

AGENDA

REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, AUGUST 13, 2015

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. APPROVAL OF MINUTES
 - A. Approval of the Minutes of the Regular Meeting of July 9, 2015
- IV. REPORT ON CLOSED SESSION ITEMS
- V. OTHER COMMUNICATIONS
 - A. For Information
 - 1. June 2015 All Stars
 - 2. Chief Executive Officer's Report
(Memo dated August 4, 2015)
- VI. PUBLIC COMMENT
- VII. NON-CONSENT AGENDA
 - A. Recommendation as submitted by Joseph Kelly, Chair, Operations Oversight Committee: That the Board direct staff to 1) Coordinate with the Occupational Health Programs the medical examination and medical advice required under CERL Sections 31680.4 and 31680.8, respectively, for retirees seeking reinstatement to active LACERA membership, and 2) Implement a standardized medical affidavit in conjunction with that process.
(Memo dated August 13, 2015)

VII. NON-CONSENT AGENDA (Continued)

B. Recommendation as submitted by Gregg Rademacher, Chief Executive Officer: That the Board approve the following:

- 1) Approve the Chief Executive Officer's recommendation for an Annual Merit Salary Adjustment from a minimum of zero to a maximum of 5 percent for Management Appraisal and Performance Plan Tier I participants effective October 1, 2015 in accordance with program provisions, with the exception of the Chief Executive Officer.
- 2) Approve reassigning Legal Services and Disability Litigation Division counsel positions participating in the LACERA Standardized Salary Schedule to the LACERA Management Appraisal and Performance Plan Tier II, effective October 1, 2015.
- 3) Approve reassigning the following classified and unclassified positions participating in the Management Appraisal and Performance Plan Tier I to Tier II effective January 1, 2016: Assistant Executive Officer, Chief Counsel, Chief Counsel Disability Litigation, Chief Internal Audit, and Retiree Health Care Director.
- 4) Clarify language in the salary ordinance section 6.127.040 to state the granting authority for Tier I merit salary adjustments.
- 5) Approve an amendment to the salary ordinance to allow unclassified positions in the investment office to be eligible for the Chartered Financial Analyst Certification compensation.
- 6) Direct staff to submit to the Board of Supervisors the necessary salary ordinance language to implement these changes. (Memo dated August 4, 2015)

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VII. NON-CONSENT AGENDA (Continued)

- C. For Information Only as submitted by Steven Rice, Chief Counsel regarding the Voter Empowerment Act of 2016.

Olson, Hagel & Fishburn LLP
Christopher W. Waddell, Senior Attorney

VIII. EXECUTIVE SESSION

- A. Conference with Legal Counsel - Anticipated Litigation
Significant exposure to litigation pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9

1. Tort Claim

- IX. GOOD OF THE ORDER
(For information purposes only)

- X. ADJOURNMENT

Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling Cynthia Guider at (626) 564-6000, from 8:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence. Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.

MINUTES OF THE REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, JULY 9, 2015

PRESENT: Shawn R. Kehoe, Chair

 Alan Bernstein, Vice Chair

 William de la Garza, Secretary

 Anthony Bravo

 Yves Chery

 Vivian H. Gray

 Joseph Kelly

 David L. Muir (Alternate Retired)

 Les Robbins

ABSENT: Ronald A. Okum

 William Pryor (Alternate Member)

STAFF ADVISORS AND PARTICIPANTS

Gregg Rademacher, Chief Executive Officer

Robert Hill, Assistant Executive Officer

JJ Popowich, Assistant Executive Officer

Steven Rice, Chief Counsel

STAFF ADVISORS AND PARTICIPANTS (Continued)

Cassandra Smith, Director, Retiree Healthcare Division

Barry W. Lew, Legislative Affairs Officer

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

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

III. REPORT ON CLOSED SESSION ITEMS

There was nothing to report at this time.

IV. OTHER COMMUNICATIONS

A. For Information

1. May 2015 All Stars

Mr. Hill announced the eight winners for the month of May; Linda Ghazarian, Stephanie Kawai, Mayra Marrufo, Irene Ballestero, Juan Almaguer, Paul Carranza, Hernan Barrientos, Debra Rendo, and Bonnie Nolley for the Employee Recognition Program. Claro Lanting, Angela Ward, Vanessa Cruz, and Remi Feliciano were the winners of LACERA's RideShare Program.

IV. OTHER COMMUNICATIONS (Continued)

2. Chief Executive Officer's Report
(Memo dated June 30, 2015)

Mr. Rademacher provided a brief overview of his Chief Executive Officer's Report with a quick update on what transpired at the previous Board of Investments meeting.

(Board of Investments minutes are available to view on LACERA's Website

www.lacera.com.)

Mr. Rademacher shared the Board of Supervisors decision to prefund the Retiree Healthcare Benefits and highlighted the annual County contribution schedule.

Lastly, Mr. Rademacher recognized LACERA's Chief Information Officer, James Pu, for sharing his knowledge and expertise at several speaking engagements with other pension systems.

V. PUBLIC COMMENT

There were no requests from the public.

VI. NON-CONSENT AGENDA

A. For Information Only as submitted by Gregg Rademacher, Chief Executive Officer regarding the Los Angeles County Other Postemployment Benefits Program Actuarial Valuation. (Memo dated June 25, 2015)

Milliman

Robert L. Schmidt, Principal and Consulting Actuary

Mr. Hill and Mr. Schmidt provided an overview of the OPEB Actuarial Valuation and answered questions from the Board.

VI. NON-CONSENT AGENDA (Continued)

- B. For Information Only as submitted by Gregg Rademacher, Chief Executive Officer regarding the Retirement Benefit Strategic Plan for Fiscal Years Ending 2015-2017. (Memo dated June 29, 2015)

Mr. Rademacher was available to answer questions from the Board.

- C. Recommendation as submitted by Cassandra Smith, Director, Retiree Health Care Division: That the Board 1) Authorize the Chief Executive Officer to amend the current LACERA-Milliman RDS Agreement allowing Milliman to continue auditing the Anthem Blue Cross Plans I, II, III, Prudent Buyer Medicare Part D RDS until no significant errors are found; and 2) Establish a policy of auditing LACERA's participation in the Medicare Part D RDS program every two years. (Memo dated June 19, 2015)

Mr. Bernstein made a motion, Chair Kehoe seconded to approve the recommendation.

The makers of the motion amended their motion to approve 1) Authorization for the Chief Executive Officer to amend the current LACERA-Milliman RDS Agreement allowing Milliman to continue auditing the Anthem Blue Cross Plans I, II, III, Prudent Buyer Medicare Part D RDS until submissions are determined to be complete per CMS guidelines; and 2) Establish a policy of auditing LACERA's participation in the Medicare Part D RDS program every two plan years. The motion passed unanimously.

- D. Information only as submitted by Cassandra Smith, Director, Retiree Health Care Division regarding the Anthem Blue Cross Plan 2006-2007 and 2011-2012 Medicare Part D RDS Resubmissions. (Memo dated June 24, 2015)

Cassandra Smith was present to answer questions from the Board.

VI. NON-CONSENT AGENDA (Continued)

- E. Recommendation as submitted by Les Robbins, Chair, Insurance, Benefits and Legislative Committee: That the Board adopt a “Watch” position on HR 711, which would enact the “Equal Treatment of Public Servants Act of 2015.” (Memo dated June 19, 2015)

Barry W. Lew was present to address any questions from the Board.

Mr. Bernstein made a motion, Mr. Kelly seconded, to approve the recommendation. The motion passed unanimously.

- F. Recommendation as submitted by Les Robbins, Chair, Insurance, Benefits and Legislative Committee: That the Board adopt a “Support” position on HR 973, which would enact the “Social Security Fairness Act of 2015.” (Memo dated June 19, 2015)

Barry W. Lew was present to address any questions from the Board.

Mr. Chery made a motion, Ms. Gray seconded, to approve the recommendation. The motion passed unanimously.

- G. Recommendation as submitted by Barry W. Lew, Legislative Affairs Officer: That the Board continue its "Watch" position on Assembly Bill 1291, which relates to the ability of the Ventura County Employees' Retirement Association to define itself as a “district” and thereby become the direct employer of certain of its employees. (Memo dated June 24, 2015)

Barry W. Lew was present to address any questions from the Board.

Mr. de le Garza made a motion, Mr. Kelly seconded, to approve the recommendation. The motion passed unanimously.

VI. NON-CONSENT AGENDA (Continued)

- H. Recommendation as submitted by Barry W. Lew, Legislative Affairs Officer: That the Board continue its "Watch" position on Senate Bill 292, which would exempt certain cities and counties with revenues from extraordinary property tax rates from the prohibition on employer payment of employee contributions. (Memo dated June 29, 2015)

Barry W. Lew was present to address any questions from the Board.

Mr. Kelly made a motion, Chair Kelly seconded, to approve the recommendation. The motion passed unanimously.

