

Memorandum

DATE: October 21, 2019
TO: Members of the Board of Retirement
FROM: Gina M. Ratto, General Counsel
SUBJECT: LEGISLATIVE UPDATE

Written Report

Background/Discussion

The California Legislature is in recess. September 6th was the last day to amend bills on the floor; and September 13th was the last day for each house to pass bills. October 13 was the last day for the Governor to sign or veto bills passed by the Legislature prior to September 13, 2019. The Legislature will reconvene on January 6, 2020.

A comprehensive list and description of the pending bills that staff has been monitoring during the legislative session is attached. Below is a brief summary of the bills that may be of greater interest to the Board. **New or updated information since the last report to the Board are indicated in bold text.**

SACRS Sponsored Bills

- **SB 783 (Senate Committee on Labor, Public Employees and Retirement)**

The CERL authorizes counties to establish retirement systems pursuant to its provisions for the purpose of providing pension and death benefits to county and district employees. This bill would correct several erroneous and obsolete cross-references within CERL.

(STATUS: Introduced 03/07/19. Read third time. Passed. Ordered to the Assembly on 05/02/19. In Assembly. Read first time. Held at desk on 05/02/19. Referred to Committee on P.E. & R. on 05/16/19.)

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

- **AB 249 (Choi)**

This bill would prohibit a public employer from deterring or discouraging a public employee or an applicant to be a public employee from opting out of becoming or remaining a member of an employee organization. The bill would prohibit a public employer from taking adverse action against a public employee or applicant to be a public employee who opts out of becoming or remaining a member of an employee organization and would specify that adverse action includes reducing a public employee's current level of pay or benefits.

(STATUS: Introduced 01/22/19. Died in committee pursuant to Joint Rule 62(a) on 06/04/19.)

- **AB 287 (Voepel)**

Existing law requires each state and local public pension or retirement system, on and after the 90th day following the completion of the annual audit of the system, to provide a concise annual report on the

investments and earnings of the system, as specified, to any member who makes a request and pays a fee, if required, for the costs incurred in preparation and dissemination of that report. This bill would also require each state and local pension or retirement system to post a concise annual audit of the information described above on that system's internet website no later than the 90th day following the audit's completion. By imposing new duties on local retirement systems, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(STATUS: Introduced 01/28/19. Referred to Committee on P.E. & R on 02/07/19.)

- **AB 472 (Voepel)**

PEPRA establishes various limits on retirement benefits generally applicable to a public employee retirement system, as defined. The act prescribes, among other things, limits on service after retirement without reinstatement into the applicable retirement system. This bill would make non-substantive changes to that provision.

(STATUS: Introduced 02/11/19. Pending committee assignment.)

- **AB 664 (Cooper)**

The CERL 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 employment, and that employment contributes substantially to that incapacity or the member has completed 5 years of service and not waived retirement in respect to the particular incapacity or aggravation thereof, as specified. This bill would require, for purposes of determining permanent incapacity of certain members employed as peace officers in the County of Sacramento, that those members be evaluated by the retirement system to determine if they can perform all of the usual and customary duties of a peace officer who is described under Section 830 of the Penal Code. The bill would apply to members who file applications for disability on or after the effective date of the act, except for cases on appeal at that time. The bill would require the board of retirement to develop a method of tracking the costs of providing permanent disability retirement to the members who become eligible for disability retirement pursuant to the bill's provisions. The bill would repeal these provisions on December 31, 2024.

(STATUS: Introduced 02/15/19. Passed out of the Assembly and ordered to the Senate on 05/13/19. Referred to Committees on L., P.E. & R. and APPR on 05/22/19. In committee: Set, first hearing. Hearing cancelled at request of author on 06/26/19.)

- **AB 931 (Boener-Horvath)**

Current law establishes the policy of the Legislature to ensure equal access to specific information about the many local regulating and advisory boards, commissions, and committees and to ensure equal opportunity to be informed of vacancies on those boards. Existing law requires each legislative

body of a local agency to prepare an appointments list of all regular and ongoing boards, commissions, and committees that are appointed by the legislative body of the local agency.

This bill, on and after January 1, 2030, would require, with respect to a city with a population of 50,000 or more, that the city not appoint members of nonsalaried, nonelected boards or commissions consisting of 5 or more members such that individuals of the same gender identity comprise more than 60% of the board or commission's membership. The bill would also prohibit a board or commission with 4 or fewer nonelected and nonsalaried members from being comprised exclusively of people with the same gender identity. The bill would define "gender identity" for purposes of the bill, and would exclude from its provisions a board or commission that has as its primary purpose addressing issues of relevance to a particular gender identity. By imposing new requirements on cities, the bill would impose a state-mandated local program.

(STATUS: Enrolled on 09/13/19.)

- **AB 992 (Mullin)**

The Brown Act generally requires that the meetings of legislative bodies of local agencies be conducted openly. That act defines "meeting" for purposes of the act and prohibits a majority of the members of a legislative body, outside a meeting authorized by the act, from using a series of communications of any kind to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. This bill would provide that the prohibition described above does not apply to the participation, as defined, in an internet-based social media platform, as defined, by a majority of the members of a legislative body, provided that a majority of the members do not discuss among themselves, as defined, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(STATUS: Introduced 02/21/19. In committee: Set, first hearing. Failed passage. Reconsideration granted on 05/01/19.)

- **AB 1184 (Gloria)**

The California Public Records Act requires a public agency, defined to mean any state or local agency, to make public records available for inspection, subject to certain exceptions. Existing law specifies that public records include any writing containing information relating to the conduct of the public's business, including writing transmitted by electronic mail. The act requires any agency that has any information that constitutes a public record not exempt from disclosure, to make that public record available in accordance with certain provisions and authorizes every agency to adopt regulations stating the procedures to be followed when making its records available, if the regulations are consistent with those provisions. Existing law authorizes cities, counties, and special districts to destroy or to dispose of duplicate records that are less than two years old when they are no longer required by the city, county, or special district, as specified.

This bill would, unless a longer retention period is required by statute or regulation, **or established by the Secretary of State pursuant to the State Public Records Management Act**, require a public agency for purposes of the California Public Records Act to retain and preserve for at least 2 years every **public**

record, as defined, that is transmitted by electronic mail. ~~writing containing information relating to the conduct of the public's business prepared, owned, or used by any public agency that is transmitted by mail.~~

(STATUS: Enrolled on 09/19/19.)

- **AB 1198 (Stone)**

PEPRA, among other things, establishes new retirement formulas, which are generally applicable to employees first employed on or after January 1, 2013, and which a public employer offering a defined benefit pension plan is prohibited from exceeding. PEPRA excepts certain public employees from its provisions, including certain transit workers whose interests are protected by specified federal law until a federal district court ruled that a United States Department of Labor determination that the application of PEPRA to these workers violated federal law was in error, or until January 1, 2016, as specified. A district court ruling to this effect occurred on December 31, 2014. This bill would except transit workers hired before January 1, 2016, from PEPRA by removing the federal district court contingency language from the provision excepting certain transit workers from PEPRA, as described above.

