



San Bernardino County Employees' Retirement Association

MEMORANDUM

DATE July 11, 2024 PHONE (909) 885-7980, Ext. 1351
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TO BOARD OF TRUSTEES
 San Bernardino County Employees' Retirement Association

SUBJECT 2023 – 2024 - CALIFORNIA LEGISLATION

Updated information reflected in blue. This is the second year of the 2023-2024 Legislative Term. Bills listed as Inactive/Dead will not appear in future updates.

2023-2024 Legislative Term Update

State lawmakers are on summer recess until Aug. 5. Once they return, they have until Aug. 31 to get their bills passed out of the Senate or Assembly so they can be sent to the Governor for consideration.

SBCERA is currently tracking two bills—AB 3025 (Valencia) and AB 2284 (Grayson)—that could have an impact on retirement system operations. Both bills are awaiting a third reading in the Senate. The bills must then go through the Assembly for concurrence with Senate amendments before being presented to the Governor.

Assembly Bill 2284 – County Employees’ Retirement Compensation

Background:

Assembly Bill 2284 introduced in the Assembly and sponsored by Assemblymember Tim Grayson representing the 15th Assembly District, which encompasses portions of Contra Costa County. This bill authorizes, for purposes of determining what compensation can be included in “compensation earnable” used to calculate a County Employees Retirement Law system pension, that CERL retirement system that has not defined “grade,” may define it 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’s provisions provide that the amendment to Government Code section 31461 would only be applicable in a county by majority vote of the Board of Supervisors. In addition, the author incorporated language that states “nothing in

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subparagraph A shall change the holding in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, and to the extent that there is any conflict between this section and the holding that case, the latter shall prevail." For your reference, attached is a copy of the bill text with relevant portions highlighted.

As way of background, the author provided the following comment to explain the need for AB 2284:

In California, there are two primary public employee retirement systems: the County Employees Retirement Law of 1937 (CERL) and the Public Employment Retirement Law (PERL). CERL oversees retirement systems for county and district employees in counties that adopt its provisions under Government Code Section 31500. However, CERL lacks a precise definition of 'grade' for determining pensionable compensation. On the other hand, PERL provides a clear definition of 'grade' as 'a grouping of employees who share job duties, schedules, work locations, collective bargaining units, or other logical classifications related to their work.' The absence of a clearly defined definition under CERL has led to ambiguity regarding retirement benefits, resulting in public servants receiving reduced pensionable compensation for the work they have performed. (Bill Analysis dated 06/28/24)

AB 2284 is sponsored by California Professional Firefighters and has registered support from several law enforcement organizations, including the San Bernardino County Sheriff's Employees' Benefit Association (SEBA).

SBCERA's Concerns:

The bill places the burden on a CERL retirement system to define grade or class of positions, which has solely been in the purview of an employer to define the terms and conditions of employment, which encompasses an employee's position, grade of the position, the number of employees in a job class, work schedule and location, and including similarities in job duties across the various class of positions. The terms and conditions are always subject to labor negotiations between an employee and employer. Essentially, resulting in Memoranda of Understanding with an employer's employees in the various bargaining groups. Requiring a CERL system to be in this position of performing an employer's function is contrary to established law, which is illustrated by Government Code section 25300, which states in relevant part, as applicable to the Board of Supervisors:

The Board of Supervisors shall prescribe ...tenure, appointment, and *conditions of employment of county employees...*

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Again, it is the employer's role to define grade or class of positions and not a CERL retirement system. Ultimately, if this bill moves forward and is signed by the Governor becoming law, SBCERA would be placed in the role of determining the conditions of employment of the members where again, this function is reserved solely for an employer.