VII. GOOD OF THE ORDER
(For information purposes only)

Mr. Robbins requested an educational session be agendize to cover the implications of the propose ballot initiative "Voter Empowerment Act of 2016." Mr. Muir requested the educational material be available in PowerPoint format.

Green Folder Information (Information distributed in each Board Members Green Folder at the beginning of the meeting)

1. LACERA Legislative Report - Bills Amending CERL/PEPRA (Dated July 7, 2015)
2. LACERA Legislative Report – Other (Dated July 7, 2015)
3. LACERA Legislative Report – Federal (Dated July 7, 2015)
4. LACERA 2015 Legislation (For Information Only) (July 7, 2015)
5. Assembly Bill 992 – Service Retirement Pending Disability Determination (For Information Only) (Memo dated July 2, 2015)

July 9, 2015

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VIII. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 10:25 a.m.

WILLIAM DE LA GARZA, SECRETARY

SHAWN R. KEHOE, CHAIR



August 4, 2015

TO: Each Member
Board of Retirement
Board of Investments

FROM: Gregg Rademacher 
Chief Executive Officer

SUBJECT: **CHIEF EXECUTIVE OFFICER'S REPORT**

I am pleased to present the Chief Executive Officer's Report that highlights a few of the operational activities that have taken place during the past month, key business metrics to monitor how well we are meeting our performance objectives, and an educational calendar.

A Story of Mission and Commitment to our Members

Every once in a while a success story comes across my desk that really helps to demonstrates our staff's determination to live up to our mission to Produce, Protect, and Provide the Promised Benefits. Sometimes these are big stories involving many staff working together to have a significant impact on our members' lives. Sometimes, these are small stories involving just a few staff going above and beyond. It is important to share these stories as they reinforce the service culture we want to thrive here at LACERA, and as such, I want to share one of these stories in this month's report.

In early July, a retired couple came into the Member Services Center and met with one of our Retirement Benefit Specialists. The couple's credit union recently reminded them to update their credit union bank account number on file with LACERA. The couple explained their credit union was advising many of their friends to change their bank account numbers or they would no longer be able to receive their direct deposit retirement benefit. Staff helped the member change the bank account number and the couple left feeling happy and secure that their monthly retirement benefit would arrive on time. The story could have successfully ended here with one satisfied member. But what happened next is what makes this a great story, demonstrating LACERA's member service commitment.

After the couple left, the Member Service Center staff began thinking about the couple mentioning other members who may not receive their monthly payment. Not knowing how many members were impacted, the staff shared the story with their supervisor. After a quick trip through the chain-of-command, this matter is on the desk of our LACERA Contact Center manager, who handles our deduction agency partner interactions. She reaches out to her credit union contact and finds out the credit union issued new bank account numbers to all of their

members as part of the credit union's member account system reengineering project. Remarkably, the change was made a few years ago and the credit union had been sending periodic reminders to their members to update their bank account numbers with the members' various business relationships, such as LACERA. In an effort to ease the transition for their members, the credit union had been manually crediting the funds sent to an old invalid bank account number to the new correct bank account number. Understandably, after years of supporting the member through this transition, the credit union decided to move forward with the new bank account numbers and no longer process manual credits sent to old invalid bank account numbers. The couple who visited the LACERA Member Service Center had received the credit union's final notice to update their bank account number.

Our Contact Center manager asked the credit union to provide a list of impacted members so LACERA could assist with the credit union's transition to new account numbers and ensure the LACERA members received their promised benefits timely. Although the credit union declined to share the information due to privacy concerns, they did explain all of the old invalid bank account numbers started with the leading digits of "000". With this valuable information, Member Services and Systems were able to find 44 LACERA members banking with this credit union with a direct deposit bank account number starting with "000". This represented 44 members who, if they did not contact LACERA in the next few days, would have their July retirement benefit direct deposits rejected by their credit union.

Staff quickly evaluated potential actions and decided LACERA would contact these 44 members to obtain the updated bank account number. Members who could not be reached by phone would be sent a letter notifying them that their July and future payments would be made by check until the member provided a new direct deposit bank account number.

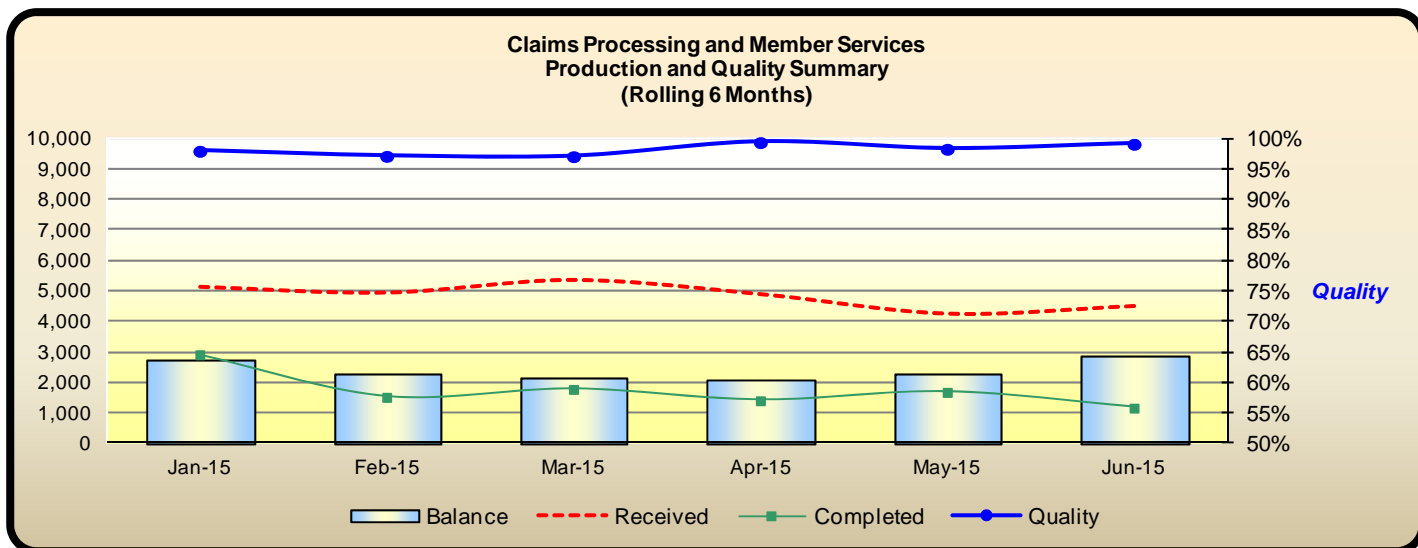
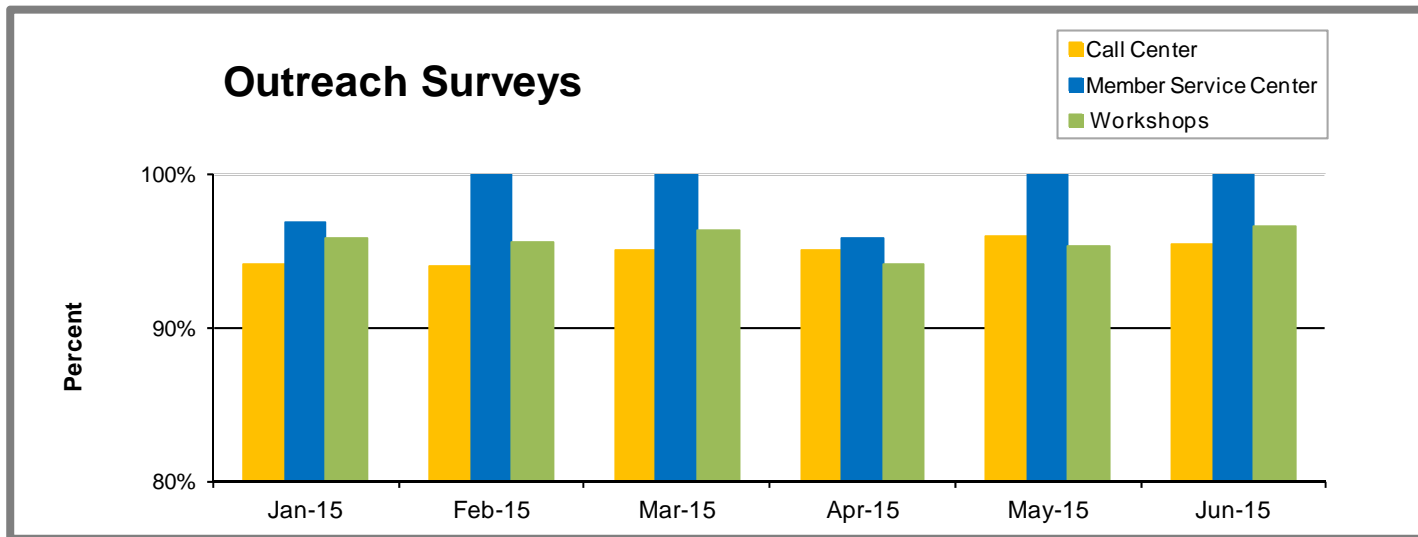
Before executing our plan, we briefed the credit union. The credit union clarified the manual adjustments only impact old checking accounts. Members with direct deposits to an old savings account number are not effected. The credit union decided they would compare the LACERA list with their records. The result, of the 44 members identified, only one member had an old checking account number. Staff immediately reached out to the one member and updated their account number in time to deliver the July retirement benefit as promised.