(STATUS: Introduced 02/21/19. Set for first hearing in committee; hearing cancelled at the request of author on 04/24/19.)

- **AB 1212 (Levine)**

Existing law authorizes the boards of CalPERS, CalSTRS, and the '37 Act systems, consistent with their fiduciary duties and investment standards, to prioritize investment in an in-state infrastructure project over a comparable out-of-state infrastructure project. This bill would require a state agency that is responsible for infrastructure projects to produce a list of priority infrastructure projects for funding consideration by the retirement boards, as described above, and to provide the list to those boards. The state agency would be required to provide further project information to a board upon request. **The bill would define a state agency for these purposes as the Department of Transportation and the Department of Water Resources.**

(STATUS: Vetoed by Governor on 10/9/19.)

- **AB 1819 (Committee on Judiciary)**

The California Public Records Act requires **public records to be open to inspection at all times during the office hours of the state or local agency that retains those records, and provides that every person has a right to inspect any public record, except as provided. The California Public Records Act requires** state and local agencies to make public records available upon receipt of a request **for a copy** that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover costs.

This bill would grant ~~the~~ requester **who inspects a disclosable record on the premises of the agency** the right to use the requester's equipment **on those premises**, without being charged any fees or costs, to photograph or otherwise copy or reproduce ~~the any~~ record **in a manner that does not require the**

equipment to make physical contact with the record, ~~upon inspection and on the premises of the agency,~~ unless the means of copy or reproduction would result in damage to the record, or unauthorized access to a computer system of the agency or secured network, as specified. The bill would authorize the agency to impose any reasonable limits on the use of the requester's equipment that are necessary to protect the safety of the records or to prevent the copying of records from being an unreasonable burden to the orderly function of the agency and its employees. The bill would authorize the agency to impose any limit that is necessary to maintain the integrity of, or ensure the long-term preservation of, historic or high-value records. By imposing additional duties and responsibilities upon local agencies in connection with requests for inspection of records, this bill constitutes a state-mandated local program.

(STATUS: **Enrolled on 09/23/19.**)

- **SB 430 (Wieckowski)**

PEPRA prohibits a public employer offering a defined benefit pension plan from exceeding specified retirement formulas for new members and prohibits an enhancement of a public employee's retirement formula or benefit adopted after January 1, 2013, from applying to service performed prior to the operative date of the enhancement. PEPRA defines "new member" to mean, among other things, an individual who becomes a member of any public retirement system for the first time on or after January 1, 2013, and who was not a member of any other public retirement system prior to date. Existing law creates the Judges' Retirement System II, which is administered by the Board of Administration of the Public Employees' Retirement System, for the provision of retirement and other benefits to specified judges and their beneficiaries.

This bill would grant a judge who was elected to office in 2012, but did not take office until on or after January 1, 2013, the option of making a one-time, irrevocable election to have a pre-January 1, 2013, membership status in the Judges' Retirement System II for service accrued after on and after July 1, 2020. The bill would require the election to be made during a 30-day period beginning March 1, 2020. A judge making this election would no longer be a new member under specified provisions of PEPRA. The election would apply prospectively only, and membership rights and obligations that accrued based on service subject to PEPRA prior to July 1, 2020, would remain unchanged. The bill would specify that the Public Employees' Retirement System is not obligated to inform or locate a person who may be eligible to make the election and that its provisions do not affect the Legislature's reserved right to increase contributions or reduce benefits for purposes of the Judges' Retirement System II.

(STATUS: Introduced 02/21/19. Passed out of the Senate and ordered to the Assembly on 05/21/19. Referred to the Committee on P.E. & R. on 05/30/19. Set for first hearing; cancelled at request of author on 06/26/19.)

- **SB 615 (Hueso)**

The California Public Records Act requires a public agency to make its public records available for public inspection and to make copies available upon request and payment of a fee, unless the public records are exempt from disclosure. The act makes specified records exempt from disclosure and provides that disclosure by a state or local agency of a public record that is otherwise exempt constitutes a waiver of

the exemptions. The act permit any person to institute proceedings for injunctive or declaratory relief or a writ of mandate to enforce the right to receive a copy of any public record covered by the act. This bill would require a person to meet and confer in good faith with the agency in an attempt to informally resolve each issue before instituting any proceeding for injunctive or declarative relief or writ of mandate. The bill would require the person or their attorney to file a declaration stating that this has occurred at the time that proceedings are instituted. Because the declaration would be made under penalty of perjury, the bill would expand the definition of a crime and impose a state-mandated local program. This bill contains other related provisions and other existing laws.

(STATUS: Introduced 02/22/19. Referred to Committee on JUD. on 03/14/19.)

- **SB 749 (Durazo)**

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Existing law provides that nothing in the act requires the disclosure of corporate proprietary information including trade secrets, among other things.

This bill would provide that specified records of a private industry employer that are prepared, owned, used, or retained by a public agency are not trade secrets and are public records, including certain records relating to employment terms and conditions of employees working for a private industry employer pursuant to a contract with a public agency, if those wages, benefits, working hours and other employment terms and conditions relate to work performed under the contract, records of compliance with local, state, or federal domestic content requirements, and records of a private industry employer's compliance with job creation, job quality, or job retention obligations contained in a contract or agreement with a state or local agency. The bill, however, would exclude contracts between a public agency and a private industry employer entered into on or before January 1, 2020, and records that include communications between the state or local agency and specified state or local officials, on matters posing a threat to the security of a public building, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities, from these provisions. Because the bill would require local officials to perform additional duties, it would impose a state-mandated local program. ~~This bill would provide that specified records of a private industry employer that are prepared, owned, used, or retained by a public agency are not trade secrets and are public records, including certain records relating to employment terms and conditions of employees working for a private industry employer pursuant to a contract public agency, records of compliance with local, state, or federal domestic content requirements, and records of a private industry employer's compliance with job creation, job quality, or job retention obligations contained in a contract or agreement with a state or local agency.~~

(STATUS: Introduced 02/22/19. **From committee with author's amendments. Read second time and amended. Re-referred to Committee on JUD. on 09/10/19. Assembly Rule 96 suspended. Withdrawn from committee. Ordered to third reading on 09/12/19. Ordered to inactive file on request of Assembly Member Calderon on 09/13/19.**)

Other Bills of Interest

- **AB 5 (Gonzalez)**

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would state the intent of the Legislature to codify the decision in *Dynamex* and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).

The bill would exempt specified occupations from the application of *Dynamex*, and would instead provide that these occupations are governed by *Borello*. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023, and the exemption for licensed manicurists applicable

only until January 1, 2022. The bill would authorize an action for injunctive relief to prevent employee misclassification to be brought by the Attorney General and specified local prosecuting agencies.

This bill would also redefine the definition of “employee” described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity’s business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission.

The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill’s provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill’s enactment.

(STATUS: Signed by the Governor on 09/18/19.)