Additionally, the bill's author is adamant that the language is similar to the provision found in a statute applicable to CalPERS. It is not. Under the Public Employees' Retirement Law (PERL), applicable to CalPERS, specifically Government Code section 20636, the language that is referred to as being "similar" in fact does not have the same language that would shift the burden to CalPERS, as a retirement system, to perform the duty of one of its employers in defining grade or class of positions. Section 20636 only prescribes a definition to the term "grade or class of employment," which is standard when it comes to defining terms in statutes. Where AB 2284 and the defined term in PERL differ is that AB 2284 burdens a retirement system in establishing grades or class of positions whereas Section 20636 does not put CalPERS in the position of establishing a grade or class of positions and merely assigns a definition to a term used in a statute.

As stated in the bill's analysis, the ultimate goal of this bill is to authorize a CERL retirement system to calculate pension benefits using compensation that employers pay to some, but not all, employees in the same grade or class. Under the Public Employees' Pension Reform Act (PEPRA) this is impermissible and could lead to pension spiking.

The following example is illustrative of the concerns raised by SBCERA.

If all Sheriff Deputy - Grade 1 employees receive a pay item, it is more likely to be includable. If only some of the Sheriff Deputy – Grade 1 employees receive that pay item, a retirement system probably must exclude it from compensation earnable.

However, a sheriff's department (or other county employer) may well have groups of people in the same position classification who their employer assigns to very different work duties and activities, with different corresponding pay items. The sponsors provide such rationale in arguing that the retirement system should be able to differentiate between a Sheriff Deputy - Grade 1 who is a patrol officer and one who is a county jail bailiff. Both have the same title and the same grade but their pay, duties, and their hours may be substantially different.

By authorizing CERL retirement systems to define "grade", this bill would allow the retirement system to treat those deputies differently so that pay items received by one subset but not all of the deputies, could be included in their pension calculations. (Bill Analysis dated 06/28/24)

In other words, CERL systems that adopt the change could "reclassify" members without an employer's consent so certain members could – despite the bill's assurances – claim

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compensation items that would otherwise be excluded by PEPRA and *Alameda*. In sum, AB 2284 would conflate the role of retirement systems with the role of employers they serve, likely leading to extensive litigation over members' compensation earnable determinations – a primary factor in calculating members' guaranteed lifetime pension allowance.

SBCERA's Position

The Board adopted SBCERA's Legislative Principles and Guidelines (Principles) that are intended to provide a "framework for SBCERA to pursue responsible legislative advocacy in accordance with priorities" set forth in the Principles. Under such principles, the Board permitted the engagement in the legislative process when proposed legislation could impact SBCERA's ability to properly administer the retirement system and meet its commitments to our members and their beneficiaries. Given the concerns raised above, and the impact that AB 2284 could have on SBCERA's ability to properly administer the retirement system, under the delegated authority by the Board to SBCERA's Chief Executive Officer in consultation with Chief Counsel, action was taken to file a letter opposing AB 2284. On June 21, SBCERA submitted a letter to the Senate Committee on Labor, Public Employment, and Retirement outlining SBCERA's concerns.

The decision to file an opposition letter satisfied several principles adopted by the Board:

1. Oppose legislative proposals that compromise or interfere with SBCERA's duty to deliver benefits to participants and beneficiaries.
2. Oppose legislation that creates unreasonable costs or complexity in the administration of retirement benefits. Under the CERL and Board's policy, the SBCERA Board determines which items are included or excluded as compensation earnable. AB 2284 would interfere with the Board's ability to undertake this responsibility, by now requiring the SBCERA Board to determine the grades or class of positions, a requirement that is reserved for an employer to perform as part of determining its own employee's terms and conditions of employment. Overall, this would create unreasonable costs and complexity in the administration of the retirement benefits.
3. Oppose proposed legislation that unnecessarily increases SBCERA covered employer and/or member contributions. AB 2284 could potentially require certain pay items now be includable for a group, whereas before the item was excluded from compensation earnable resulting in an employer paying contributions on the now included item of compensation earnable. Overall, this could lead to unnecessary increases in employer contributions.