Although the story is simple and the number of LACERA members and LACERA staff involved were few, the story highlights how staff identified a potential problem that could have adversely impacted our members, took immediate action, and collaborated with our business partner to resolve it. It demonstrates our strong commitment to member service and our belief that each member matters.

LACERA's KEY BUSINESS METRICS

OUTREACH EVENTS AND ATTENDANCE

Type	# of WORKSHOPS		# of MEMBERS	
	Monthly	YTD	Monthly	YTD
Benefit Information	28	146	1,222	6,309
Mid Career	0	20	0	675
New Member	19	130	272	2,013
Pre-Retirement	7	76	166	1,594
General Information	0	5	0	177
Retiree Events	1	15	56	1,099
Member Service Center	Daily	Daily	1,206	15,651
TOTALS	55	392	2,922	27,518



Member Services Contact Center			RHC Call Center	Top Calls
Overall Key Performance Indicator (KPI)	95.45%			
Category	Goal	Rating		Member Services
Call Center Monitoring Score	95%	95.45%	98%	1) Benefit Payments: Gen. Inquiry/Payday
Grade of Service (80% in 60 seconds)	80%	71%	27%	2) Workshop Information/Appointments Inquiry
Call Center Survey Score	90%	95.45%	xxxxx	3) Retirement Counseling: Estimate
Agent Utilization Rate	65%	62%	86%	Retiree Health Care
Number of Calls	10,914		4,811	1) Medical Benefits - General Inquiries
Calls Answered	10,308		3,925	2) Medical-New Enroll/Change/Cancel
Calls Abandoned	621		884	3) Dental/Vision-Benefits, Gen. Inquiries
Calls-Average Speed of Answer	0:01:13		05:52	
Number of Emails	258		95	
Emails-Average Response Time	.2515		1 day	Adjusted for weekends

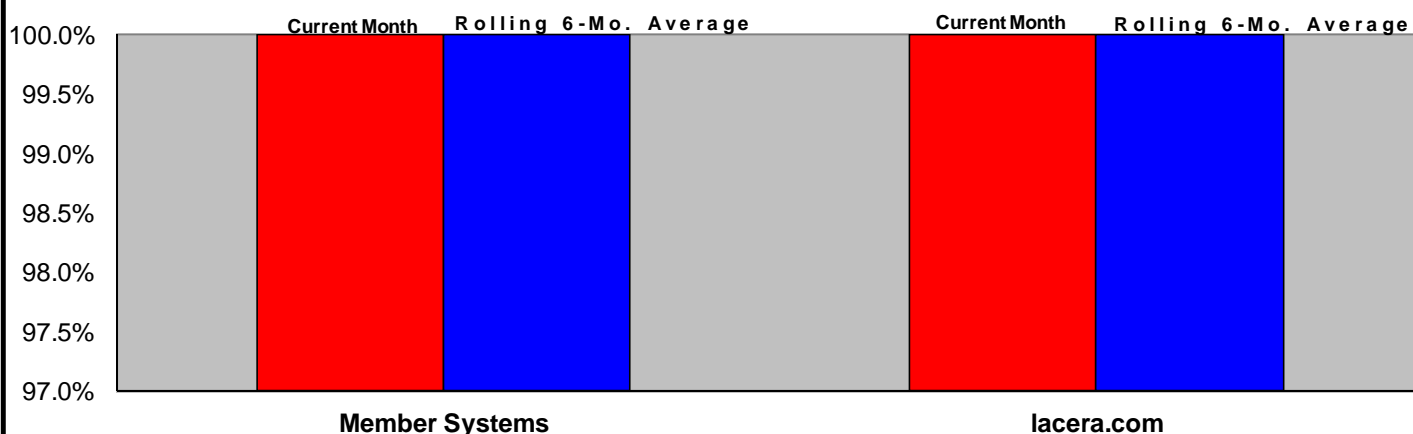
LACERA's KEY BUSINESS METRICS

Fiscal Years	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Assets-Market Value	\$32.0	\$35.2	\$40.9	\$38.7	\$30.5	\$33.4	\$39.5	\$41.2	\$43.7	\$51.1
Funding Ratio	85.8%	90.5%	93.8%	94.5%	88.9%	83.3%	80.6%	76.8%	75.0%	79.5%
Investment Return	11.0%	13.0%	19.1%	-1.4%	-18.2%	11.8%	20.4%	0.3%	12.1%	16.8%

DISABILITY INVESTIGATIONS

APPLICATIONS	TOTAL	YTD		APPEALS	TOTAL	YTD
On Hand	452	xxxxxxx		On Hand	196	xxxxxxx
Received	55	408		Received	4	52
Re-opened	1	5		Administratively Closed	2	22
To Board – Initial	34	367		Referee Recommendation	4	25
Closed	7	76		Revised/Reconsidered for Granting	0	6
In Process	467	467		In Process	194	194

SYSTEMS AVAILABILITY JUNE 2015



Active Members as of 8/3/15		Retired Members/Survivors as of 8/3/15			Retired Members	
		Retirees	Survivors	Total		
General-Plan A	321	20,110	4,830	24,940	Monthly Payroll	238.08 Million
General-Plan B	113	684	58	742	Payroll YTD	2.80 Billion
General-Plan C	111	417	54	471	Monthly Added	308
General-Plan D	48,442	10,698	1,028	11,726	Seamless %	99.03
General-Plan E	21,987	10,414	811	11,225	YTD Added	3,712
General-Plan G	10,478	1	0	1	Seamless YTD %	99.76
Total General	81,452	42,324	6,781	49,105	Direct Deposit	95%
Safety-Plan A	15	6,020	1,571	7,591		
Safety-Plan B	11,705	3,893	209	4,102		
Safety-Plan C	733	1	0	1		
Total Safety	12,453	9,914	1,780	11,694		
TOTAL ACTIVE	93,905	TOTAL RETIRED	52,238	8,561		

Health Care Program (YTD Totals)

	Employer Amount	Member Amount
Medical	391,715,774	37,588,072
Dental	35,586,198	3,885,901
Med Part B	47,315,542	xxxxxxxxxx
Total Amount	\$474,617,514	\$41,473,973

Health Care Program Enrollments

Medical	46,475
Dental	47,414
Med Part B	29,683
Long Term Care (LTC)	794

Funding Metrics as of 6/30/14

Employer Normal Cost	9.29%
UAAL	10.04%
Assumed Rate	7.50%
Star Reserve	\$614 million
Total Assets	\$47.7 billion

Member Contributions as of 6/30/14

Annual Additions	\$439 million
% of Payroll	6.08%

Employer Contributions as of 6/30/14

Annual Addition	\$1,320 million
% of Payroll	19.33%

Date	Conference
August, 2015	
18-21	World Pension Forum – Summer Summit Aspen, CO
25-28	CALAPRS (California Association of Public Retirement Systems) Principles of Pension Management Pepperdine University
September, 2015	
8-10	United Nations Principals of Responsible Investing (UNPRI) PRI in Person 2015 London, England
8-10	Robbins Geller Rudman & Down LLP’s 2015 Public Funds Forum Laguna Beach, CA
18	CALAPRS (California Association of Public Retirement Systems) Round Table – Benefits DoubleTree Hotel San Jose
18	CALAPRS (California Association of Public Retirement Systems) Round Table – Trustees DoubleTree Hotel San Jose
29-30	International Corporate Governance Network (ICGN) Regional Conference Boston, MA
30-Oct. 2	Council of Institutional Investors (CII) Fall Conference Boston, MA
30-Oct. 2	PREA (Pension Real Estate Association) Annual Institutional Investor Real Estate Conference San Francisco, CA
October, 2015	
18-22	AHIP (America’s Health Insurance Plans) Medicare Conference Washington D.C.
19-21	CRCEA (California Retired County Employees Association) Fall Conference Stockton, CA
25-27	Pacific Pension Institute (PPI) Executive Seminar (PES) Tokyo, Japan
25-28	NCPERS (National Conference on Public Employee Retirement Systems) Public Safety Conference Rancho Mirage, CA
26-30	Investment Strategies & Portfolio Management (<i>prev. Pension Fund & Investment Mgmt.</i>) Wharton School, University of Pennsylvania
28-30	Pacific Pension Institute (PPI) Asian Pension Fund Roundtable Tokyo, Japan



August 13, 2015

TO: Each Member
Board of Retirement

FROM: Operations Oversight Committee
Joseph Kelly, Chair *SUBS FOR Joe Kelly*
Yves Chery, Vice Chair
Anthony Bravo
Ronald Okum
David Muir, Alternate

FOR: Board of Retirement Meeting of August 13, 2015

SUBJECT: Reinstatement Medical Examinations

At our Committee meeting of July 9, 2015, staff presented recommendations regarding reinstatement medical examinations, and the Committee voted unanimously to forward these recommendations to the full Board of Retirement for approval. If approved, Staff will monitor the performance of this new process, alert the Committee to delays or other issues that may arise, as well as their associated corrective measures, and expedite individual medical examinations as needed.