- **AB 1332 (Bonta)**

This bill, the Sanctuary State Contracting Act, would, among other things, require the Department of Justice, commencing on January 1, 2020, and quarterly thereafter, to publish a list on its internet website, based on specified criteria, of each person or entity that, in the opinion of the Department of Justice, is providing data broker, extreme vetting, or detention facilities support to any federal immigration agency, as specified. The bill would prohibit a state or local agency from entering into a new, amended, or extended contract or agreement with any person or entity that appears on the list published by the Department of Justice unless the state or local agency has made a finding that no reasonable alternative exists, as specified. The bill would exempt certain contracts or agreements from these provisions related to provisions the administration of retirement benefits and investment of moneys for retirement benefits, as specified. This bill would authorize the Department of Justice to initiate, and require the department to receive and investigate, all complaints regarding violations of these provisions, and would require the department to issue findings regarding any alleged violation and notify any affected state or local agency. By increasing the duties of local officials, this bill would impose a state-mandated local program. Additionally, this bill would make a violation of these provisions subject to civil and criminal penalties, thereby imposing a state-mandated local program.

(STATUS: Introduced 02/22/19. In committee: Set, first hearing. Referred to APPR. suspense file on 05/08/19. In committee: Held under submission on 05/16/19.)

- **SB 53 (Wilk)**

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions. This bill would specify that the definition of “state body” includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation. This bill would declare that it is to take effect immediately as an urgency statute.

(STATUS: Introduced 12/10/18. **Placed on APPR. suspense file on 08/14/19. Heard on 08/30/19. Held in committee and under submission on 08/30/19.**)

- **SB 715 (Galgiani)**

The California Constitution establishes the University of California as a public trust with full powers of organization and government, subject only to specified limitations. Under this independent constitutional authority, the University of California established retirement systems to provide various retirement benefits to its members. Existing law prohibits the University of California from contracting for services unless a contractor certifies that the services will be performed solely by workers within the United States or if the contractor’s bid describes any work that will be performed by workers outside the United States. This bill would prohibit the University of California from contracting for services with an asset manager for a defined contribution plan if that plan is a stand-alone optional plan that is not a complement to a defined benefit pension plan. The bill would apply this prohibition to a contract entered into on or after January 1, 2015.

(STATUS: Introduced 02/22/19. Failed to pass out of committee. Reconsideration granted 04/24/19.)

Bills that Apply to CalPERS and/or CalSTRS Only:

- **AB 181 (Rodriguez)**

~~This bill would require CalPERS and CalSTRS to each provide a report to the Legislature, commencing March 1, 2021, and annually thereafter, on the status of achieving appropriate objectives and initiatives, to be defined by the boards, regarding participation of emerging managers responsible for asset management within each system’s portfolio of investments. The bill would require that the report be based on contracts that the system enters into on and after January 1, 2020, and be based on information from the prior fiscal year. The bill would require each report to include certain elements and would require the boards to define “emerging manager” for purposes of these provisions.~~

~~(STATUS: Introduced 01/09/19. Passed out of the Assembly and ordered to the Senate on 05/28/19. Read first time. Referred to Committee on RLS. on 06/06/19.)~~

AB 181 was amended in the Senate on 09/04/19. As amended, AB 181 relates to hazardous waste; the author is Maienschein.

- **AB 462 (Rodriguez)**

This bill would require the Board of Administration of CalPERS and CalSTRS to each provide a report to the Legislature, commencing March 1, 2021, and annually thereafter, on the status of achieving appropriate objectives and initiatives, to be defined by the boards, regarding participation of emerging managers responsible for asset management within each system's portfolio of investments. The bill would require that the report be based on contracts that the system enters into on and after January 1, 2020, and be based on information from the prior fiscal year. The bill would require each report to include certain elements and would require the boards to define emerging manager for purposes of these provisions. This bill contains other related provisions and other existing laws.

(STATUS: Introduced 02/11/19. Referred to Committee on RLS. on 05/01/19. From committee chair, with author's amendments: Amend and re-refer to committee. Read second time, amended, and re-referred to Com. on RLS. on 05/21/19.)

- **AB 644 (Committee on Public Employment and Retirement)**

Existing law applicable to CalSTRS defines compensation earnable for the purpose of benefit calculations as the creditable compensation a person could earn in a school year for creditable service performed on a full time basis, and defines creditable compensation as remuneration paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position. Existing law also requires employers to make contributions to the CalSTRS system based on the member's creditable compensation. This bill would revise the definition of compensation earnable for the purposes of CalSTRS to be the sum of the average annualized pay rate, as defined, paid in a school year divided by the service credited for that school year and the remuneration paid in addition to salary or wages. The bill would make various conforming changes in accordance with the revised definition of compensation earnable.

Existing law applicable to CalSTRS requires an employer to certify that the member's employment has been terminated, unless the member's termination of employment occurred 12 consecutive months or more prior to the date the application for a termination of benefits is received by the system. This bill would require the employer certification to be in a format prescribed by CalSTRS and would specify that the application for a termination benefit must be received at the system's headquarters office.

Existing law authorizes specified CalSTRS members who, on January 1, 1976, are in state service positions or are employees of the Trustees of the California State University, to elect to not continue as members of CalSTRS and to transfer to CalPERS. This bill would repeal these provisions.

(STATUS: Signed by Governor on 07/12/19.)

- **AB 672 (Cervantes)**

CalPERS provides pension and other benefits to members of the system and prescribes conditions for service after retirement. PERL and PEPR establish various limits on retirement benefits generally applicable to a public employee retirement system, and prescribes, among other things, limits on service after retirement without reinstatement into the applicable retirement system. This bill would prohibit a person who has retired for disability from being employed by any employer without reinstatement from

retirement if the position is the position from which the person retired or if the position includes duties or activities that the person was previously restricted from performing at the time of retirement, unless an exception applies. The bill would require, if a person retired for disability is employed by an employer without reinstatement, an employer to provide to the board the nature of the employment and the duties and activities the person will perform.

(STATUS: Signed by Governor on 07/12/19.)

- **AB 1452 (O'Donnell)**

Existing law creates the CalSTRS Cash Balance Benefit Program, which is administered by the CalSTRS board, to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time. This bill would prohibit aggregating creditable service in more than one position for the purpose of determining mandatory membership on a part-time basis for 50% or more of the time the employer requires for a full-time position, as specified. This bill contains other related provisions and other existing laws.

(STATUS: **Signed by Governor on 09/20/19.**)

- **SB 266 (Leyva)**

Under existing law, CalPERS is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures. This bill would establish new procedures under PERL for cases in which CalPERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPPRA and other specified laws and thus impermissible under PERL. The bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation. The bill would require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that the state, school employer, or contracting agency return to the member any contributions paid by the member or on the member's behalf.

With respect to retired members, survivors, or beneficiaries whose benefits are based on disallowed final compensation, the bill would require PERS to adjust the benefit to reflect the exclusion of the disallowed compensation, and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer entity that reported the disallowed compensation. Additionally, if specified conditions are met, the bill would require the employing entity to refund overpayment costs to the system and to pay **retired** members, survivors, and beneficiaries whose benefits have been reduced ~~a lump sum or~~ **an annuity or a lump sum, as prescribed, that reflects** ~~reflecting~~ the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as

provided. The bill would require the system to provide certain notices in this regard. This bill would require the system to provide confidential contact information of retired members, and their survivors and beneficiaries, who are affected by these provisions to the relevant employing entities, the confidentiality of which the entities would be required to maintain.