Along with filing an opposition letter, staff contacted Assemblymember Grayson's office to discuss possible amendments to AB 2284, which were taken into consideration. Staff also as offered suggested language to SACRS, which was rejected. In addition to SBCERA, the County of Kern and the Kern County Employees' Retirement Association have formally opposed the

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bill. The Los Angeles County Employees' Retirement System BOR adopted an oppose position on July 3, and the Contra Costa County Employees' Retirement Association BOR will consider whether to submit formal opposition to the bill later this month.

Assembly Bill 3025 –

AB 3025 would establish a correction process for disallowed compensation associated with PEPRA or Alameda for CERL systems that haven't established one as of January 2024. SBCERA's Benefits Administration Procedures Policy No. 024 outlines how SBCERA administers benefit corrections; therefore, AB 3025 would not affect SBCERA's current procedures for PEPRA and Alameda corrections, nearly all of which have been completed.

However, SBCERA would be required to follow the AB 3025 correction process if future court rulings or determinations identify other pay as disallowed compensation.

Under the correction process established by AB 3025, employers would be required to repay a retirement system directly or through recognition in actuarial accrued liability the full cost of overpayments resulting from disallowed compensation found after a member has retired.

Additionally, employers would be required to pay the member or survivor 20 percent of the amount calculated by the retirement system that reflects the actuarial equivalent of the difference between the allowance predicated on disallowed compensation and the adjusted monthly allowance.

CalPERS's disallowed compensation correction process—prescribed in Government Code 20164.4—is like AB 3025. It was enacted in 2022 by SB 278.

AB 3025 is sponsored by California Professional Firefighters. SEBA and San Bernardino County Firefighters Local 935 have registered support for the bill along with more than a dozen other public safety labor organizations.

California Association of Counties, California Special Districts Association, Rural Counties, League of Cities, Urban Counties of California, and the County of Kern have registered opposition to AB 3025.

SACRS-Proposed Legislation Update

AB 2474 contains several SACRS-sponsored legislative proposals. It passed both the Assembly and the Senate and has been forwarded to the Governor for consideration.

AB 2474 would allow CERL system members to have their benefits placed in a living trust so they could qualify for Medi-Cal or comparable assistance.

It would also allow the Los Angeles County Employees' Retirement Association (LACERA) to provide benefits to members via prepaid cards. The provision originally would have provided

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all CERL systems with the option of issuing prepaid cards; however, the bill was amended to only apply to LACERA because of concerns that prepaid cards would subject members to possible fraud. LACERA must submit a report to the Legislature by November 2027 outlining its experience with prepaid cards.

AB 2474 would substantially change return-to-work regulations in the CERL by adding penalties for employers and making it clear members and employers are required to pay contributions plus interest when a retired member is reinstated. The law would not alter the current work limits for returning retirees, i.e., 960 hours per fiscal year, required separation period, etc.

The return-to-work violations in AB 2474 are outlined below:

For retired members, the penalties for violating return to work regulations would be:

- Reimburse retirement system for any allowance received when employment was in violation of the law.
- If the system reinstates the member, the member would be required to reimburse the system for contributions that would have otherwise been required plus interest.
- Reimburse retirement system for any administrative expenses as determined by the system administrator to the extent the member is at fault.

For employers, the penalty would be:

- If retired member is reinstated, reimburse the system for contributions that would have otherwise been required plus interest.
- Reimburse retirement system for any administrative expenses as determined by the system administrator to the extent the employer is at fault.
- For employers that fail to report hiring a retired member to a retirement system, the system could charge the employer \$200 per retired member per month until the member is enrolled as a returning retiree with the retirement system.
- Employers that do not report the pay rate and number of hours worked by a retired member within 30 days of the last pay period could be charged \$200 per retired member per month until the information is reported to the system.
- Employers would be prohibited from passing the fees to the member.

Additionally, employers would be required to notify members when they are either 10 days or 80 hours away from being in violation of return-to-work regulations.

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Another SACRS-sponsored legislative proposal is included in AB 2770. It would eliminate the requirement for a physical return receipt when CERL systems send certified mail to members entitled to a refund of their accumulated contributions. This return receipt is no longer necessary because systems receive electronic receipts for certified mail delivery.