Recommendation

Direct Staff to:

- coordinate with the Occupational Health Programs (OHP) the medical examination and medical advice required under CERL Sections 31680.4 and 31680.8, respectively, for retirees seeking reinstatement to active LACERA membership, and
- implement a standardized medical affidavit in conjunction with that process.

Introduction

At the May 21, 2015, meeting of the Board of Retirement, Board Members shared their desire to see greater clarity, reliability, and consistency in the medical evidence provided to the Board in connection with applications for reinstatement.

Background

CERL Sections 31680.4 and 31680.8 require that, before the Board of Retirement may reinstate a LACERA retiree to active LACERA membership, the Board must determine based upon “medical examination” (CERL Section 31680.4) or “medical advice” (CERL Section 31680.8) that a retiree seeking reemployment with the County is not incapacitated for the duties he or she will be assigned (see page 2 of Attachment 1 for specific language under CERL Sections 31680.4 and 31680.8).

Discussion

Staff is proposing the following two-part plan:

1. Standardized Medical Form. Staff is proposing a standardized medical form that can be required from all County Departments reemploying a retired member and requesting LACERA to reinstate that member to active LACERA membership. The standardized medical form will ensure that medical eligibility standards are in alignment with the job specifications. A copy of this form can be found under Attachment 1. LACERA’s Legal Office reviewed this form and concurs that it will satisfy the intent of CERL Sections 31680.4 and 31680.8 without inappropriately divulging a member’s personal health information.
2. Coordination with the County’s Occupational Health Programs. Staff is proposing to coordinate the medical examination with the County. The Occupational Health Programs (OHP) under the Risk Management Branch of the County’s Chief Executive Office is the agency already designated by the County to set the medical eligibility standards for all County workers. Leveraging the OHP to oversee medical examinations for reinstated employees will help ensure that these workers are not incapacitated for the duties to which they are assigned. A description of OHP’s mission and functions can be found under Attachment 2.

OHP management has expressed their willingness to conduct all medical examinations required for determining retirees’ eligibility for reemployment. They are prepared to utilize the standardized form described above and have already established medical criteria and examination protocols that will ensure that they can provide the medical examination and medical advice required under CERL Sections 31680.4 and 31680.8, respectively. Depending on the job specifications and medical expertise required, the OHP has the option to use its own in-house physicians or contracted physicians under

OHP's oversight to collect the necessary medical data. OHP staff would evaluate the data, and OHP's Medical Director would render an opinion. Note that, under this protocol, it is possible that the physician signing the Medical Affidavit for LACERA may not be the same physician who actually examined the retiree but, instead, may be the OHP Medical Director or other OHP Physician overseeing the examination process.

Based on this information, Staff believes that OHP can provide the resources, structure, controls, objectivity, and consistency needed to meet the Board of Retirement's expectations. Coordinating with OHP would help ensure that reinstated retirees are subject to medical eligibility standards that are in alignment with the job specifications.

THEREFORE, IT IS RECOMMENDED YOUR BOARD Direct Staff to:

- coordinate with the Occupational Health Programs (OHP) the medical examination and medical advice required under CERL Sections 31680.4 and 31680.8, respectively, for retirees seeking reinstatement to active LACERA membership, and
- implement a standardized medical affidavit in conjunction with that process.

Encl:

Attachment 1: "Reemployment and Reinstatement to Active LACERA Membership:
Medical Affidavit Pursuant to CERL Section 31680.4 or 31680.8"

Attachment 2: Excerpt from the Website of the Occupational Health Programs

ATTACHMENT 1: 3 PAGES

**REEMPLOYMENT AND REINSTATEMENT TO ACTIVE LACERA
MEMBERSHIP**

MEDICAL AFFIDAVIT PURSUANT TO CERL SECTION 31680.4 or 31680.8

SECTION A-INSTRUCTIONS

To Department Re-Hiring the Retiree:

- 1) Arrange a medical examination of the retiree with Los Angeles County's Occupational Health Programs (OHP). They may be reached at (213) 738-2269.
- 2) To be acceptable to LACERA's Board of Retirement, Section C of this form should be completed and signed by the Medical Staff of OHP who is authorized to oversee the medical examination prescribed under CERL Section 31680.4 or 31680.8 (see SECTION B-REFERENCE) and determine that the retiree is not incapacitated for the assigned duties.
- 3) This properly completed document and all other required documents should be delivered to LACERA no later than three weeks before the Board of Retirement Administrative meeting at which you wish this case to be addressed. Contact LACERA's Benefits Division at (626) 564-6000, extension 3373, for further instructions.

To the Medical Staff of the OHP who is overseeing the examination and is authorized to determine that the retiree is not incapacitated for the assigned duties:

- 1) After reviewing the Class Specification for the position for which the LACERA retiree will be hired, and the results of the medical examination prescribed under CERL Section 31680.4 or 31680.8 (SEE SECTION B-REFERENCE), please complete and sign Section C of this form.
- 2) Return this form to the hiring Los Angeles County Department and forward a copy to LACERA's Benefits Division.

ATTACHMENT 1: 3 PAGES

**REEMPLOYMENT AND REINSTATEMENT TO ACTIVE LACERA
MEMBERSHIP**

MEDICAL AFFIDAVIT PURSUANT TO CERL SECTION 31680.4 or 31680.8

SECTION B-REFERENCE

County Employees Retirement Law of 1937

Section 31680.4. Reemployment; reinstatement to active membership; contingent operation

Notwithstanding any other provision of law, a member retired for service and reemployed in a county or district under this chapter shall become again an active member of the retirement association upon (a) his or her application to the board for reinstatement, **(b) the determination of the board, based upon medical examination, that he or she is not incapacitated for the duties assigned to him or her;** and (c) meeting the conditions for membership in Article 4 (commencing with Section 31550) are met. [Emphasis Added]

Section 31680.8. (Operative date contingent) Reemployment and reinstatement; Additional Retirement benefit; Applicability (Los Angeles)

(a) Notwithstanding any other provision of law, a safety member who was required to retire for service because of age during the operative dates of, and as described in, Section 31662.4, 31662.6, 31662.8, or 31663, may be reemployed by the county in the same position that he or she retired from and be reinstated to active membership upon all of the following:

(1) His or her application to the board for reinstatement to active membership.

(2) The determination of the board, based on medical advice, that the member is not incapacitated for the duties of the position assigned to him or her.

[Emphasis Added]

ATTACHMENT 1: 3 PAGES

**REEMPLOYMENT AND REINSTATEMENT TO ACTIVE LACERA
MEMBERSHIP**

SECTION C-MEDICAL AFFIDAVIT PURSUANT TO CERL SECTION 31680.4 or 31680.8

On _____, I, the undersigned, conducted or oversaw the
<date of medical examination>,

medical examination of _____
<Name of Retiree>

pursuant to Section 31680.4 or 31680.8 of the County Employees Retirement Law, in connection with
this Retiree's application to be re-employed as:

<Prospective Job Title>.

I have also reviewed the Class Specification for this position. Based on this examination, I find that this
individual is not incapacitated for the duties assigned to this position. A copy of the medical
examination report is retained at Los Angeles County's Occupational Health Programs.

Signature of Physician performing or overseeing medical examination:

Print Name and Title of Physician:

Date Signed:

Board of Retirement
August 13, 2015

ATTACHMENT 2: EXCERPT FROM THE WEBSITE OF THE OCCUPATIONAL HEALTH PROGRAMS

OCCUPATIONAL HEALTH PROGRAMS

3333 Wilshire Blvd., Suite 1000
Los Angeles, CA 90010
(213) 738-2269
(213) 637-0822 Fax

The Occupational Health Programs (OHP) is under the Risk Management Branch of the Chief Executive Office (CEO). Our mission is to protect the health of County employees, and by extension, the health and safety of the public they serve. We strive to minimize the adverse effects of employee illness and injury on County departments. Our primary responsibility is to develop and implement job-related medical guidelines for County employees and new job applicants, advance the health of County employees, and manage the County's employee medical records.

Applicants and employees seeking promotional opportunities must meet the medical standards for a County position by taking a pre-placement medical examination. To meet this standard, OHP provides medical evaluation services through multiple, contracted medical clinic sites throughout the County for both applicants and County employees while maintaining their confidential medical records.

OHP also provide periodic medical monitoring for County employees, under Cal/OSHA or California Department of Motor Vehicles requirements, or as part of an established wellness program. OHP medical staff review the evaluations and liaisons with County departments to provide medical clearance. OHP responds to County Civil Service appeals if an evaluation is challenged.