The bill would authorize the state, a school employer, **as specified**, or a contracting agency, as applicable, to submit to the system an additional compensation item proposed to be included or contained in a memorandum of understanding or collective bargaining agreement on and after January 1, 2020, that is intended to form the basis of a pension benefit calculation ~~for determination of compliance~~ **in order for PERS to review its consistency** with PEPR and other laws, as specified, and would require PERS to ~~respond~~ **provide guidance regarding the review** within 90 days, as specified. The bill would require PERS to publish notices **regarding proposed compensation identifying items of allowable compensation derived from** language submitted to the system for review **and the guidance given by the system that is connected with it. For educational entities that participate in the system, the final responsibility for funding payments to the system and to retired members, survivors, and beneficiaries would belong to the educational entity that is the actual employer of the employee.** (STATUS: Introduced 02/12/19. **Read third time in Assembly; ordered to the Senate; Senate concurred in amendments; ordered to engrossing and enrolling on 09/12/19. Withdrawn from engrossing and enrolling, and ordered held at the Desk on 09/13/19.**)

- **SB 341 (Morell)**

Existing law requires the CalPERS and CalSTRS retirement boards to provide annual reports to the Legislature and the Governor with regard to investment returns on assets of CalPERS and CalSTRS, respectively. As part of these reports, the boards are required to calculate and report on the rate of return on investments based on different assumptions. This bill would require the Board of Administration of CalPERS to report a calculation of liabilities based on a discount rate equal to the yield on a 10-year United States Treasury note in the year prior to the report. The bill would require the CalSTRS Retirement Board to provide a description of the discount rate the board uses for reporting liabilities, a calculation of liabilities based on a discount rate that is 2% below the long-term rate of return assumed by the board, and a calculation of liabilities based on a discount rate equal to the yield on a 10-year United States Treasury note in the year prior to the report. This bill would also appropriate \$1 billion from the General Fund for transfer to the Teachers' Retirement Fund to reduce the unfunded liability of the STRS defined benefit program, and appropriate another \$1 billion to the Teachers' Retirement Fund if the Legislative Analyst determines in the May Revision of the 2019-20 Budget that the State has collected more than \$1 billion in unanticipated General Fund revenue. This bill contains other related provisions and amendments other existing laws. (STATUS: Introduced 02/19/19. Referred to Committee on L., P.E. & R on 02/28/19. Set for hearing on 03/27/19. Failed passage in committee. Reconsideration granted.)

Divestment Proposals (CalPERS and CalSTRS Only)

- **AB 33 (Bonta)**

This bill would prohibit the CalPERS and CalSTRS from making new investments or renewing existing investments of public employee retirement funds in a private prison company, as defined. This bill would require the boards to liquidate investments in private prison companies on or before July 1, 2020, and would require the boards, in making a determination to liquidate investments, to constructively engage with private prison companies to establish whether the companies are transitioning their business models to another industry. 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. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill's requirements, as specified. The bill would make related legislative findings and declarations.

(STATUS: Introduced 12/03/18. Referred to Committee on P.E. & R on 01/17/19. Second hearing cancelled at the request of author 04/24/19.)

- **AB 1320 (Nazarian)**

This bill, upon the passage of a federal law that imposes sanctions on the government of Turkey for failure to officially acknowledge its responsibility for the Armenian Genocide, would prohibit the boards of administration of CalPERS and CalSTRS from making additional or new investments, or renewing existing investments, of public employee retirement funds in an investment vehicle in the government of Turkey that is issued by the government of Turkey or that is owned by the government of Turkey. The bill would require the boards to liquidate existing investments in the government of Turkey within 18 months of the passage of the above-describe federal law. The bill would require these boards to make specific reports to the Legislature and the Governor regarding these actions within one year of passage of a federal law imposing those sanctions on the government of Turkey and on or before January 1, 2024. The bill would specify that its provisions do not require a board to take any action that the board determines in good faith is inconsistent with its constitutional fiduciary responsibilities to the retirement system. The bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, the boards, in connection with actions relating to these investments. The bill would repeal the above-described prohibited investment and reporting provisions on January 1, 2025, or if a determination is made by the board, the Department of State, the Congress of the United States, or another appropriate federal agency, that the government of Turkey has officially acknowledged its responsibility for the Armenian Genocide, whichever occurs first.

(STATUS: **Signed by Governor on 10/2/19.**)

Attachments

Submitted by:



GMR- Approved

Gina M. Ratto
General Counsel



2019 - 2020 LEGISLATIVE SESSION BILLS OF INTEREST
LEGISLATIVE UPDATE (OCTOBER 21, 2019) – ATTACHMENT

New or updated information in bold text

AB 5 (Gonzalez)

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would state the intent of the Legislature to codify the decision in *Dynamex* and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).

The bill would exempt specified occupations from the application of *Dynamex*, and would instead provide that these occupations are governed by *Borello*. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023, and the exemption for licensed manicurists applicable only until January 1, 2022. The bill would authorize an action for injunctive relief to prevent employee misclassification to be brought by the Attorney General and specified local prosecuting agencies.

This bill would also redefine the definition of “employee” described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity’s business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission.

The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill’s provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill’s enactment.

(STATUS: Signed by the Governor on 09/18/19.)

AB 33 (Bonta)

This bill would prohibit the CalPERS and CalSTRS from making new investments or renewing existing investments of public employee retirement funds in a private prison company, as defined. This bill would require the boards to liquidate investments in private prison companies on or before July 1, 2020, and would require the boards, in making a determination to liquidate investments, to constructively engage with private prison companies to establish whether the companies are transitioning their business models to another industry. 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. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill’s requirements, as specified. The bill would make related legislative findings and declarations.

(STATUS: Introduced 12/03/18. Referred to Committee on P.E. & R on 01/17/19. Second hearing canceled at request of author on 04/24/19.)

AB 181 (Rodriguez)

~~This bill would require CalPERS and CalSTRS to each provide a report to the Legislature, commencing March 1, 2021, and annually thereafter, on the status of achieving appropriate objectives and initiatives, to be defined by the boards, regarding participation of emerging managers responsible for asset management within each system's portfolio of investments. The bill would require that the report be based on contracts that the system enters into on and after January 1, 2020, and be based on information from the prior fiscal year. The bill would require each report to include certain elements and would require the boards to define "emerging manager" for purposes of these provisions.~~

~~(STATUS: Introduced 01/09/19. Passed out of the Assembly and ordered to the Senate on 05/28/19. Read first time. Referred to Committee on RLS. on 06/06/19.)~~

AB 181 was amended in the Senate on 09/04/19. As amended, AB 181 relates to hazardous waste; the author is Maienschein.

