



MEMORANDUM

DATE September 5, 2019 **PHONE** (909) 885-7980
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TO **BOARD OF TRUSTEES**
San Bernardino County Employees'
Retirement Association

SUBJECT REVIEW CALIFORNIA LEGISLATION 2019 - 2020

Updated information reflected in red.

I. County Employees' Retirement

AB 287 -- Annual audits. (Voepel)

Subject: Amends Government Code section 7512

Status: Referred to Com. on P.E. & R on February 7, 2019

Existing law creates state and local public pension and retirement systems that provide pension benefits based on age at retirement, service credit, and final compensation. 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.

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AB 472-- Returning Retiree (Voepel)

Subject: Amends Government Code Section 7522.56

Status: Introduced February 11, 2019

Existing law, the California Public Employees' Pension Reform Act of 2013, 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 nonsubstantive changes to that provision.

AB 664 – Permanent Incapacity

Subject: Amends Government Code section 31720

Status: June 26, 2019 – In committee: Set, first hearing. Hearing canceled at the request of author.

The County Employees Retirement Law of 1937 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, as specified. 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.

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AB 1212 - Public employees' retirement: pension fund management: in-state infrastructure.

Subject: Amends section 7514.2 of the Government Code.

Status: **In Senate, Amended August 12, 2019 ordered to third reading.**

The California Constitution confers upon the retirement boards of public retirement systems plenary authority and fiduciary responsibility for the investment of moneys of those systems. Existing law authorizes the Board of Administration of the Public Employees' Retirement System, the Teachers' Retirement Board of the State Teachers' Retirement System, and the board of retirement or the board of investments of a retirement system established pursuant to the County Employees Retirement Law of 1937, 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. Amended bill incorporates a definition of a "state agency" that is subject to this requirement.

SB 430 – Public Employees' Retirement Benefits: Judges (Wieckowski)

Subject: Amends Government Code section 7522.04 and to add Section 7522.06

Status: June 26, 2019 – set for first hearing canceled at the request of author.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its pension plan or plans to comply with the act, as specified. Among other things, 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 terms for those purposes, including defining "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 that 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.

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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 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.

SB 783 – County Employees' Retirement Law - Clean Up

Subject: Amends Government Code Sections 31465, 31627.1, 31627.2 and 31631.5

Status: Referred to Com. on L., P.E. & R (05/16/2019)

The County Employees Retirement Law of 1937 (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.

II. Local Government (including Brown Act & Public Records Act)

AB 510 - Destruction of Records

Subject: Amends Government Code sections 26202, 34090.6, and 53160

Status: Referred to Com. on L. Gov. on February 21, 2019

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.

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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.

AB 992 - Open Meetings: Local Agencies: Social Media (Mullin)

Subject: Amends Government Code section 54952.2

Status: In Com. on L.GOV. First hearing, failed passage. Reconsideration granted.

The Ralph M. 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, that are ephemeral, live, or static, 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.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. This bill would make legislative findings to that effect.

AB 1184 – Public Records – Preservation of Electronic Mail (Gloria)

Subject: Adds Government Code section 6253.32

Status: In Senate, Com. on APPR suspense file August 12, 2019.

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

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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, require a public agency for purposes of Public Records Act to retain and preserve the public's business prepared, owned, or used by any public agency that is transmitted by electronic mail. Amended bill deletes reference to "other similar messaging system" and limits the agency's retention of electronic writing to those transmitted by electronic mail only.

AB 1819 – Public Records – Inspection of Public Records (Stone)

Subject: Amends Government Code section 6253

Status: **In Senate, Com. on APPR, in suspense file on August 12, 2019.**

Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request 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 the right to use the requester's equipment, without being charged any fees or costs, to photograph or otherwise copy or reproduce any record upon inspection and on the premises of the agency, unless the means of copy or reproduction would damage 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.

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SB 615 – Public Records: Disclosure (Hueso)

Subject: Amends Government Code sections 6258 and 6259

Status: Referred to Com. on JUD

The California Public Records Act requires a public agency, defined to mean a state or local 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.

Existing law permits any person to institute proceedings for injunctive or declarative relief or a writ of mandate in any court of competent jurisdiction to enforce their right to inspect or to receive a copy of any public record or class of public records covered by the act. The act, when it appears to a superior court that certain public records are being improperly withheld from a member of the public, requires the court to order the officer or person charged with withholding the records to disclose the public record or show cause why they should not do so. The act requires the court to award court costs and reasonable attorney's fees to the requester if the requester prevails in litigation filed pursuant to these provisions, and requires the court to award court costs and reasonable attorney's fees to the public agency if the court finds that the requestor's case is clearly frivolous.

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.

The bill would define "improperly withheld" for purposes of the act to mean a refusal by a public agency or public official to disclose a public record or some part thereof. The bill would require that in order for a requester to prevail in litigation related to the act, the trial court must find by a preponderance of the evidence that an agency knowingly, willfully, and without substantial justification failed to respond to a request for records, improperly withheld from a member of the public records that were clearly subject to public disclosure, unreasonably delayed providing the contents of a record subject to disclosure in part or in whole, improperly assessed a fee upon a requester that exceeded the direct cost of duplication, or otherwise did not act in good faith to comply with these provisions. The bill would make other nonsubstantive changes.

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The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

SB 749 – Public Records – Trade Secrets

Subject: Adds Government Code section 6254.34

Status: July 10 set for first hearing. Placed on APPR. suspense file.

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, 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.

Under existing law, a person may seek injunctive or declaratory relief or a writ of mandate to enforce their right to inspect or receive a copy of a public record, as specified. Under existing case law, an agency's decision to release a public record pursuant to the California Public Records Act is reviewable by a petition for a writ of mandate on the basis that the public record was confidential, which is known as a reverse public records act.

This bill would require the requester, as defined, to be named as a real party in interest in a reverse public records action, and would require a court to allow the requester to participate fully on the merits of the reverse public records action. The bill would require the person who initiated the reverse public records action to pay the requester's court costs and reasonable attorney's fees if the court denies the petition seeking to prevent the public agency from disclosing the record at issue. The bill would require a public agency to pay court costs and reasonable attorney's fees to the requester under specified circumstances.

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AB 1332 - Sanctuary State Contracting and Investment Act.

Subject: Adds Chapter 17.23 (commencing with section 7283.50) to Division 7 of Title 1 of the Government Code relating to local government.

Status: Referred to Com. on APPR, held under submission.

The 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 upon 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 the administration of retirement benefits and investment of moneys for retirement benefits, as specified. The 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.

ATTACHMENTS: No.

PRESENTER: Barbara M. A. Hannah, Chief Counsel