OHP also revises and develops new medical guidelines according to Federal and State laws, including Cal/OSHA, the Federal Americans with Disabilities Act, and the State's Fair Employment and Housing Act. The need to establish medical guidelines occurs when new positions are created or existing positions change in their physical, psychological or emotional demands, or when medical knowledge advances.

For questions or comments, please feel free to contact us at:

Steve NyBlom
Manager, Chief Executive Office
Risk Management Branch
snyblom@ceo.lacounty.gov
(213) 738-2214

Robert L. Goldberg, M.D., M.S.O.M.
Medical Director, Chief Executive Office
Occupational Health Programs
rgoldberg@ceo.lacounty.gov



August 4, 2015

TO: Each Member
Board of Retirement

FROM: Gregg Rademacher 
Chief Executive Officer

FOR: August 13, 2015, Board of Retirement Meeting

SUBJECT: **AMENDING THE LACERA MANAGEMENT APPRAISAL AND
PERFORMANCE PLAN PROGRAM**

RECOMMENDATION

It is recommended the Board of Retirement:

1. Approve the Chief Executive Officer's recommendation for an Annual Merit Salary Adjustment from a minimum of zero to a maximum of 5 percent for Management Appraisal and Performance Plan Tier I participants effective October 1, 2015 in accordance with program provisions, with the exception of the Chief Executive Officer.
2. Approve reassigning Legal Services and Disability Litigation Division counsel positions participating in the LACERA Standardized Salary Schedule to the LACERA Management Appraisal and Performance Plan Tier II, effective October 1, 2015.
3. Approve reassigning the following classified and unclassified positions participating in the Management Appraisal and Performance Plan Tier I to Tier II effective January 1, 2016: Assistant Executive Officer, Chief Counsel, Chief Counsel Disability Litigation, Chief Internal Audit, and Retiree Health Care Director.
4. Clarify language in the salary ordinance section 6.127.040 to state the granting authority for Tier I merit salary adjustments.
5. Approve an amendment to the salary ordinance to allow unclassified positions in the investment office to be eligible for the Chartered Financial Analyst Certification compensation.
6. Direct staff to submit to the Board of Supervisors the necessary salary ordinance language to implement these changes.

EXECUTIVE SUMMARY

At its January 2015 meeting, the Board of Retirement approved amending the LACERA compensation program, known as the Management Appraisal and Performance Plan Program

(MAPP) to transition staff participating in MAPP Tier I and legal counsel participating in the Standardized Salary to the MAPP Tier II program.

This recommendation was presented to the Board of Investments at their July 2015 meeting, along with a review of the Investment Office staff salary ranges. No changes to the investment staff salary ranges were recommended or approved and the Board of Investments returned the MAPP transition recommendation back to staff to address the following concerns:

1. Reevaluate removing the Investment Office staff from the MAPP Tier I compensation structure that includes an incentive compensation factor that is absent in the MAPP Tier II compensation structure,
2. Review the legal authority for the LACERA Boards to allow an unclassified employee to participate in MAPP Tier II,
3. Provide the Board with the specific changes that will be required in the salary ordinance, and
4. Request the Los Angeles County Director of Personnel to review staff's analysis and recommendations.

Anticipating the Board of Investments will approve an amended MAPP plan at their August 12, 2015 meeting that is different than the amended MAPP plan approved by the Board of Retirement in January 2015, and that this revised approach includes a recommendation for the Boards to grant a MAPP Tier I merit increase in 2015, staff is submitting the revised plan for the Board of Retirement's consideration.

Staff addressed the Board of Investments' concerns and presented the following revised recommendations to the Board of Investments at their August 12, 2015 meeting:

1. Reevaluate removing the Investment Office staff from the MAPP Tier I compensation structure.

MAPP Tier II provides an annual 3% "step" compensation increase for all participants provided they meet or exceed performance expectations. MAPP Tier I provides the Boards the flexibility to increase the annual compensation adjustment up to 5% and to vary this percentage depending on the employee's performance rating. Staff agrees the MAPP Tier I program is a viable compensation structure provided it is reviewed by the granting authority on a regular annual basis. Staff also agrees the Investment Office operations may benefit from the additional 1% to 2% compensation variability for those employees whose performance is at least meeting expectations. As such, staff is withdrawing its recommendation to transition the Investment Office staff participating in MAPP Tier I into MAPP Tier II.

2. Review the legal authority for the LACERA boards to allow an unclassified employee to participate in MAPP Tier II.

Pursuant to the California Government Codes known as the County Employees Retirement Law (CERL) and the California Constitution, the Board of Retirement and the Board of Investments have joint responsibility to appoint personnel to accomplish the necessary work of the Boards. Generally speaking, the personnel shall be county employees subject to civil service rules and shall be included in the salary ordinance adopted by the Board of Supervisors.

In Los Angeles County, nearly all county employees are hired subject to the Civil Service system. These employees are also known as "classified" employees. However, Measure A, which was approved by Los Angeles County voters in March 2000, provides for specific employees to be hired at-will. These at-will employees are known as "unclassified" employees. Measure A applies to county employees hired by the Board of Supervisors; however, it does not apply to county employees hired by the LACERA Boards.

The CERL provides that most LACERA employees are classified employees. However, CERL also provides the LACERA Boards the choice to hire specified employees as being "at-will" (also known as being an "unclassified" employee), or being hired subject to the Civil Service rules (also known as being a "classified" employee). As such, it is LACERA Board policy on which positions among these specific categories of employees are at-will or subject to Civil Service. Currently, the following LACERA positions are at-will: Chief Executive Officer, Assistant Executive Officer, Chief Investment Officer, and Principal Investment Officer. Please note that some employees who attained these positions before the CERL was amended in 2001 allowing the LACERA Boards to hire at-will employees continue to be covered by Civil Service.

The LACERA Boards have the joint responsibility to establish compensation rules for its employees. Under CERL, the Boards' determination must be included in the County's compensation ordinance, but this is merely a ministerial task on the County's part. Together, the LACERA Boards defined the LACERA MAPP program and, following CERL, the Board of Supervisors included it in the salary ordinance. The LACERA Boards, by policy, can designate whether certain positions, defined in CERL, are at-will or Civil Service, and whether those positions participate in MAPP Tier I and/or MAPP Tier II.

Should the LACERA Boards agree to have at-will LACERA employees participate in the MAPP Tier II program, a change in the LACERA section of the salary ordinance will be required. As noted above, it is within the Boards' authority to request such a change in the salary ordinance, and it would be the County's ministerial duty to approve that request.

These issues are more fully discussed in a memo from the Legal Division which is provided to the Boards with this memorandum.

3. Los Angeles County Salary Ordinance changes.

Attached are the requisite changes required in the Los Angeles County Salary Ordinance to transition legal counsel participating in the Standard Salary Schedule to MAPP Tier II, to transition the Assistant Executive Officer, Chief Counsel, Chief Counsel Disability Litigation, and Retiree Health Care Director positions from MAPP Tier I to MAPP Tier II, and to facilitate having classified and unclassified positions participate in either MAPP Tier.

Additionally, staff believes the Los Angeles County Code describing MAPP Tier I merit adjustments is ambiguous as to whether the LACERA Boards or the LACERA CEO is responsible for granting an annual merit salary increase. Staff have interpreted the current LACERA salary ordinance language to mean the CEO is required to make a recommendation to the LACERA Boards, and as such, the Boards hold the authority to approve the merit increase. Staff recommends the Board amend the salary ordinance to clarify the Boards are responsible for approving the MAPP Tier I merit salary increases. Revised language is included on page 13 of the revised salary ordinance.

"O. Tier I merit salary adjustment provisions. Annually, the retirement administrator shall recommend to the board of retirement and board of investments jointly a Merit Salary Adjustment, ranging from a minimum of zero percent to a maximum of 5 percent."

Alternatively, the Board may wish to consider delegating its authority using the County's version of the MAPP program as a guide. The Board of Supervisors has delegated this responsibility to the county administrator. If the Board would like to follow the County model, the following ordinance language change would suffice.

"O. Tier I merit salary adjustment provisions. Annually, the retirement administrator shall ~~recommend~~ determine a Merit Salary Adjustment, ranging from a minimum of zero percent to a maximum of 5 percent."

Staff believes either a LACERA Board driven or CEO driven business model will work well with the program's 0%-5% and minimum performance competency constraints already in place. Staff simply would like the LACERA section of the salary ordinance to clearly state the authority.

Additionally, staff found an unintended omission in the salary ordinance section that provides additional compensation for employees holding professional certifications.

Specifically, it was noted that the section providing additional compensation for specified Investment Office staff who hold a Chartered Financial Analyst certificate did not include the at-will/unclassified Principal Investment Officer position. Currently, the civil service/classified Principal Investment Officer position is included in the position list. Staff recommends adding the unclassified position to the list.