AB 249 (Choi)

This bill would prohibit a public employer from deterring or discouraging a public employee or an applicant to be a public employee from opting out of becoming or remaining a member of an employee organization. The bill would prohibit a public employer from taking adverse action against a public employee or applicant to be a public employee who opts out of becoming or remaining a member of an employee organization and would specify that adverse action includes reducing a public employee's current level of pay or benefits.

(STATUS: Introduced 01/22/19. Died in committee pursuant to Joint Rule 62(a) on 06/04/19.)

AB 287 (Voepel)

Existing law requires each state and local public pension or retirement system, on and after the 90th day following the completion of the annual audit of the system, to provide a concise annual report on the investments and earnings of the system, as specified, to any member who makes a request and pays a fee, if required, for the costs incurred in preparation and dissemination of that report. This bill would also require each state and local pension or retirement system to post a concise annual audit of the information described above on that system's internet website no later than the 90th day following the audit's completion. By imposing new duties on local retirement systems, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(STATUS: Introduced 01/28/19. Referred to Committee on P.E. & R on 02/07/19.)

AB 346 (Cooper)

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law provides that certain peace officers, firefighters, and other specified state and local public employees are entitled to a leave of absence without loss of salary while disabled by injury or illness

arising out of and in the course of employment. The leave of absence is in lieu of temporary disability payments or maintenance allowance payments otherwise payable under the workers' compensation system. This bill would add police officers employed by a school district, county office of education, or community college district to the list of public employees entitled to a leave of absence without loss of salary, in lieu of temporary disability payments, while disabled by injury or illness arising out of and in the course of employment.

(STATUS: **Enrolled 09/09/19.**)

AB 462 (Rodriguez)

This bill would require the Board of Administration of CalPERS and CalSTRS to each provide a report to the Legislature, commencing March 1, 2021, and annually thereafter, on the status of achieving appropriate objectives and initiatives, to be defined by the boards, regarding participation of emerging managers responsible for asset management within each system's portfolio of investments. The bill would require that the report be based on contracts that the system enters into on and after January 1, 2020, and be based on information from the prior fiscal year. The bill would require each report to include certain elements and would require the boards to define emerging manager for purposes of these provisions. This bill contains other related provisions and other existing laws.

(STATUS: Introduced 02/11/19. Referred to Committee on RLS. on 05/01/19. From committee chair, with author's amendments: amend and re-refer to committee. Read second time, amended, and re-referred to Com. on RLS. on 05/21/19.)

AB 472 (Voepel)

PEPRA establishes various limits on retirement benefits generally applicable to a public employee retirement system, as defined. The act prescribes, among other things, limits on service after retirement without reinstatement into the applicable retirement system. This bill would make non-substantive changes to that provision.

(STATUS: Introduced 02/11/19. Pending committee assignment.)

AB 510 (Cooley)

Existing law authorizes the head of a department of a county or city, or the head of a special district to destroy recordings of routine video monitoring maintained by that county, city, or special district after one year if that person receives approval from the legislative body and the written consent of the agency attorney. Existing law authorizes the head of a department of a county or city, or the head of a special district to destroy recordings of telephone and radio communications maintained by that county, city, or special district after 100 days if that person receives approval from the legislative body and the written consent of the agency attorney. This bill would exempt the head of a department of a county or city, or the head of a special district from these recording retention requirements if the county, city, or special district adopts a records retention policy governing recordings of routine video monitoring and recordings of telephone and radio communications.

(STATUS: Introduced 02/13/19. Referred to Committee on L. Gov. on 02/21/19.)

AB 644 (Committee on Public Employment and Retirement)

Existing law applicable to CalSTRS defines compensation earnable for the purpose of benefit calculations as the creditable compensation a person could earn in a school year for creditable service performed on a full time basis, and defines creditable compensation as remuneration paid in cash by an employer to all persons in the same class of employees for performing creditable service in that position. Existing law also requires employers to make contributions to the CalSTRS system based on the member's creditable compensation. This bill would revise the definition of compensation earnable for the purposes of CalSTRS to be the sum of the average annualized pay rate, as defined, paid in a school year divided by the service credited for that school year and the remuneration paid in addition to salary or wages. The bill would make various conforming changes in accordance with the revised definition of compensation earnable.

Existing law applicable to CalSTRS requires an employer to certify that the member's employment has been terminated, unless the member's termination of employment occurred 12 consecutive months or more prior to the date the application for a termination of benefits is received by the system. This bill would require the employer certification to be in a format prescribed by CalSTRS and would specify that the application for a termination benefit must be received at the system's headquarters office.

Existing law authorizes specified CalSTRS members who, on January 1, 1976, are in state service positions or are employees of the Trustees of the California State University, to elect to not continue as members of CalSTRS and to transfer to CalPERS. This bill would repeal these provisions.

(STATUS: Signed by Governor on 07/12/19.)

AB 664 (Cooper)

The CERL 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 employment, and that employment contributes substantially to that incapacity or the member has completed 5 years of service and not waived retirement in respect to the particular incapacity or aggravation thereof, as specified. This bill would require, for purposes of determining permanent incapacity of certain members employed as peace officers in the County of Sacramento, that those members be evaluated by the retirement system to determine if they can perform all of the usual and customary duties of a peace officer who is described under Section 830 of the Penal Code. The bill would apply to members who file applications for disability on or after the effective date of the act, except for cases on appeal at that time. The bill would require the board of retirement to develop a method of tracking the costs of providing permanent disability retirement to the members who become eligible for disability retirement pursuant to the bill's provisions. The bill would repeal these provisions on December 31, 2024.

(STATUS: Introduced 02/15/19. Passed out of the Assembly and ordered to the Senate on 05/13/19. Referred to Committees on L., P.E. & R. and APPR on 05/22/19. In committee: Set, first hearing. Hearing cancelled at request of author on 06/26/19.)

AB 672 (Cervantes) CalPERS provides pension and other benefits to members of the system and prescribes conditions for service after retirement. PERL and PEPRA establish various limits on retirement benefits generally applicable to a public employee retirement system, and prescribes, among other things, limits on service after retirement without reinstatement into the applicable retirement system. This bill would prohibit a person who has retired for disability from being employed by any employer without reinstatement from retirement if the position is the position from which the person retired or if the position includes duties or activities that the person was previously restricted from performing at the time of retirement, unless an exception applies. The bill would require, if a person retired for disability is employed by an employer without reinstatement, an employer to provide to the board the nature of the employment and the duties and activities the person will perform. (STATUS: Signed by Governor on 07/12/19.)

AB 931 (Boener-Horvath)

Current law establishes the policy of the Legislature to ensure equal access to specific information about the many local regulating and advisory boards, commissions, and committees and to ensure equal opportunity to be informed of vacancies on those boards. Existing law requires each legislative body of a local agency to prepare an appointments list of all regular and ongoing boards, commissions, and committees that are appointed by the legislative body of the local agency.