AB 2770 also would extend the sunset date for the post-traumatic stress (PTSD) disability retirement presumption for police and firefighters from January 2025 to January 2029. The PTSD presumption was added to the CERL, along with several other presumptions, last year through the adoption of AB 1020.

AB 2770 passed both the Assembly and the Senate and has been forwarded to the Governor for consideration.

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ACTIVE BILLS

Below is a new format for reporting on bills being monitored that may have the potential to impact SBCERA as a public retirement system and an employer. For each bill, a brief summary is provided, as well as a position recommendation that will be in line with SBCERA’s Legislative Principles and Guidelines. Staff met on May 13 to discuss the proposed legislation, as well as recommend whether the Board take a support, oppose, amend, neutral, or watch position on pending legislation.

A. County Employees Retirement Law and PEPR

Position Recommendation	Bill and Summary
Watch	<p>AB 3025 – County Employees’ Retirement – Compensation (Valencia-D)</p> <p>This bill would legislate how CERL systems handle disallowed compensation issues for active and retired members. It would mandate that systems require employers to discontinue reporting disallowed compensation. The law would require employers to pay “restitution” to retired members or beneficiaries when a CERL system determines their benefit calculation included disallowed compensation. CERL systems, such as SBCERA, that had a formal process to handle disallowed compensation for retired members prior to January 1, 2024, could continue using their established process.</p> <p>For active members, it would require CERL systems to credit all contributions made on disallowed compensation against future contributions to the benefit of the employer that reported the disallowed compensation. Additionally, the CERL system would have to return contributions on disallowed compensation to the active member. CERL systems, such as SBCERA, that had a formal process to handle disallowed compensation for active members prior to January 1, 2024, could continue using their established process.</p> <p>SB 278 (2021) established a similar framework for CalPERS.</p> <p>Status: Awaiting third reading in the Senate.</p> <p>Impact: Unknown</p> <p>Sponsor: California Professional Firefighters</p>

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<p>Oppose</p>	<p>AB 2284 – CERL- Compensation (Grayson-D)</p> <p>The is a permissive bill that would allow CERL systems that have not defined “grade” as it relates to compensation earnable to define grade as “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.” It’s important to note that employers, not retirement systems, define what grade means for their employees.</p> <p>The bill’s analysis expresses concern about the legislation creating more administrative variations among CERL systems and about it spawning additional litigation regarding compensation earnable.</p> <p>Status: Awaiting third reading in the Senate.</p> <p>Impact: Unknown</p> <p>Sponsors: California Professional Firefighters; Fraternal Order of Police, Orange County</p>
<p>Support</p>	<p>AB 2474 – CERL Benefit Payments and Overpayments (Lackey-R)</p> <p>This bill would allow the Los Angeles County Employees’ Retirement Association to issue benefit payments to members via qualified pre-paid cards. It would also allow the deposit of retirement benefits into a living trust or income-only trust controlled by the member or survivor of a deceased member. Additionally, it would establish penalties for employers and retirees who violate return-to-work rules.</p> <p>Status: Awaiting the Governor’s consideration.</p> <p>Impact: Unknown</p> <p>Sponsor: SACRS</p>
<p>Watch</p>	<p>AB 2770 – CERL– PTSD Sunset Extension (Assembly Pension Committee Bill)</p> <p>For CERL systems, this bill would extend the sunset date for PTSD as a disability retirement presumption for safety members from January 1, 2025, to January 1, 2029. It would also remove the return receipt requirement for certified mail sent by CERL systems.</p> <p>Status: Awaiting the Governor’s consideration</p>