4. Los Angeles County Director of Personnel review.

This memo, along with its attachments, was provided to the Los Angeles County Director of Personnel for her review.

The Los Angeles County and the LACERA employee compensation structures are designed with salary ranges. The intent is for the employee to move from the beginning of their salary range to the end of their salary range during their career in recognition of the employee's developing skill set and growing experience provided the employee meets performance expectations. Los Angeles County and LACERA compensate their employees with base salary and do not use incentive salary compensation structures where some of the employee's salary is at risk.

Both union represented and non-represented employees are compensated using salary ranges that actively move the employee compensation through the salary range using annual adjustments. However, the compensation program designed for the senior management positions did not facilitate moving the employees moving through the established salary range during the past 13 years. The last time LACERA utilized the MAPP Tier I merit salary increase was October 1, 2002. In more recent years the reason for not using the program is due to two factors. First, the Chief Executive Officer recognized the political limitations of granting senior management salary increases during years with severe budget limitations. Although the "step merit increases" remained in effect for the represented employees and MAPP Tier II participants, the Chief Executive Officer did not desire to place the Board in the position of granting senior management merit increases in the MAPP Tier I program. Second, the Chief Executive Officer was unaware the County had reinstated the MAPP Tier I merit increase program during the past two fiscal years. While the responsibility for these decisions sits squarely upon the Chief Executive Officer's shoulders, these decisions, along with the prior Chief Executive Officer's decisions, have contributed to salary stagnation for our seasoned management employees which may lead to unwanted employee departures.

One remedy to avoid this situation in the future would be to reassign senior management from their current LACERA MAPP Tier I compensation program to LACERA's MAPP Tier II compensation program. The Tier II program operates similarly to the compensation program utilized by the union represented and non-represented employees where employee compensation moves through the salary range using predefined annual adjustments.

In 2008, LACERA created the current compensation program using the County's newly created compensation program as a model. At that time, LACERA staff recommended following the County methodology to assign the Chief Executive Officer's direct reports along with the Investment Office professionals to participate in LACERA Management Appraisal and Performance Plan Program (MAPP) Tier I. In substance, staff is now second guessing this 2008 recommendation, and with the benefit of hindsight, recommends placing the senior management employees in the position of being in MAPP Tier II with the rest of the management group and professional staff at the MAPP Tier II compensation step nearest their current salary.

Relatedly, when management and professional staff were being transitioned from MAPP Tier I to MAPP Tier II in 2008, the Legal and Disability Litigation office's legal counsel staff were instead moved to the Standardized Salary Schedule Table step program. With the benefit of hindsight, we believe the legal counsel staff would be better served in the MAPP Tier II program's broader salary ranges. Again, staff's recommendation would be to place the employee in the Tier II salary range at the compensation step nearest their current salary.

The transition from Tier I to Tier II will impact:

- 8 Legal Office staff,
- 4 Disability Litigation staff,
- 2 Executive Office staff,
- 1 Internal Audit staff, and
- 1 Retiree Health Care Program staff.

Participation in the Tier II program will be on a "time-forward" basis when the appropriate paperwork has been completed. The transition into the step program is expected to have minimal impact to LACERA's salary cost. The remaining participants in MAPP Tier I will be the Chief Executive Officer and specified Investment Office staff.

COMPENSATION PROGRAM BACKGROUND

In 2007, the Los Angeles County Board of Supervisors adopted changes to its Management Appraisal and Performance Plan Program (MAPP) to enhance the overall effectiveness of the performance appraisal process to better ensure that salary and performance would be linked together for key management staff. The County recognized the need to develop a viable tool to both evaluate and compensate its management staff. They noted that since inception of the previous MAPP program, merit adjustments (based on performance) were only funded and implemented in two of the previous ten years. The impact was that many managers received less salary movement over the ten year period than both the union represented and non-represented staff. This occurs because the union represented staff receive annual salary adjustments (steps) that represent 5½%

per year for the first four years and 2¾% for the next two years in their positions so long as the employee is rated competent or better.

Before the County adopted their new plan, all MAPP participants were on a wide salary range according to their job classification. The intent was that each year, a certain percentage increase would be made available to recognize performance; however, the County failed to fund this merit pool, so salary merit adjustments were virtually non-existent.

The County amended the 2007 MAPP Program by assigning senior management (executives, department heads and their direct reports) to MAPP Tier I and all other management staff to the new MAPP Tier II. Tier I senior management remained in their current compensation range (identified as an "R" range). Tier II managers went to an equivalent "S" range which was identical to the "R" range, but was divided into eighteen steps (the first twelve steps at 3% and the last six steps at 1½%). The Tier II participant would move through the salary range at one step per year similar to how the union represented and non-represented employee moves through their salary range. The management salary ranges are generally broader but move the management employee through at a slower pace. Tier II managers are eligible for the 3% compensation adjustment for the first twelve steps provided their performance evaluation is rated "Met Expectations" or better, and eligible for the 1½% compensation adjustment for the remaining six steps provided their performance evaluation is rated "Exceeded Expectations" or better.

In September 2008, the LACERA Board of Retirement and Board of Investments adopted a similar compensation strategy for its employees. However, at the request of the Chief Investment Officer, the investment staff remained in MAPP Tier I, and at the request of the Chief Counsels, the legal and disability litigation counsels were placed in the Standard Salary Schedule.

In the ensuing five years, LACERA found the problem the County encountered with the original MAPP Tier I continued to manifest itself for the LACERA Tier I participants. With the benefit of hindsight, staff concludes it would have been a better choice in 2008 to have transitioned the senior management team, and legal counsel team into MAPP Tier II.

REASSIGNMENT PROPOSAL

Reassigning senior management and legal counsel employees to Tier II will not change the structure of the program. The Board of Investments and the Board of Retirement will continue their current authority to approve General Salary Adjustments (also known as cost-of-living wage adjustments) and establishing salary ranges to attract and retain employees. Transitioning the senior management and legal counsel teams to MAPP Tier II will bring alignment to the compensation structures used by the remainder of LACERA's union represented, non-represented, and management employees.

The following steps will be required to implement a revised MAPP Program at LACERA:

1. Reassign LACERA Senior Management Positions to MAPP Tier II.

The following positions currently participate in MAPP Tier I and staff recommends reassigning the positions on a prospective basis at their current salaries to MAPP Tier II:

Item Number	Position	At-Will Unclassified	Civil Service Classified	Number of Staff
0778	Assistant Executive Officer, LACERA		✓	1
0792	Assistant Executive Officer, LACERA	✓		1
9215	Chief Counsel, Disability Litigation, LACERA		✓	1
9216	Chief Counsel, LACERA		✓	1
0793	Director, Retiree Health Care, LACERA		✓	1

2. Reassign LACERA Legal and Disability Litigation Counsel Positions to MAPP Tier II.

The following positions currently participate in the Standardized Salary Schedule Table and staff recommends reassigning the positions on a prospective basis to MAPP Tier II:

Item Number	Position	At-Will Unclassified	Civil Service Classified	Number of Staff
9213	Senior Staff Counsel, LACERA		✓	6
9212	Staff Counsel, LACERA		✓	2
9203	Associate Staff Counsel, LACERA		✓	0

Prior to being assigned compensation ranges in the Standardized Salary Schedule, the legal counsel positions participated in the MAPP Program. The requested change will return the legal positions back to their former MAPP salary range. The following provides detail by position:

Position	Former MAPP Salary Range	Current Standard Salary Schedule	Proposed MAPP Tier II Salary Range
Senior Staff Counsel	Range 16 \$141,006-\$213,431	119F \$128,265-\$187,508	Range 16 \$141,006-\$213,431
Staff Counsel	Range 12 \$105,585-\$159,811	113B \$107,921-\$149,425	Range 12 \$105,585-\$159,811
Associate Staff Counsel	Range 8 \$79,062-\$119,667	104B \$84,546-\$123,596	Range 8 \$79,062-\$119,667

While the Standard Salary Schedule provides the employee a faster climb to the salary range maximum, staff believes the broader salary range for the Senior Staff Counsel and Staff Counsel positions is a better compensation tool for long term staff retention. LACERA does not currently use the Associate Staff Counsel position and there are no budgeted positions.

IMPLEMENTATION TIMELINE

The salary ordinance provides clear direction that MAPP Tier I merit adjustments shall be effective October 1. As such, staff is recommending we follow the plan provisions and make a merit adjustment for all current MAPP Tier I participants, with the exception of the Chief Executive Officer, as of October 1, 2015, provided all other plan requirements are met, such as, a completed performance evaluation meeting the required performance standards. Following this adjustment, staff is recommending moving certain MAPP Tier I positions to MAPP Tier II as of January 1, 2016. Staff would have recommended moving these positions immediately, however, the MAPP Tier II program provisions require participants to have been in the program on or before April 2015 in order to be eligible to be considered for the MAPP Tier II October 1, 2015 salary step increase. With regard to the legal counsel, the transition from the Standard Salary Schedule to the MAPP Tier II program will be evaluated on a case-by-case basis with the Chief Executive Officer collaborating with the Chief Counsels and the Human Resources Director on the best course of action for merit adjustments in relation to the individuals recent step advancement under the Standard Salary Schedule.