This bill, on and after January 1, 2030, would require, with respect to a city with a population of 50,000 or more, that the city not appoint members of nonsalaried, nonelected boards or commissions consisting of 5 or more members such that individuals of the same gender identity comprise more than 60% of the board or commission's membership. The bill would also prohibit a board or commission with 4 or fewer nonelected and nonsalaried members from being comprised exclusively of people with the same gender identity. The bill would define "gender identity" for purposes of the bill, and would exclude from its provisions a board or commission that has as its primary purpose addressing issues of relevance to a particular gender identity. By imposing new requirements on cities, the bill would impose a state-mandated local program.

(STATUS: Enrolled on 09/13/19.)

AB 979 (Reyes)

Existing law establishes the Judges' Retirement System II, which CalPERS administers. Existing law authorizes a judge who is a member of the system and who retires upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of 5 years of service, to elect from specified retirement benefits including a monthly pension. Existing law requires a judge who leaves judicial office after accruing 5 or more years of service, but who has not reached the applicable age of retirement, to be paid a lump sum equal to monetary credits that accrued while in office, as specified. Existing law authorizes a judge who, among other things, separates from office after accruing 5 or more years of service and has not reached 65 years of age to continue health care benefits if the judge assumes certain payments. Existing law specifies benefits provided to a surviving spouse or other beneficiary in relation to these provisions.

This bill would authorize a judge who is a member of the system to retire upon attaining both 63 years of age and 15 or more years of service, or when a judge who has accrued at least 5 years of service and who has not

received specified discipline is defeated for reelection. The bill would authorize a judge who is not otherwise eligible to retire and who has either attained 60 years of age with a minimum of 5 years of service or accrued 15 or more years of service to leave the judge's monetary credits on deposit with the system, to retire, and upon reaching retirement age, as specified, to receive a retirement allowance, as provided. The bill would prescribe procedures to apply if the judge fails to elect within 30 days of separation and would authorize the board to charge an administrative fee, as specified, to a judge who elects to apply these provisions. The bill would specify the monthly allowance provided to a surviving spouse or other beneficiary and would make other conforming changes in relation to these provisions. This bill contains other related provisions and other existing laws. (STATUS: Introduced 02/21/19. Set for first hearing in committee; hearing canceled at request of author on 04/24/19.)

AB 992 (Mullin)

The Brown Act generally requires that the meetings of legislative bodies of local agencies be conducted openly. That act defines "meeting" for purposes of the act and prohibits a majority of the members of a legislative body, outside a meeting authorized by the act, from using a series of communications of any kind to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. This bill would provide that the prohibition described above does not apply to the participation, as defined, in an internet-based social media platform, as defined, by a majority of the members of a legislative body, provided that a majority of the members do not discuss among themselves, as defined, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency. (STATUS: Introduced 02/21/19. In committee: Set, first hearing. Failed passage. Reconsideration granted on 05/01/19.)

AB 1184 (Gloria)

The California Public Records Act requires a public agency, defined to mean any state or local agency, to make public records available for inspection, subject to certain exceptions. Existing law specifies that public records include any writing containing information relating to the conduct of the public's business, including writing transmitted by electronic mail. The act requires any agency that has any information that constitutes a public record not exempt from disclosure, to make that public record available in accordance with certain provisions and authorizes every agency to adopt regulations stating the procedures to be followed when making its records available, if the regulations are consistent with those provisions. Existing law authorizes cities, counties, and special districts to destroy or to dispose of duplicate records that are less than two years old when they are no longer required by the city, county, or special district, as specified.

This bill would, unless a longer retention period is required by statute or regulation, **or established by the Secretary of State pursuant to the State Public Records Management Act**, require a public agency for purposes of the California Public Records Act to retain and preserve for at least 2 years every **public record, as defined, that is transmitted by electronic mail. ~~writing containing information relating to the conduct of the public's business prepared, owned, or used by any public agency that is transmitted by mail.~~** (STATUS: Enrolled on 09/19/19.)

AB 1198 (Stone)

PEPRA, among other things, establishes new retirement formulas, which are generally applicable to employees first employed on or after January 1, 2013, and which a public employer offering a defined benefit pension plan is prohibited from exceeding. PEPRA excepts certain public employees from its provisions, including certain transit workers whose interests are protected by specified federal law until a federal district court ruled that a United States Department of Labor determination that the application of PEPRA to these workers violated federal law was in error, or until January 1, 2016, as specified. A district court ruling to this effect occurred on December 31, 2014. This bill would except transit workers hired before January 1, 2016, from PEPRA by removing the federal district court contingency language from the provision excepting certain transit workers from PEPRA, as described above.

(STATUS: Introduced 02/21/19. Set for first hearing in committee; hearing canceled at request of author on 04/24/19.)

AB 1212 (Levine)

Existing law authorizes the boards of CalPERS, CalSTRS, and the '37 Act systems, consistent with their fiduciary duties and investment standards, to prioritize investment in an in-state infrastructure project over a comparable out-of-state infrastructure project. This bill would require a state agency that is responsible for infrastructure projects to produce a list of priority infrastructure projects for funding consideration by the retirement boards, as described above, and to provide the list to those boards. The state agency would be required to provide further project information to a board upon request. **The bill would define a state agency for these purposes as the Department of Transportation and the Department of Water Resources.**

(STATUS: **Vetoed by Governor on 10/9/19.**)

AB 1320 (Nazarian)

This bill, upon the passage of a federal law that imposes sanctions on the government of Turkey for failure to officially acknowledge its responsibility for the Armenian Genocide, would prohibit the boards of administration of CalPERS and CalSTRS from making additional or new investments, or renewing existing investments, of public employee retirement funds in an investment vehicle in the government of Turkey that is issued by the government of Turkey or that is owned by the government of Turkey. The bill would require the boards to liquidate existing investments in the government of Turkey within 18 months of the passage of the above-described federal law. The bill would require these boards to make specific reports to the Legislature and the Governor regarding these actions within one year of passage of a federal law imposing those sanctions on the government of Turkey and on or before January 1, 2024. The bill would specify that its provisions do not require a board to take any action that the board determines in good faith is inconsistent with its constitutional fiduciary responsibilities to the retirement system. The bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, the boards, in connection with actions relating to these investments. The bill would repeal these the above-described prohibited investment and reporting provisions on January 1, 2025, or if a determination is made by the board, the Department of State or State, the Congress of the United States, or another appropriate

federal agency, that the government of Turkey has officially acknowledged its responsibility for the Armenian Genocide, whichever occurs first.

(STATUS: **Signed by Governor on 10/2/19.**)

AB 1332 (Bonta)

This bill, the Sanctuary State Contracting Act, would, among other things, require the Department of Justice, commencing on January 1, 2020, and quarterly thereafter, to publish a list on its internet website, based on specified criteria, of each person or entity that, in the opinion of the Department of Justice, is providing data broker, extreme vetting, or detention facilities support to any federal immigration agency, as specified. The bill would prohibit a state or local agency from entering into a new, amended, or extended contract or agreement with any person or entity that appears on the list published by the Department of Justice unless the state or local agency has made a finding that no reasonable alternative exists, as specified. The bill would exempt certain contracts or agreements from these provisions related to provisions the administration of retirement benefits and investment of moneys for retirement benefits, as specified. This bill would authorize the Department of Justice to initiate, and require the department to receive and investigate, all complaints regarding violations of these provisions, and would require the department to issue findings regarding any alleged violation and notify any affected state or local agency. By increasing the duties of local officials, this bill would impose a state-mandated local program. Additionally, this bill would make a violation of these provisions subject to civil and criminal penalties, thereby imposing a state-mandated local program.

