

BOARD OF RETIREMENT AGENDA 7-14-11

LACERA

300 N. Lake Ave., Suite 810
Pasadena, CA 91101

9:00 AM

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF JUNE 9, 2011

IV. OTHER COMMUNICATIONS

- A. For Information
 - 1. June 2011 All Stars
 - 2. Chief Executive Officer's Report (Memo dated July 7, 2011)

V. NON-CONSENT AGENDA

- A. Recommendation as submitted by David L. Muir, Legal Counsel: That the Board approve the corrective actions proposed in the "Action Plan for Correction of Record Deficiencies." (Memo dated June 30, 2011.)
- B. Recommendation as submitted by David L. Muir, Legal Counsel: That the Board 1) Adopt the Resolution updating the listing of pensionable compensation in addition to base pay to include compensation received by members of participating agencies and compensation received for serving on commissions and boards; 2) Instruct staff to implement this change by coordinating with the employer to remit member and employer contributions on compensation for serving on commissions and boards; and 3) Instruct staff to collect arrears contributions on compensation for serving on commissions and boards in accordance with the Board's policy regarding implementation of new pensionable pay items. (Memo dated June 30, 2011.)
- C. Recommendation as submitted by Les Robbins, Chair, Insurance, Benefits and Legislative Committee: That the Board adopt a "support" position on HR 1332, also known as the "Social Security Fairness Act of 2011." (Memo dated June 14, 2011.)
- D. Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 23 which would amend the Brown Act to require compensation disclosure at multiple meetings. (Memo dated June 27, 2011.)
- E. Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 89 which prohibits the calculation of pension benefits based on compensation levels that exceed federal limits and allows implementation of lower retirement tiers for San Mateo County safety members. (Memo dated June 27, 2011.)
- F. Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 340 which prohibits "pension spiking" and "double dipping." (Memo dated June 28, 2011.)
- G. Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 1248 which would require local public employers to provide coverage under Federal Social Security to all employees who are not covered under a defined benefit plan, as specified. (Memo dated July 5, 2011.)
- H. Information only as submitted by Cynthia Lau, Legislative Affairs Officer regarding Senate Bill 637 – Chaptered. (Memo dated July 6, 2011.)

VI. PUBLIC COMMENT

VII. GOOD OF THE ORDER

(For discussion purposes only.)

VIII. EXECUTIVE SESSION

- A. Pursuant to Government Code Section 54957
 - Public Employee Performance Evaluation
 - Title: Chief Executive Officer

IX. ADJOURNMENT

BOARD OF RETIREMENT MINUTES 7-14-11

PRESENT

Les Robbins, Chair
Simon S. Russin, Vice Chair
Yves Chery, Secretary
Marvin Adams
Sadonya Antebi
Alan Bernstein
William de la Garza
Shawn R. Kehoe (Alternate Member)
Ed C. Morris (Alternate Retired)
Mark J. Saladino

ABSENT

William R. Pryor

STAFF ADVISORS AND PARTICIPANTS

Gregg Rademacher, Chief Executive Officer
Robert Hill, Assistant Executive Officer
Janice Golden, Assistant Executive Officer
Robb Van Der Volgen, Chief Counsel
David L. Muir, Legal Counsel
Cynthia Lau, Legislative Affairs Officer

I. CALL TO ORDER

The meeting was called to order by Chair Robbins at 9:00 a.m., in the Board Room of Gateway Plaza.

II. PLEDGE OF ALLEGIANCE

Mr. Kehoe led the Board Members and staff in reciting the Pledge of Allegiance.

III. APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF JUNE 9, 2011

A motion was made by Mr. Chery, seconded by Mr. Bernstein, to approve the minutes of the regular meeting of June 9, 2011. The motion passed unanimously.

IV. OTHER COMMUNICATIONS

A. For Information

1. June 2011 All Stars

Mr. Hill announced the eight winners for the month of June; John Popowich, David Davidson, Claro Lanting, Alex Yin, Gary Smith, Anna Collay, Virginia Carrillo, and Gordon Pacana for the Employee Recognition Program. Stephanie Kawai was the winner of LACERA's Web Watcher Award. Michael Romero, John Slattery, James North, and Lourdes Diaz were the winners of LACERA's RideShare Program.