CONCLUSION

In accordance with Board policy, staff is required to engage a compensation consultant to conduct an investment staff compensation study on a biennial basis and present findings to the Board of Investments. The results of the study were presented to the Board of Investments at the July 2015 meeting and found investment staff compensation salary ranges are competitive with the public fund comparative group, and as such, staff did not recommend nor did the Board approve changes to the investment staff salary ranges. However, performing the analysis highlighted that staff participating in the MAPP Tier I program tend to remain in the salary range relative to their starting salary (e.g. employees who are placed at the beginning of the salary range upon hire have a propensity to remain at the beginning of the salary range). While the responsibility for this condition sits squarely upon the Chief Executive Officer's shoulders, this salary stagnation may lead to unwanted employee departures.

One remedy would be to actively utilize the MAPP Tier I merit increase program option. This solution is recommended for the Investment Office staff already participating in the MAPP Tier I Program. A second remedy would be to reassign employees to LACERA's Tier II compensation program. This solution is recommended for the senior management group participating in the MAPP Tier I Program. The proposed reassignment would place the employee in the salary range at

their current salary level with future Tier II compensation adjustments being prospective upon completing the necessary paperwork.

Additionally, staff recommends returning the Legal Services and Disability Litigation Office Counsel to the MAPP program at the salary ranges utilized when the positions were moved to the Standard Salary Schedule Table in 2008. Doing so will provide a broader salary range for the longer serving counsel and may assist in our retention efforts.

As requested by the Board of Investments, the analysis and recommendations have been reviewed by the Los Angeles County Director of Personnel.

Staff is presenting the requisite salary ordinance changes that have been reviewed by the Executive, Legal, and Human Resources staff.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

1. Approve the Chief Executive Officer's recommendation for an Annual Merit Salary Adjustment from a minimum of zero to a maximum of 5 percent for Management Appraisal and Performance Plan Tier I participants effective October 1, 2015 in accordance with program provisions, with the exception of the Chief Executive Officer.
2. Approve reassigning Legal Services and Disability Litigation Division counsel positions participating in the LACERA Standardized Salary Schedule to the LACERA Management Appraisal and Performance Plan Tier II, effective October 1, 2015.
3. Approve reassigning the following classified and unclassified positions participating in the Management Appraisal and Performance Plan Tier I to Tier II effective January 1, 2016: Assistant Executive Officer, Chief Counsel, Chief Counsel Disability Litigation, Chief Internal Audit, and Retiree Health Care Director.
4. Clarify language in the salary ordinance section 6.127.040 to state the granting authority for Tier I merit salary adjustments.
5. Approve an amendment to the salary ordinance to allow unclassified positions in the investment office to be eligible for the Chartered Financial Analyst Certification compensation.
6. Direct staff to submit to the Board of Supervisors the necessary salary ordinance language to implement these changes.

GR:nm

Transition Tier I to Tier II-August BoI meetingv3.docx

Attachments

ATTACHMENTS

LACERA

MAPP Positions

Salary Ranges Effective January 1, 2015

Item Number	Position	Number of Positions	At-Will Unclassified	Civil Service Classified	MAPP Tier	MAPP Range	MAPP Salary Range	Proposed Change
493	Chief Investment Officer, LACERA (UC)	0	✓		I	25	\$270,351 - \$409,199	
495	Principal Investment Officer, LACERA	2		✓	I	23	\$233,944 - \$354,093	
496	Principal Investment Officer, LACERA (UC)	2	✓		I	23	\$233,944 - \$354,093	
492	Senior Investment Officer, LACERA	1		✓	I	20	\$188,310 - \$282,862	
9216	Chief Counsel, LACERA	1		✓	I	18	\$162,951 - \$246,639	Reassign to MAPP Tier II
776	Chief Executive Officer, LACERA	1	✓		I	18	\$162,951 - \$246,639	
9215	Chief Counsel, Disability Litigation, LACERA	1		✓	I	18	\$162,951 - \$246,639	Reassign to MAPP Tier II
769	Finance Analyst III, LACERA	6		✓	I	16	\$141,006 - \$213,425	
778	Assistant Executive Officer, LACERA	1		✓	I	14	\$122,018 - \$184,683	Reassign to MAPP Tier II
792	Assistant Executive Officer, LACERA (UC)	1	✓		I	14	\$122,018 - \$184,683	Reassign to MAPP Tier II
783	Information Systems Manager, LACERA	1		✓	II	13	\$113,505 - \$171,799	
774	Chief, Internal Audit, LACERA	1		✓	I	12	\$105,586 - \$159,813	Reassign to MAPP Tier II
780	Chief, Quality Assurance & Metrics, LACERA	1		✓	II	12	\$105,586 - \$159,813	
793	Director, Retiree Health Care, LACERA	1		✓	I	12	\$105,586 - \$159,813	Reassign to MAPP Tier II
773	Division Manager, LACERA	4		✓	II	12	\$105,586 - \$159,813	
768	Finance Analyst II, LACERA	6		✓	I	12	\$105,586 - \$159,813	
781	Assistant Information Systems Manager, LACERA	1		✓	II	11	\$ 98,219 - \$148,663	
771	Assistant Division Manager, LACERA	2		✓	II	10	\$ 91,367 - \$138,291	
794	Chief, Communications, LACERA	1		✓	II	10	\$ 91,367 - \$138,291	
425	Director, Human Resources, LACERA	1		✓	II	10	\$ 91,367 - \$138,291	
410	Administrative Services Officer, LACERA	1		✓	II	9	\$ 84,992 - \$128,643	
772	Section Head, LACERA	4		✓	II	9	\$ 84,992 - \$128,643	
437	Assistant Director, Human Resources, LACERA	1		✓	II	8	\$ 79,063 - \$119,668	

July 23, 2015

TO: Each Member
Board of Retirement

Each Member
Board of Investments

From: Johanna M. Fontenot 
Senior Staff Counsel

FOR: August 12, 2015 Board of Investments Meeting
August 13, 2015 Board of Retirement Meeting

RE: **LACERA Management Appraisal and Performance Plan Program**

The Board of Investments has requested our opinion on the following question:

Do the Board of Retirement and Board of Investments (the "Boards") have the authority to reassign certain unclassified employees participating in the LACERA's Management Appraisal and Performance Plan Program ("MAPP") from Tier I to Tier II?

Based on the following analysis, we believe that as a matter of law the answer to this question is yes. Under CERL and the California Constitution, the two Boards act jointly in approving class specifications for LACERA employees and adopting policies and procedures relating to classification, reclassification, and compensation.

More generally, we considered the Boards' legal ability to approve the classification and compensation proposal set forth included in the Chief Executive Officer's current recommendation. We believe that the CEO's recommendation is within the Board's authority based on LACERA's independence under the law. While the law requires that the compensation of LACERA's employees be included in the County's compensation ordinance, the County's responsibility to incorporate the Board's decisions into the County's ordinance is, as a matter of law, ministerial.

LACERA's Independence Is Supported by Statute and Case Law

Government Code Sections 31522.1, 31522.4, and 31580.2 make clear that the Legislature intended for LACERA's Boards to have independent authority to select and compensate their employees. The Boards have authority to appoint such employees "as are required to accomplish the necessary work of the boards." (Government Code Section 31522.1; see also Government Code Sections 31522.2 and 31522.4.) The entire cost of administering LACERA, including expenses associated with salaries and

benefits, are a charge on the earnings of the retirement fund pursuant to Government Code Section 31580.2.

As provided in the California Constitution, public retirement boards have "plenary authority" over the administration of retirement systems. Cal. Const., Art. XVI, Section 17. This authority necessarily includes the authority to select personnel and establish salary terms and conditions for staff of the system.

Additionally, existing case law recognizes LACERA as a separate legal entity from the County of Los Angeles. (*Traub v. Board of Retirement*, 34 Cal. 3d 793 (1983)).

LACERA Employees and Civil Service Classifications

Government Code Section 31522.1 provides:

"The board of retirement and both the board of retirement and board of investment may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards. The appointments shall be made from eligible lists created in accordance with the civil service or merit system rules of the county in which the retirement system governed by the boards is situated. The personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees."