(STATUS: Introduced 02/22/19. In committee: Set, first hearing. Referred to APPR. suspense file on 05/08/19. In committee: Held under submission on 05/16/19.)

AB 1452 (O'Donnell)

Existing law creates the CalSTRS Cash Balance Benefit Program, which is administered by the CalSTRS board, to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time. This bill would prohibit aggregating creditable service in more than one position for the purpose of determining mandatory membership on a part-time basis for 50% or more of the time the employer requires for a full-time position, as specified. This bill contains other related provisions and other existing laws.

(STATUS: **Signed by Governor on 09/20/19.**)

AB 1819 (Committee on Judiciary)

The California Public Records Act requires **public records to be open to inspection at all times during the office hours of the state or local agency that retains those records, and provides that every person has a right to inspect any public record, except as provided. The California Public Records Act requires** state and local agencies to make public records available upon receipt of a request **for a copy** that reasonably describes an identifiable record not otherwise exempt from disclosure, and upon payment of fees to cover costs.

This bill would grant ~~the~~ requester **who inspects a disclosable record on the premises of the agency** the right to use the requester's equipment **on those premises**, without being charged any fees or costs, to photograph or otherwise copy or reproduce ~~the any~~ record **in a manner that does not require the equipment to make physical contact with the record, upon inspection and on the premises of the agency,** unless the means of copy

or reproduction would result in damage to the record, or unauthorized access to a computer system of the agency or secured network, as specified. The bill would authorize the agency to impose any reasonable limits on the use of the requester's equipment that are necessary to protect the safety of the records or to prevent the copying of records from being an unreasonable burden to the orderly function of the agency and its employees. The bill would authorize the agency to impose any limit that is necessary to maintain the integrity of, or ensure the long-term preservation of, historic or high-value records. By imposing additional duties and responsibilities upon local agencies in connection with requests for inspection of records, this bill constitutes a state-mandated local program.

(STATUS: **Enrolled on 09/23/19.**)

SB 53 (Wilk)

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions. This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation. This bill would declare that it is to take effect immediately as an urgency statute.

(STATUS: Introduced 12/10/18. **Placed on APPR. suspense file on 08/14/19. Heard on 08/30/19. Held in committee and under submission on 08/30/19.**)

SB 184 (Moorlach) Enrolled 09/12/19

Existing law establishes the Judges' Retirement System II, which CalPERS administers. Existing law authorizes a judge who is a member of the system and who retires upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of 5 years of service, to elect from specified retirement benefits including a monthly pension. Existing law requires a judge who leaves judicial office after accruing 5 or more years of service, but who has not reached the applicable age of retirement, to be paid a lump sum equal to monetary credits that accrued while in office, as specified. Existing law authorizes a judge who, among other things, separates from office after accruing 5 or more years of service and has not reached 65 years of age to continue health care benefits if the judge assumes certain payments. Existing law specifies benefits provided to a surviving spouse or other beneficiary in relation to these provisions.

This bill would authorize a judge who is not otherwise eligible to retire and who has either attained 60 years of age with a minimum of 5 years of service or accrued 20 or more years of service to leave the judge's monetary credits on deposit with the system, to retire, and upon reaching retirement age, as specified, to receive a retirement allowance, as provided. The bill would prescribe procedures to apply if the judge fails to elect within 30 days of separation and would authorize the board to charge an administrative fee, as specified, to a judge who elects to apply these provisions. The bill would specify the monthly allowance provided to a surviving spouse or other beneficiary and would make other conforming changes in relation to these provisions. The bill

would also provide, for the purposes of the Judges' Retirement System II, and for a judge first appointed or elected to office on or after January 1, 2020, that a surviving spouse is a spouse who was married to the judge continuously for a period beginning one year prior to the date of the judge's retirement until the judge's death.

Existing law establishes the Public Employees' Medical and Hospital Care Act (PEMHCA) for the purpose of providing health care benefits to employees and annuitants, as defined. PEMHCA defines an annuitant for purposes of receiving postretirement health benefits as including, among others, a person who retires within 120 days of separation from public employment and a judge who receives the above-described lump sum payment of monetary credits. Contributions and premiums paid under PEMHCA are deposited in the Public Employees' Contingency Reserve Fund, which is continuously appropriated.

This bill would authorize a judge who elects to retire as described above, but is not yet receiving a retirement allowance, **or a specified surviving spouse of the judge**, to continue health care benefits upon separation from office if **the judge or surviving spouse** ~~he or she~~ assumes specified payments. The bill would include these judges, and specified surviving spouses, within the definition of annuitant upon commencement of the judge's retirement allowance, thereby authorizing the judge or a surviving spouse to receive applicable postretirement health benefits. By authorizing the use of continuously appropriated funds for a new purpose, and by depositing additional amounts into a continuously appropriated fund, this bill would make an appropriation.

(STATUS: Introduced 01/30/19. **Amended in Assembly on 09/03/19; Senate concurrence in amendments on 09/10/19. Enrolled on 09/17/19.**)

SB 266 (Leyva)

Under existing law, CalPERS is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures. This bill would establish new procedures under PERL for cases in which CalPERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPR and other specified laws and thus impermissible under PERL. The bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation. The bill would require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that the state, school employer, or contracting agency return to the member any contributions paid by the member or on the member's behalf.

With respect to retired members, survivors, or beneficiaries whose benefits are based on disallowed final compensation, the bill would require PERS to adjust the benefit to reflect the exclusion of the disallowed

compensation, and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer entity that reported the disallowed compensation. Additionally, if specified conditions are met, the bill would require the employing entity to refund overpayment costs to the system and to pay **retired** members, survivors, and beneficiaries whose benefits have been reduced ~~a lump sum~~ **or an annuity or a lump sum, as prescribed, that reflects** reflecting the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided. The bill would require the system to provide certain notices in this regard. This bill would require the system to provide confidential contact information of retired members, and their survivors and beneficiaries, who are affected by these provisions to the relevant employing entities, the confidentiality of which the entities would be required to maintain.