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	<p>Impact: Unknown</p> <p>Sponsors: CalPERS, CalSTRS, CA Professional Firefighters</p>
Watch	<p>AB 2301 – Sacramento Area Sewer District Pension Protection Act of '24 (Nguyen-D)</p> <p>The bill would establish how the Sacramento Area Sewer District joins the Sacramento County Employees' Retirement Association.</p> <p>Status: Approved by Governor on July 2, 2024.</p> <p>Impact: None</p> <p>Sponsors: Sacramento Area Sewer District; SCERS</p>
Watch	<p>AB 2183 – Public Employees' Retirement Benefits - Final Compensation (Jones-Sawyer-D)</p> <p>As written, this bill changes "his or her" in the code section that defines final compensation to "the member's." This is likely a spot bill that will be amended.</p> <p>Status: Dead</p> <p>Impact: Unknown</p>
Neutral	<p>SB 1189 – CERL Ventura County BOR Hiring Authority (Limón-D)</p> <p>This bill would allow the Board of Retirement of VCERA to appoint a chief technology officer. Currently VCERA must go through the county's Board of Supervisors to appoint someone to this position.</p> <p>Status: Awaiting the Governor's consideration.</p> <p>Impact: None</p> <p>Sponsor: Ventura County Employees' Retirement Association</p>

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B. Public Employment

Position Recommendation	Bill and Summary
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C. Local Government (including Brown Act, Public Records Act, & Conflict of Interest)

Position Recommendation	Bill and Summary
Watch	<p>SB 769 – Local Government – Fiscal and Financial Training (Gonzalez-D)</p> <p>The bill would require a member of a legislative body to receive at least two (2) hours of fiscal and financial training at least every two years.</p> <p>Status: Dead</p> <p>Impact: Under review.</p>
Watch	<p>SB 1034 – California Public Records Act - State of Emergency (Seyarto-R)</p> <p>Would allow a public agency more time to respond to a request for public information during a state of emergency proclaimed by the Governor.</p> <p>Status: Awaiting the Governor’s consideration.</p> <p>Impact: Under review.</p> <p>Sponsor: City of Chino Hills</p>

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Position Recommendation	Bill and Summary
Amended No Longer Relevant	<p>SB 908 – Fentanyl; Child Deaths (Cortese-D) This bill will appear as a strikethrough in future reports.</p> <p>Bill originally would have prohibited government employees and elected officials from conducting official business via texts or emails on private devices unless those records were preserved by the agency.</p> <p>It was amended and would now require the State to collect data on child deaths from fentanyl.</p>
Watch	<p>AB 2153 – Public Records – Employee Notifications (Lowenthal-D)</p> <p>This bill would require public employers to notify employees when someone requests to inspect their personnel information, which—for the most part—is exempt from being disclosed under the California Public Records Act.</p> <p>Status: Dead</p> <p>Impact: Under Review</p>
Watch	<p>AB 2302 – Open Meetings, Teleconferences (Addis-D)</p> <p>This bill would revise how a local legislative body calculates the number of meetings a member can participate in remotely for “just cause” or “emergency circumstance.” Specifically, it would prohibit such participation for more than a specified number of meetings per year, based on how frequently the legislative body regularly meets.</p> <p>Status: Awaiting third reading in the Senate.</p> <p>Impact: Under Review</p> <p>Sponsor: City of Pismo Beach</p>

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Position Recommendation	Bill and Summary
Watch	<p>AB 2421—Employer-employee relations, confidential communications (Low-D)</p> <p>This bill would prohibit employers from questioning any employee about communication they had in confidence with a labor representative in connection with any matter within the scope of the recognized employee organization’s representation.</p> <p>Status: Placed in suspense file due to potential costs.</p> <p>Impact: Under Review</p> <p>Sponsor: California Association of Highway Patrolmen; Peace Officers Research Association of California</p>
Watch	<p>AB 2611— California Political Reform Act - Conflicts of Interest</p> <p>This bill is a spot bill that will be amended. As written, it makes a non-substantive change to wording in the Political Reform Act, i.e., “any public official” to “a public official.”</p> <p>Status: Dead</p> <p>Impact: Under Review</p>
Watch	<p>SB 1151— Political Reform Act - Foreign Agents</p> <p>This bill would require an individual who engages in certain specified activities related to influencing legislative or administrative action to register as an agent of a foreign principal and to file periodic reports with the Secretary of State.</p> <p>Status: Placed in suspense file due to potential costs.</p> <p>Impact: Under Review</p> <p>Sponsor: Sen. Hurtado (Author)</p>
Support	<p>AB 2715— Brown Act - Close Session - Cyber Security</p> <p>This bill would additionally authorize a closed session to consider or evaluate matters related to cybersecurity, as specified, provided that any action taken on those matters is done in open session.</p>

