publication of *Alameda County Deputy Sheriff’s Assoc. v. Alameda County Employees’ Retirement Assoc.* (2020) 9 Cal.5th 1032 to adjust retirement allowances of members affected by the decision. However, SBCERA determined that collection of overpayments from retirees was not warranted. SBCERA has mostly concluded its administrative process for adjudication of member appeals. The proposed definition is vague and likely to lead to protracted disputes and litigation as to whether a retirement system made adjustments to a retirement allowance.

Finally, SBCERA joins in the opposition filed by the California State Association of Counties (CSAC) and other retirement systems that include the joint opposition filed by MendocinoCERA, SonomaCERA, and MarinCERA. The bill imposes significant burdens on counties and retirement systems and is likely to lead to inequalities in the administration of the County Employees’ Retirement Law (CERL).

SBCERA staff will be happy to discuss the bill with you at your convenience. Thank you for your consideration in this matter.

Sincerely,



Deborah S. Cherney
Chief Executive Officer, SBCERA

Cc:

Hon. Senator Rosilicie Ochoa-Bogh
Hon. Senator Connie Leyva
Hon. Senator Shannon Grove
Hon. Senator Josh Newman
Hon. Senator Anthony Portantino
Hon. Senator Scott Wilik
Hon. Senator Richard Pan
Hon. Senator Mike McGuire
Hon. Dave Cortese, Chair, Senate Labor, Public Employment and Retirement Committee
Hon. Members and Consultant, Senate Labor, Public Employment and Retirement Committee
Scott Seekatz, Senate Republican Caucus Consultant



June 9, 2022

The Honorable Phillip Chen
California State Assembly
1021 O Street, Suite 4620
Sacramento, CA 95814

**Re: AB 2493 – County Employees' Retirement: Disallowed Compensation/Benefit Adjustments
As Amended 4/5/2022 – OPPOSE
Location: Senate Labor, Public Employment and Retirement Committee**

Dear Assembly Member Chen:

The San Bernardino County Employees' Retirement Association (SBCERA) writes to express its opposition to Assembly Bill 2493, which would place a significant financial burden on SBCERA and its participating employers, including but not limited to San Bernardino County.

The practical effect of AB 2493 is to undo some of the reforms mandated under the Public Employees' Pension Reform Act of 2013 (PEPRA) and the California Supreme Court's decision in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.*, referred to here as "*Alameda*". Specifically, PEPRA and *Alameda* mandated that certain pay items be excluded from retirement benefit calculations. SBCERA is working hard to comply with *Alameda*.

The language of AB 2493 takes aim at all pay items that were disallowed as a direct result of *Alameda*. These are not "once in a blue moon" errors; these are numerous corrections that range from very small to large adjustments. The SBCERA Board did not require the recoupment of any overpaid amounts from retirees for the period preceding *Alameda*. Should AB 2493 pass as currently written, SBCERA anticipates that over 2,000 actuarial calculations will need to be performed for public safety members at a potential cost of millions of dollars.

In addition, the language of AB 2493 imposes additional duties for the retirement systems to meet and confer with employee organizations regarding the impact of disallowed compensation items. The retirement systems are not parties to labor negotiations between employers and their employees. Finally, AB 2493 requires county retirement systems to follow CalPERS regulations that define "compensation earnable." Some of those rules are different from those authorized under the County Employees' Retirement Law, both regarding their inclusions in, and exclusions from, retirement allowance determinations, and it is unclear from AB 2493 how those differences are to be reconciled.

SBCERA staff will be happy to discuss the bill with you at your convenience. Thank you for your consideration in this matter.

Sincerely,

Deborah S. Cherney
Chief Executive Officer, SBCERA

Neal Waner
Board Chair, SBCERA

August 17, 2022

The Honorable Mike McGuire
California State Senate
1021 O Street, Suite 8620
Sacramento, CA 95814

RE: AB 2493 (as amended April 5, 2022) (Chen): County Employees' Retirement:
Disallowed Compensation: Benefit Adjustments -- OPPOSE
Location – Senate Labor, Public Employment and Retirement Committee

Dear Senator McGuire,

On behalf of three of the twenty county retirement systems that are governed by the County Employees Retirement Law of 1937 (CERL), the Marin County Employees' Retirement Association (MarinCERA), Mendocino County Employees' Retirement Association (MendocinoCERA), and Sonoma County Employees' Retirement Association (SCERA), all of which are in District 2, we write to express our continued opposition to Assembly Bill 2493, for the following four reasons.