2. Chief Executive Officer's Report (Memo dated July 7, 2011)

Mr. Rademacher provided a brief overview of his Chief Executive Officer's Report with emphasis on the 2010-2011 Civil Grand Jury report. LACERA was selected, out of 277 pension plans offered within Los Angeles County, by the Civil Grand Jury Committee for an in-depth analysis. Four other public pension systems located within Los Angeles County were also among those being reported on. The report reported favorably on LACERA's Boards, staff and its plan design. The report will be presented to the Audit Committee Meeting on July 20th with a request that their recommendations and findings be forwarded to the Boards of Retirement and Investments for response. The full report can be found on the Civil Grand Jury's website.

Mr. Rademacher reported that he along with Ms. Smith and Mr. Van Der Volgen, met with representatives of Los Angeles County to work on finalizing the Retiree Health Care Investment Services Agreement wherein the Board of Investments would help in prefunding the Retiree Health Care Plan by providing investment services. The next step would be for the County unions to concur with the Agreement after which time it would be brought back to the Board of Investments and Los Angeles County Board of Supervisors.

Additionally, Mr. Rademacher thanked Claims and Members Services staff for their continued efforts in handling the large volume of members seeking information about retirement.

At the request of Mr. Kehoe, staff will begin incorporating into the CEO's business metrics portion of his report the number of emails received from members and staff's response time.

V. NON-CONSENT AGENDA

- A. Recommendation as submitted by David L. Muir, Legal Counsel: That the Board approve the corrective actions proposed in the "Action Plan for Correction of Record Deficiencies." (Memo dated June 30, 2011.)

Mr. Muir addressed the Board and gave a brief overview of the above recommendation noting that LACERA filed an application with the Internal Revenue Service (IRS) for an updated Determination Letter. Issuance of a Determination Letter constitutes a finding by the IRS that operation of the retirement plan in accordance with the plan provisions and documents disclosed in the application qualifies the plan for federal tax exempt status.

A brief discussion ensued whereby the Board approved an action plan for correction of record deficiencies needed to ensure favorable action by the IRS on the Determination Letter application.

A motion was made by Mr. Morris, seconded by Mr. Chery, to approve the following recommendations: 1) Introduce legislation to repeal provisions requiring the refund of member contributions upon a member's transfer from a contributory plan to a non-contributory Plan E; 2) Request the County Board of Supervisors to adopt an ordinance implementing Section 31725.5, retroactive to the date Section 31725.5 was added to CERL; 3) Amend the Bylaws of the Board of Retirement by transferring the provisions that constitute "regulations" within the meaning of Section 31525 to a new document to be determined by staff; 4) Prepare and execute a contract documenting membership in LACERA by LAFCO employees, effective February 1, 1994; and 5) Request the governing board of each participating agency to adopt a resolution ratifying LACERA's action in implementing the pick-up of member contributions applicable to employees of the agency, effective January 1, 1985. The motion passed unanimously.

Mr. Muir commended Cynthia Lau for all her outstanding efforts in helping to complete the study.

- B. Recommendation as submitted by David L. Muir, Legal Counsel: That the Board 1) Adopt the Resolution updating the listing of pensionable compensation in addition to base pay to include compensation received by members of participating agencies and compensation received for serving on commissions and boards; 2) Instruct staff to implement this change by coordinating with the employer to remit member and employer contributions on compensation for serving on commissions and boards; and 3) Instruct staff to collect arrears contributions on compensation for serving on commissions and boards in accordance with the Board's policy regarding implementation of new pensionable pay items. (Memo dated June 30, 2011.)

A motion was made by Mr. Morris, seconded by Mr. Kehoe, to approve the recommendation. The motion passed unanimously.

- C. Recommendation as submitted by Les Robbins, Chair, Insurance, Benefits and Legislative Committee: That the Board adopt a "support" position on HR 1332, also known as the "Social Security Fairness Act of 2011." (Memo dated June 14, 2011.)

HR 1332

HR 1332, also known as the "Social Security Fairness Act of 2011," is another attempt to amend Title II of the Social Security Act to repeal Government Pension Offset (GPO) requirements and the Windfall Elimination Provision (WEP). A number of similar bills were introduced in prior years, but were unsuccessful.