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	<p>Status: Awaiting a third reading in the Senate.</p> <p>Impact: Under Review</p>
Watch	<p>AB 1870 – Notice RE: Workers Compensation</p> <p>This bill would require employers to include a notice on standard workers’ compensation claim forms that informs employees of their right to consult an attorney.</p> <p>Status: Awaiting the Governor’s consideration.</p> <p>Impact: None</p> <p>Supporters: California Applicants’ Attorneys Association and labor groups</p>

D. Other Bills of Interest Re CalPERS, STRS, and JRS I and II

Position Recommendation	Bill and Summary
Watch	<p>SB 252 – Public Retirement Systems- Fossil Fuels – Divestment (Gonzalez-D)</p> <p>This bill would prohibit the boards of the Public Employees’ Retirement System and the State Teachers’ Retirement System from making new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, as defined. The bill would require the boards to liquidate investments in a fossil fuel company on or before July 1, 2031. The bill would temporarily suspend the above-described liquidation provision upon a good faith determination by the board that certain conditions materially impact normal market mechanisms for pricing assets, as specified, and would make this suspension provision inoperative on January 1, 2035. 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 California Constitution.</p> <p>Status: Author pulled bill because she thought proposed Assembly amendments would erode bill’s core purpose.</p>

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Position Recommendation	Bill and Summary
	<p>Impact: None</p> <p>Sponsor: Fossil Free California; California Faculty Association</p>
Watch	<p>AB 1997 – Teachers’ Retirement Law (McKinnor-D)</p> <p>This bill would redefine “annualized pay rate” to mean the salary, as described, a person could earn during a school term in a position subject to membership if creditable service were performed for that position on a full-time basis, to be determined pursuant to a publicly available pay schedule by a prescribed method. The bill, if no annualized pay rate exists for a position subject to membership, would deem all compensation earned in that position “supplemental pay,” as prescribed. This bill would revise the definition of “compensation earnable” to be the sum of the average annualized pay rate, determined as the quotient obtained when salary earned in a school year is divided by the service credited for that salary and special pay, as prescribed. The bill would also redefine terms such as service and credited service. In addition, an employer may be subject to prosecution if for willfully reporting compensation inconsistent with the requirements.</p> <p>Status: Placed in suspense file due to potential costs.</p> <p>Impact: None</p> <p>Sponsor: CalSTRS</p>
Watch	<p>SB 1240 – PERS Contracting Agencies Consolidation (Alvarado-Gil-D)</p> <p>This bill would facilitate the consolidation of fire districts in El Dorado County by allowing the successor fire district to contract with CalPERS to provide the same retirement benefits to transferred employees.</p> <p>Status: Stuck in Assembly appropriations committee.</p> <p>Impact: None</p>
	<p>SB 1379 – PERS Return to Work Reinstatement/Solano County (Dodd-D)</p> <p>This bill would remove the 960-hour work limit for retirees who return to</p>