The bill would authorize the state, a school employer, **as specified**, or a contracting agency, as applicable, to submit to the system an additional compensation item proposed to be included or contained in a memorandum of understanding or collective bargaining agreement on and after January 1, 2020, that is intended to form the basis of a pension benefit calculation ~~for determination of compliance~~ **in order for PERS to review its consistency** with PEPR and other laws, as specified, and would require PERS to ~~respond~~ **provide guidance regarding the review** within 90 days, as specified. The bill would require PERS to publish notices **regarding proposed compensation identifying items of allowable compensation derived from** language submitted to the system for review **and the guidance given by the system that is connected with it. For educational entities that participate in the system, the final responsibility for funding payments to the system and to retired members, survivors, and beneficiaries would belong to the educational entity that is the actual employer of the employee.**

(STATUS: Introduced 02/12/19. **Read third time in Assembly; ordered to the Senate; Senate concurred in amendments; ordered to engrossing and enrolling on 09/12/19. Withdrawn from engrossing and enrolling, and ordered held at the Desk on 09/13/19.**)

SB 341 (Morell)

Existing law requires the CalPERS and CalSTRS retirement boards to provide annual reports to the Legislature and the Governor with regard to investment returns on assets of CalPERS and CalSTRS, respectively. As part of these reports, the boards are required to calculate and report on the rate of return on investments based on different assumptions. This bill would require the Board of Administration of CalPERS to report a calculation of liabilities based on a discount rate equal to the yield on a 10-year United States Treasury note in the year prior to the report. The bill would require the CalSTRS Retirement Board to provide a description of the discount rate the board uses for reporting liabilities, a calculation of liabilities based on a discount rate that is 2% below the long-term rate of return assumed by the board, and a calculation of liabilities based on a discount rate equal to the yield on a 10-year United States Treasury note in the year prior to the report. This bill would also appropriate \$1 billion from the General Fund for transfer to the Teachers' Retirement Fund to reduce the unfunded liability of the STRS defined benefit program, and appropriate another \$1 billion to the Teachers' Retirement Fund if the Legislative Analyst determines in the May Revision of the 2019-20 Budget that the State

has collected more than \$1 billion in unanticipated General Fund revenue. This bill contains other related provisions and amendments other existing laws.

(STATUS: Introduced 02/19/19. Referred to Committee on L., P.E. & R on 02/28/19. Set for hearing on 03/27/19. Failed passage in committee. Reconsideration granted.)

SB 430 (Wieckowski)

PEPRA prohibits a public employer offering a defined benefit pension plan from exceeding specified retirement formulas for new members and prohibits an enhancement of a public employee's retirement formula or benefit adopted after January 1, 2013, from applying to service performed prior to the operative date of the enhancement. PEPRA defines "new member" to mean, among other things, an individual who becomes a member of any public retirement system for the first time on or after January 1, 2013, and who was not a member of any other public retirement system prior to date. Existing law creates the Judges' Retirement System II, which is administered by the Board of Administration of the Public Employees' Retirement System, for the provision of retirement and other benefits to specified judges and their beneficiaries.

This bill would grant a judge who was elected to office in 2012, but did not take office until on or after January 1, 2013, the option of making a one-time, irrevocable election to have a pre-January 1, 2013, membership status in the Judges' Retirement System II for service accrued after on and after July 1, 2020. The bill would require the election to be made during a 30-day period beginning March 1, 2020. A judge making this election would no longer be a new member under specified provisions of PEPRA. The election would apply prospectively only, and membership rights and obligations that accrued based on service subject to PEPRA prior to July 1, 2020, would remain unchanged. The bill would specify that the Public Employees' Retirement System is not obligated to inform or locate a person who may be eligible to make the election and that its provisions do not affect the Legislature's reserved right to increase contributions or reduce benefits for purposes of the Judges' Retirement System II.

(STATUS: Introduced 02/21/19. Passed out of the Senate and ordered to the Assembly on 05/21/19. Referred to the Committee on P.E. & R. on 05/30/19. Set for first hearing cancelled at request of author on 06/26/19.)

SB 615 (Hueso)

The California Public Records Act requires a public agency to make its public records available for public inspection and to make copies available upon request and payment of a fee, unless the public records are exempt from disclosure. The act makes specified records exempt from disclosure and provides that disclosure by a state or local agency of a public record that is otherwise exempt constitutes a waiver of the exemptions. The act permit any person to institute proceedings for injunctive or declaratory relief or a writ of mandate to enforce the right to receive a copy of any public record covered by the act. This bill would require a person to meet and confer in good faith with the agency in an attempt to informally resolve each issue before instituting any proceeding for injunctive or declarative relief or writ of mandate. The bill would require the person or their attorney to file a declaration stating that this has occurred at the time that proceedings are instituted. Because the declaration would be made under penalty of perjury, the bill would expand the definition of a crime and impose a state-mandated local program. This bill contains other related provisions and other existing laws.

(STATUS: Introduced 02/22/19. Referred to Committee on JUD. on 03/14/19.)

SB 715 (Galgiani)

The California Constitution establishes the University of California as a public trust with full powers of organization and government, subject only to specified limitations. Under this independent constitutional authority, the University of California established retirement systems to provide various retirement benefits to its members. Existing law prohibits the University of California from contracting for services unless a contractor certifies that the services will be performed solely by workers within the United States or if the contractor's bid describes any work that will be performed by workers outside the United States. This bill would prohibit the University of California from contracting for services with an asset manager for a defined contribution plan if that plan is a stand-alone optional plan that is not a complement to a defined benefit pension plan. The bill would apply this prohibition to a contract entered into on or after January 1, 2015.

(STATUS: Introduced 02/22/19. Failed to pass out of committee; reconsideration granted on 04/24/19.)

SB 749 (Durazo)

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Existing law provides that nothing in the act requires the disclosure of corporate proprietary information including trade secrets, among other things.

This bill would provide that specified records of a private industry employer that are prepared, owned, used, or retained by a public agency are not trade secrets and are public records, including certain records relating to employment terms and conditions of employees working for a private industry employer pursuant to a contract with a public agency, if those wages, benefits, working hours and other employment terms and conditions relate to work performed under the contract, records of compliance with local, state, or federal domestic content requirements, and records of a private industry employer's compliance with job creation, job quality, or job retention obligations contained in a contract or agreement with a state or local agency. The bill, however, would exclude contracts between a public agency and a private industry employer entered into on or before January 1, 2020, and records that include communications between the state or local agency and specified state or local officials, on matters posing a threat to the security of a public building, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities, from these provisions. Because the bill would require local officials to perform additional duties, it would impose a state-mandated local program. ~~This bill would provide that specified records of a private industry employer that are prepared, owned, used, or retained by a public agency are not trade secrets and are public records, including certain records relating to employment terms and conditions of employees working for a private industry employer pursuant to a contract public agency, records of compliance with local, state, or federal domestic content requirements, and records of a private industry employer's compliance with job creation, job quality, or job retention obligations contained in a contract or agreement with a state or local agency.~~

(STATUS: Introduced 02/22/19. **From committee with author's amendments. Read second time and amended. Re-referred to Committee on JUD. on 09/10/19. Assembly Rule 96 suspended. Withdrawn from committee. Ordered to third reading on 09/12/19. Ordered to inactive file on request of Assembly Member Calderon on 09/13/19.**)

SB 783 (Senate Committee on Labor, Public Employees and Retirement)

The CERL authorizes counties to establish retirement systems pursuant to its provisions for the purpose of providing pension and death benefits to county and district employees. This bill would correct several erroneous and obsolete cross-references within CERL.

(STATUS: Introduced 03/07/19. Passed out of the Senate and ordered to the Assembly on 05/02/19. Referred to Committee on P.E. & R. on 05/16/19.)