The WEP and GPO reduce the social security benefits payable to persons who are entitled to benefits. Under WEP, a social security or disability benefit is figured using a modified formula if the worker is entitled to a pension from a job where he/she did not pay Social Security tax. Under the GPO, any Social Security spouse or widow(er) benefit will be offset if the worker also receives a Federal, State or local government pension based on work where he/she did not pay Social Security tax. Both of these offsets impact LACERA members who are eligible for Social Security benefits, even though Los Angeles County has not participated in the Social Security program since 1983.

Facts sheets on WEP and GPO provided by the Social Security Administration were included in the Board Members' package.

The Board of Retirement supported similar legislation to repeal the WEP and GPO over the past years.

A motion was made by Mr. Adams, seconded by Mr. Kehoe, to take a "support" position on HR 1332. The motion passed unanimously.

- D. Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 23 which would amend the Brown Act to require compensation disclosure at multiple meetings. (Memo dated June 27, 2011.)

AB 23

Assembly Bill 23 was introduced by Assembly Member Smyth who said that he was outraged by disclosures in a criminal complaint filed against eight current and former Bell officials that some council members had received more than \$100,000 in stipends since 2006 for sitting on city commissions that rarely met or met for just minutes at a time.

The introduced version added new Government Code Section 54952.3 to prohibit meetings in simultaneous or serial order, where the members of the previously convened legislative body constitute at least a quorum of the legislative body that is attempting to convene a meeting. The bill was subsequently amended numerous times and no longer

prohibits meetings in simultaneous or serial order.

It now requires the clerk or a member of a legislative body to announce, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend that each member will be entitled to receive. However, recent amendments provide that the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

Excluded from the definition of compensation and stipend are amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses related to travel, meals and lodging.

As LACERA's Board member, compensation for attending meetings and for reviewing disability cases is prescribed in statute and no additional compensation has been authorized, the announcement of compensation is not required under this bill. The Board of Retirement adopted a "Watch" position on May 5, 2011 and March 2, 2011 on Assembly Bill 23.

A motion was made by Mr. de la Garza, seconded by Mr. Morris, to continue the "watch" position on AB 23. The motion passed unanimously.

- E.** Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 89 which prohibits the calculation of pension benefits based on compensation levels that exceed federal limits and allows implementation of lower retirement tiers for San Mateo County safety members. (Memo dated June 27, 2011.)

AB 89

Assembly Bill 89 adds Section 7503.5 to the Government Code to specify that for the purposes of determining a retirement benefit paid to a person who first becomes a member of a public retirement system on or after January 1, 2012, the total compensation upon which defined retirement benefits are based shall not exceed an amount set forth in Section 401(a)(17) of Title 26 of the United States Code (currently \$245,000 for 2011).

It also specifies that a public employer shall not make employer contributions to any qualified public retirement plan or plans on behalf of an employee who first becomes a member of the retirement system on or after January 1, 2012, based on that portion of the amount of total compensation that exceeds the limit specified above.

The bill has been amended on June 23, 2011 to also amend Section 31485.10 of the County Employees Retirement Law (CERL). This would allow for implementation of a recently negotiated MOU between the County of San Mateo and the Probation and Detention Association (PDA). According to a recent bill analysis, the MOU will require new hires to choose reduced retirement formulas of either 2% at age 50, or 3% at age 55. Employees who choose the 3% at age 55 formula will also pay a larger share of the cost in contributions. (The formula for current employees is 3% at age 50.)

The recent amendment also declares that the bill is to take effect immediately as an urgency statute.

The Board of Retirement adopted a "Watch" position on this bill on May 5, 2011 and March 2, 2011.

A motion was made by Mr. Adams, seconded by Mr. Russin, to continue the "watch" position on AB 89. The motion passed unanimously.

- F.** Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 340 which prohibits "pension spiking" and "double dipping." (Memo dated June 28, 2011.)

AB 340

AB 340 is a broad-based pension reform proposal which amends the County Employees Retirement Law (CERL).

Earlier versions of the bill excluded certain pay items from compensation earnable which are currently pensionable under the Ventura ruling. In addition, the exclusion of payments for unused vacation and sick leave that exceed what can be earned in a 12-month period could impact members whose benefits are based on three 12-month periods.

The SACRS Legislative Committee recognized that some of the bill's provisions were problematic and sought to have the bill amended. Meetings between SACRS representatives, the Assembly Committee consultant and labor representatives resulted in the June 22, 2011 amendment.