The MarinCERA, MendocinoCERA and SCERA Boards of Retirement have constitutional fiduciary duties to administer the retirement systems they govern in a manner that provides prompt delivery of benefits to each of the system's members and beneficiaries in accordance with applicable statutes. Retirement Boards are vested with the sole authority to secure actuarial services in order to properly determine the rates of contributions to charge members and the employers they work for. (Cal. Const., Art. XVI, Sec. 17). Part of the actuarial valuation process is determining the cost of benefits to be paid out of the system under both CERL and the Public Employees' Pension Reform Act of 2013 (PEPRA). In determining the benefit costs for our legacy members, the actuary considers the elements of compensation that are included in the retirement benefit calculation. The actuary considers the statutes that impact the compensation component of the calculations and decisions that the Board has made on what is to be included or excluded. The new provisions included in AB 2493 distort the actuaries' role requiring them to determine amounts that employers must pay directly to certain retirees, which contradicts the statutes that apply in all other situations.

The California Supreme Court has upheld the constitutionality of PEPRA's amendments to the definition of "compensation earnable" in CERL in its unanimous decision, *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (*Alameda*). AB 2493 undermines *Alameda* by providing a lifetime bonus to individuals who retired from county retirement systems that did not implement the provisions of PEPRA in 2013. AB 2493 also defeats the efforts of systems like MarinCERA and SCERA, and their governing Retirement Boards, who implemented PEPRA upon its effective date. It also defeats the efforts of systems like MendocinoCERA, and their Retirement Boards, who implemented *Alameda* promptly after the Supreme Court issued the decision. It does so by

allowing extra compensation from their employers to be added to their retirement benefits, which PEPRA did not permit. This appears to contradict the purpose of the PEPRA legislation which was to provide pension reform through a clearer management of those items of pay which should be included in the retirement benefit calculation.

The California Supreme Court's unanimous decision in *Alameda* resolved issues that arose from the passage of the PEPRA legislation. While MarinCERA was not one of the three CERL systems who were parties to *Alameda*, it too was subject to litigation over its implementation of *Alameda*. See *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (2016) 2 Cal.App.5th 674. Similarly, SCERA successfully defended itself recently against litigation seeking to alter benefit entitlements. *Luke v. Sonoma County, et al.* (2019) Cal.App.5th 301. Finally, MendocinoCERA has already completed all corrections called for by *Alameda*, according to and in agreement with the terms of a Voluntary Compliance Program (VCP) Compliance Statement that it received from the Internal Revenue Service (IRS), including refund of contributions to members. The MendocinoCERA Board is concerned that the VCP may be affected to the extent that there are provisions in AB 2493 that are not in line with the correction proposals in MendocinoCERA's VCP that were accepted by the IRS. While MarinCERA and SCERA defended themselves effectively against the referenced lawsuits, and MendocinoCERA has managed the VCP process arising from *Alameda* and otherwise, those efforts were not without a cost. The new obligations AB 2493 requires of county retirement systems and their employer sponsors may lead to additional litigation on the same issues resolved by *Alameda* and new issues raised by current or former employee members.

Finally, proposed Amendments 3 and 15 to AB 2493 incorporate regulations and certain statutory language applicable to the California Public Employees' Retirement System (CalPERS) into the law that governs CERL systems, and thus changes the way CERL systems are to determine what is, and is not, compensation earnable. CERL systems have never before been bound by regulations adopted by the CalPERS Board of Administration, and article XVI, section 17 of the California Constitution mandates that they maintain at least some independence in that regard. As a result, we believe that proposed Amendment 15 is likely an unconstitutional abrogation of CERL system boards' authority and discretion, and that the changed statutory language in proposed Amendment 3 will lead to additional disputes and potentially even further litigation against CERL systems over that topic.

We are happy to discuss these concerns with you or your office should you wish further information. Mr. Wickman can be reached at (415) 473-3773, Ms. Wyne can be reached at (707) 565-8103, and Ms. Rentschler can be reached at (707) 463-4329.

Respectfully,



Jeff Wickman
Retirement Administrator
Marin County Employees' Retirement Association



Julie Wyne
Chief Executive Officer
Sonoma County Employees' Retirement Association



Doris Rentschler
Retirement Administrator
Mendocino County Employees' Retirement Association

cc:

Adriana Gomez, Office of Senator McGuire
Hon. Phillip Chen, California State Assembly Member
Hon. Dave Cortese, Chair, Senate Labor, Public Employment and Retirement Committee
Hon. Members and Consultant, Senate Labor, Public Employment and Retirement Committee
Scott Seekatz, Senate Republican Caucus Consultant