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Position Recommendation	Bill and Summary
Watch	<p>work for the Solano County Sheriff’s Department to perform specified law enforcement duties. The position must have been vacant for six continuous months, and the County must have been unable to find a reasonable applicant to fill the position. Committee staff expressed strong opinions about this bill normalizing double dipping and eroding support for public pensions.</p> <p>Status: Stuck in Assembly appropriations committee.</p> <p>Impact: None</p>
Amended No Longer Relevant	<p>SB 1260 – High Speed Rail Office of Inspector General (Alvarado-Gil-D) This bill will appear as a striethrough in future reports.</p> <p>Bill originally sought to create an Office of Inspector General within CalPERS; however, bill was amended to apply to High-Speed Rail Authority.</p> <p>Status: May be heard after 03/18/24.</p> <p>Impact: None</p>
Watch	<p>AB 2362 – County Fire Service Retirement Law (Lackey-R)</p> <p>Amends County Fire Service Retirement Law. This is a spot bill that will be amended. No California county currently operates a retirement system under County Fire Service Retirement Law.</p> <p>Status: Did not move this session.</p> <p>Impact: TBD</p>

End of Memo.

AMENDED IN SENATE JUNE 27, 2024

AMENDED IN SENATE JUNE 10, 2024

AMENDED IN ASSEMBLY MAY 20, 2024

AMENDED IN ASSEMBLY APRIL 18, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2284

Introduced by Assembly Member Grayson

February 8, 2024

An act to amend Section 31461 of the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2284, as amended, Grayson. County employees' retirement: compensation.

Existing law, the California Public Employees' Pension Reform Act of 2013 (PEPRA), generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to their employees. CERL generally vests management of each retirement system in a board of retirement.

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 define “grade” 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 group or class, as specified. *The bill would specify that these provisions shall not become operative in a county until the board of supervisors of that county, by resolution adopted by majority vote, makes the provisions applicable in that county.*

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

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

1 SECTION 1. Section 31461 of the Government Code is
2 amended to read:

3 31461. (a) (1) “Compensation earnable” by a member means
4 the average compensation as determined by the board, for the
5 period under consideration upon the basis of the average number
6 of days ordinarily worked by persons in the same grade or class
7 of positions during the period, and at the same rate of pay. The
8 computation for any absence shall be based on the compensation
9 of the position held by the member at the beginning of the absence.
10 Compensation, as defined in Section 31460, that has been deferred
11 shall be deemed “compensation earnable” when earned, rather
12 than when paid.

13 (2) (A) To the extent a retirement system has not defined
14 “grade,” it may define “grade,” as described in paragraph (1), to
15 mean a number of employees considered together because they
16 share similarities in job duties, schedules, unit recruitment
17 requirements, work location, collective bargaining unit, or other
18 logical work-related group or class. A single employee shall not
19 constitute a group or class.

20 (B) *Subparagraph (A) shall not be operative in any county until*
21 *the board of supervisors of that county, by resolution adopted by*
22 *majority vote, makes that subparagraph applicable in the county.*
23 *Nothing in subparagraph (A) shall change the holding in Alameda*
24 *County Deputy Sheriff’s Association v. Alameda County*

1 *Employees' Retirement Association (2020) 9 Cal.5th 1032, and to*
2 *the extent that there is any conflict between this section and the*
3 *holding in that case, the latter shall prevail.*

4 (b) "Compensation earnable" does not include, in any case, the
5 following:

6 (1) Any compensation determined by the board to have been
7 paid to enhance a member's retirement benefit under that system.

8 That compensation may include:

9 (A) Compensation that had previously been provided in kind
10 to the member by the employer or paid directly by the employer
11 to a third party other than the retirement system for the benefit of
12 the member, and which was converted to and received by the
13 member in the form of a cash payment in the final average salary
14 period.

15 (B) Any one-time or ad hoc payment made to a member, but
16 not to all similarly situated members in the member's grade or
17 class.

18 (C) Any payment that is made solely due to the termination of
19 the member's employment, but is received by the member while
20 employed, except those payments that do not exceed what is earned
21 and payable in each 12-month period during the final average
22 salary period regardless of when reported or paid.

23 (2) Payments for unused vacation, annual leave, personal leave,
24 sick leave, or compensatory time off, however denominated,
25 whether paid in a lump sum or otherwise, in an amount that exceeds
26 that which may be earned and payable in each 12-month period
27 during the final average salary period, regardless of when reported
28 or paid.

29 (3) Payments for additional services rendered outside of normal
30 working hours, whether paid in a lump sum or otherwise.