The most significant amendment addressed exclusions from compensation earnable. It provides that compensation earnable does not include:

1. Any compensation determined by the board to have been paid for the principal purpose of enhancing a member's retirement benefit under that system. Compensation earnable may include the following:
 - a. Compensation that had previously been provided in-kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.
 - b. Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

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

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

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

4. Unscheduled overtime.

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

For members first hired on or after January 1, 2012, compensation earnable also does not include:

1. Any employer-provided housing allowance.

2. Any employer-provided vehicle allowance.

The bill's amendments also included a provision that the board shall establish a procedure for assessing and determining whether an element of compensation was paid for the principal purpose of enhancing a member's retirement benefit, as well as notice to the employer and member when such a determination has been made.

The Board of Retirement adopted a "Watch" position on AB 340 on May 5, 2011.

A motion was made by Mr. Chery, seconded by Mr. Russin, to continue the "watch" position on AB 340. The motion passed unanimously.

- G.** Recommendation as submitted by Cynthia Lau, Legislative Affairs Officer: That the Board continue its "watch" position on Assembly Bill 1248 which would require local public employers to provide coverage under Federal Social Security to all employees who are not covered under a defined benefit plan, as specified. (Memo dated July 5, 2011.)

AB 1248

As amended on May 23, 2011, Assembly Bill 1248 would require local public employers to provide coverage under the Federal Social Security system to all employees who are not covered under a defined benefit plan.

Part-time, temporary and seasonal employees of Los Angeles County and Los Angeles Superior Courts who are not eligible for membership in LACERA or the Judges Retirement System are enrolled in the Los Angeles County Pension Savings Plan (administered by Great West Retirement Services).

This is a defined-contribution plan with mandatory employer and employee contributions.

On June 9, 2011, your Board asked staff to find out if the employer would be required to fully participate in Social Security for all of its employees if the bill passes, or if the employer could participate in Social Security for just the employees impacted by the bill. If the employer is required to fully participate for all employees, then your Board would adopt an "Oppose Unless Amended" position to exclude the above employees from AB 1248. If the employer could participate in Social Security for just some of its employees, then your Board would adopt a "Watch" position.

Staff sought an answer to the question and her research resulted in the following:

1. A representative from the Chief Executive Office of the County reported that the employer would not be required to participate in Social Security for all of its employees, but could participate for just those impacted by the bill.
2. LACERA's tax counsel also responded to staff: "Yes, a governmental employer under this scenario could participate in Social Security for just some of its employees (i.e., "coverage groups")."

Therefore, based on the research conducted and your Board's direction, LACERA's position on AB 1248, as amended on May 23, 2011, is "Watch."

June 30, 2011 Bill Amendment

The California State Association of Counties (CSAC) adopted an "Oppose Unless Amended" position on the bill to allow counties to continue to provide an alternative benefit and not be required to opt in to Social Security for the sub groups of part-time, temporary, and seasonal county employees.

The County of Los Angeles also adopted an "Oppose" position on AB 1248.

The bill was subsequently amended on June 30, 2011 and the requirements of the bill shall not apply with regards to:

1. Replacing or changing an employer's alternate benefit plan for part-time, temporary and seasonal employees that was in place on July 1, 2011, or
2. Replacing or changing an employer's defined contribution plan that was in place on July 1, 2011, unless the defined contribution plan will replace or change the employer's existing defined benefit plan.

A motion was made by Mr. de la Garza, seconded by Mr. Chery, to continue the "watch" position on AB 1248. The

motion passed unanimously.

H. Information only as submitted by Cynthia Lau, Legislative Affairs Officer regarding Senate Bill 637 — Chaptered. (Memo dated July 6, 2011.)

The memo was received and filed without discussion.

VI. PUBLIC COMMENT

VII. GOOD OF THE ORDER

(For discussion purposes only.)

VIII. EXECUTIVE SESSION

A. Pursuant to Government Code Section 54957

Public Employee Performance Evaluation

Title: Chief Executive Officer

The Board met in Executive Session pursuant to California Government Code Section 54957 to consider the performance evaluation of the Chief Executive Officer. No reportable action was taken.

Green Folder Information

(Information distributed in each Board Member's Green Folder at the beginning of the meeting.)

1. LACERA Legislative Report — Bills Amending CERL. (Dated July 11, 2011.)
2. LACERA Legislative Report — Other. (Dated July 11, 2011.)
3. LACERA Legislative Report — Federal (Dated July 11, 2011.)

IX. ADJOURNMENT