31 (4) Payments made at the termination of employment, except
32 those payments that do not exceed what is earned and payable in
33 each 12-month period during the final average salary period,
34 regardless of when reported or paid.

35 (c) The terms of subdivision (b) are intended to be consistent
36 with and not in conflict with the holdings in *Salus v. San Diego*
37 *County Employees Retirement Association* (2004) 117 Cal.App.4th
38 734 and *In re Retirement Cases* (2003) 110 Cal.App.4th 426.

39 ~~(d) Nothing in this section shall change the holding in *Alameda*~~
40 ~~*County Deputy Sheriff's Association v. Alameda County*~~

1 ~~Employees' Retirement Association (2020) 9 Cal.5th 1032, and~~
2 ~~to the extent that there is any conflict between this section and the~~
3 ~~holding in that case, the latter shall prevail.~~

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June 21, 2024

The Honorable Timothy Grayson
California State Assembly
1021 O Street
Sacramento, CA 95814

**RE: AB 2284 (Grayson)—County Employees' Retirement: Compensation
As Amended 5/20/2024 – OPPOSE
Location: Senate Labor, Public Employment and Retirement Committee**

Dear Assemblymember Grayson,

The San Bernardino County Employees' Retirement Association (SBCERA) respectfully opposes the adoption of AB 2284 because it would conflate the role of retirement systems with the role of the employers they serve, likely leading to extensive litigation over members' compensation earnable determinations—a primary factor in calculating members' guaranteed lifetime pension allowance.

AB 2284 seeks to give County Employee Retirement Law (CERL) systems the authorization to define "grade" as it relates to members' job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or logical work-related group or class. CERL systems that adopt the change could "reclassify" members without an employer's consent so certain members could—despite the bill's assurances—claim compensation items that would otherwise be excluded by the Public Employees' Pension Reform Act of 2013 (PEPRA) and/or the California Supreme Court's decision in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032 (*Alameda*) in their pension calculations.

This alone would undermine the Legislature's pension reform efforts and subsequent court decisions. The legislation would also blur the lines between employers and retirement systems by allowing county retirement systems to determine what employment grade their members fall under. **Retirement systems are not—and should not be—parties to labor negotiations between member agencies and their employees.**

AB 2284 would create major inconsistencies among the 20 counties operating retirement systems under the CERL. This would likely spawn litigation as some retirement systems could boost members' pensions by lumping them into job categories despite the Memorandums of Understanding or contracts they were hired under while other systems continue to base calculations on job categories legally established and negotiated by their member agencies.

Government Code 25300 puts the responsibility of employee classification squarely with a county's board of supervisors: "*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.)

Exhibit A: Page 22

SBCERA sympathizes with the hardworking members who based their retirement planning on compensation items disallowed by PEPR and the *Alameda* decision; however, giving retirement systems the authority to reclassify members so those disallowed compensation items can now be included in their pension calculations would undermine the Legislature's pension reform efforts and subsequent court decisions. Furthermore, retirement systems are not parties to their participating employers' labor negotiations and, therefore, should not be placed in the position of defining "grade" as it relates to their participating employers' employees.

For the reasons stated above, SBCERA opposes AB 2284. Thank you for your consideration in this matter. We are happy to continue our discussion about the bill should you wish to do so.

Sincerely,



Deborah S. Cherney
Chief Executive Officer, SBCERA

cc: The Hon. Senator Rosilicie Ochoa Bogh
The Hon. Senator Josh Newman
The Hon. Senator Steve Padilla
The Hon. Senator Anthony Portantino
The Hon. Senator Susan Rubio
The Hon. Senator Scott Wilk
The Hon. Senator Richard Roth
The Hon. Senator Kelly Seyarto
The Hon. Senator Lola Smallwood-Cuevas, Chair, Senate Labor, Public
Employment, and Retirement Committee
The Hon. Members and Consultant, Senate Labor, Public Employment, and
Retirement Committee