The County civil service is divided into classified and unclassified service. Classified service, also referred to as civil service, employees may not be disciplined, suspended, or discharged except for cause. (Los Angeles County Civil Service Rules, rules 4 and 18.) The basic principle of civil service, as enumerated in judicial decisions, is that of a service in which appointments and promotion are based upon merit and employees' job security is protected by relatively high assurances of tenure. Non-civil service, also referred to as unclassified service, means that an employee serves at the pleasure of the appointing authority and may at any time be removed by the appointing authority. By statute adopted in 2001, the Administrator and certain other LACERA management positions appointed after that date, including Assistant Administrators, the Chief Investment Officer, and investment officers next in line to the CIO, as designated by the Boards, are non-civil service and therefore at will, unclassified employees. (See Government Code Sections 31522.2 and 31522.4)¹ With the exception of these

¹ Similarly, the County of Los Angeles' unclassified service employees are enumerated in Section 33 of the County Charter. In 2000, the voters passed Measure A, which removed several positions, including Chief Deputies, and assistants or deputies next in line of authority to Chief Deputies, from the County's civil service system and placed these positions in the unclassified service. As a result, these positions were added to Section 33 of the County Charter as unclassified service. Measure A did not relate to or affect LACERA.

statutory exemptions, all of LACERA employees are subject to the County's civil service system.

The fact that LACERA personnel "shall" be County employees, however, does not change the scope of authority and independence granted by CERL and the Constitution. Sections 31522.1, 31522.2, and 31522.4, as well as the plenary authority extended by the Constitution, provide the Board with the latitude to independently create and modify its own classification plan by establishing new classes that are unique to LACERA. Although the provisions of LACERA's Tier I and Tier II MAPP Program are found in the County's compensation ordinance, as required by CERL, and parallel the provisions of the County MAPP Program, LACERA Boards maintain independent management of its MAPP program and its participants. The County's duty to incorporate LACERA's personnel and compensation structure into the compensation ordinance is entirely ministerial.

The County has long recognized LACERA's independence in this area. As stated on page 6 of the attached County Counsel opinion: "LACERA has no obligation to apply the County's classification policies and standards, but is free to establish its own policies and standards relating to classification and reclassification of positions." (A copy of the County Counsel opinion dated May 16, 1996 is attached.)

LACERA Management Appraisal and Performance Plan Tier I and Tier II

MAPP is a compensation program. As such, LACERA Boards have independent management of the MAPP Program and the participants. In 2008, the Boards approved and the Board of Supervisors adopted the ordinance establishing a Tier I and Tier II MAPP Program specific to LACERA. It was added to Chapter 6.127 of the salary ordinance. As noted on page 5 of the attached County Counsel legal opinion, the Board of Supervisors has a ministerial duty to include LACERA-determined classifications and compensation in the County salary ordinance.

It is also important to note that LACERA has its own salary schedule for LACERA participants, which is separate and apart from participants in County departments. As a result, general salary adjustments approved by the Board of Supervisors for participants in County departments are not applicable to participants employed by LACERA and vice versa.

Section 6.127.040, of the LACERA Salary Schedule, currently defines Tier I as that part of the Plan that is applicable to unclassified management positions and other positions specifically designated as eligible for Tier I by the Board of Supervisors as requested by the Board of Retirement and Board of Investments jointly; and Tier II is defined as that part of the Plan that is applicable to all Participants other than Tier I Participants. While we believe that language, as written, covers the CEO's current recommendation, the proposed revised ordinance language will delete any reference to the unclassified

service in the definition of Tier I to eliminate any confusion.

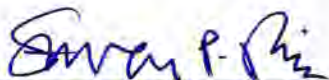
There is nothing inherent in the definition of Tier I or Tier II or any other authority that requires unclassified positions to be limited to only Tier I. The classification and compensation structure for LACERA employees is within the discretion of the Boards. Accordingly, the initial placement or later reassignment of certain LACERA positions in Tier I and Tier II has no affect on whether the position is classified or unclassified. The Board of Supervisors is required to respect LACERA's independence by incorporating the Boards' language changes, once approved by the Boards, into the compensation ordinance.

Conclusion

LACERA's Chief Executive Officer is seeking your Boards' approval to reassign certain positions that are currently in Tier I to Tier II. In our opinion, it is within your legal authority to approve the proposed reassignment of staff from MAPP Tier I to Tier II, including the unclassified positions. In other words, unclassified positions may be placed in either Tier I or Tier II in LACERA's MAPP Program.

The Legal Division has reviewed and approved the proposed ordinance language changes as consistent with the authority described in this memo. The County, through the Board of Supervisors, will have the ministerial responsibility to include the revised language in the compensation ordinance.

Reviewed and Approved



Steven P. Rice
Chief Counsel

Attachment

c: Gregg Rademacher
Robert Hill
JJ Popowich

**County Counsel Opinion
May 16, 1996**

Attachment



DE WITT W. CLINTON, COUNTY COUNSEL

COUNTY OF LOS ANGELES
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May 16, 1996

Sally R. Reed
Chief Administrative Officer
713 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: Status of LACERA Employees

Dear Ms. Reed:

By memo dated April 5, 1996, you asked that we review the opinion provided to LACERA by the law firm of Morrison & Foerster regarding the classification and compensation of LACERA employees. In particular, you have asked for our opinions on the following questions:

1. Do we concur with the Morrison & Foerster opinion, including the conclusion that the Board of Supervisors must "without discretion" implement by ordinance the classification and compensation changes adopted by LACERA for its employees?
2. If LACERA employees are subject to the County Civil Service system, are they subject to the same classification system established and maintained by the County for County employees? If yes, are they subject to the same County administration of that system? Specifically, should classification actions affecting LACERA employees be subject to the approval of the County's Director of Personnel in the same manner and to the same extent that classification actions affecting all other County employees are subject to the approval of the Director of Personnel?

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3. If classification actions affecting LACERA employees are not subject to the approval of the Director of Personnel, does LACERA have the latitude to independently modify the classification plan by establishing new classes that are unique to LACERA? If yes, does LACERA have an obligation to apply the same classification policies and standards and generally exercise the same care exercised by the County in the approval of reclasses and the establishment of new classes?

4. Does LACERA have the latitude to establish separate pay rates for LACERA employees who hold positions in generic County-wide classes? For example, can LACERA establish a salary for Senior Clerk that is different from the salary the County has established for Senior Clerk? Can LACERA provide a different fringe benefit package for Senior Clerk?

5. Generally, what control, if any, does the Board of Supervisors have over the classification and compensation of LACERA employees?

6. Although the Morrison & Foerster opinion points to the effects of Proposition 162, it seems to base its opinion, in part, on interpretation of the 1937 Retirement Act. Are there potential changes to the 1937 Retirement Act, or other State law, that, if legislated, would give greater control to the Board of Supervisors over the classification and compensation of LACERA employees? If yes, what are those changes?"

Our opinions are as follows:

1. We concur with the Morrison & Foerster opinion, including the conclusion that the Board of Supervisors has a ministerial duty to adopt an ordinance implementing classification and compensation changes adopted by LACERA for its employees.

2. By statute, LACERA employees are subject to the civil service provisions of the County Charter and to the County's Civil Service Rules. They are not subject to the classification system maintained by the County for its employees, nor are classification actions affecting LACERA employees subject to the approval of the Director of Personnel.

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3. The LACERA boards may establish their own classification system, and may establish classes that are unique to LACERA. In doing so, they may establish their own classification policies and standards and are not bound by the County's classification policies and standards.

4. LACERA may establish different pay rates for LACERA employees who hold positions in generic County-wide classes, although we recommend that such classes be designated differently to avoid confusion. LACERA may also provide fringe benefits for its employees which are different from corresponding County classes. However, if changes in pay or benefits involve represented employees, LACERA would have an obligation to meet and confer with employee representatives before making such changes.

5. The Board of Supervisors has no direct control over the classification or compensation of LACERA employees. However, if the Board of Supervisors feels that the LACERA boards have abused their discretion with regard to the classification or compensation of LACERA employees in a manner which is detrimental to the County, the Board may seek judicial review of the LACERA action.

6. The County could seek to amend the 1937 Retirement Law to provide that LACERA classification and compensation decisions require Board of Supervisors' approval. However, the courts may well hold that such an amendment violates Proposition 162.

ANALYSIS

Answering your first question, we concur with the Morrison & Foerster opinion provided to LACERA, including the conclusion that the Board of Supervisors has a ministerial duty to implement by ordinance the classification and compensation changes adopted by LACERA for its employees. As noted in the Morrison & Foerster opinion, case law has made it clear that LACERA is a completely separate entity from the County, and this has been reemphasized by Proposition 162. In addition, the legislative history of Government Code Sections 31522.1 and 31580.2 makes it clear that the Legislature intended for the LACERA boards to have independent authority to select and compensate their employees without County oversight, and this has also been reemphasized by case law construing Proposition 162.

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Since we agree with the Morrison & Foerster opinion, we will not duplicate their analysis here. However, as noted in their opinion, and as we recall, the Board of Supervisors opposed the legislation giving personnel and budget authority to LACERA and lost, and the Board also urged the Governor to veto the legislation, but he did not. Hence, the County lost the legislative battle some 23 years ago, and the full effects are only now being felt.

LACERA employees are not County employees in any general sense. They are not County employees by virtue of the County Charter, which requires the Board of Supervisors to provide for the number, classification, compensation, and appointment of County employees. Nor do they meet the usual common-law tests relating to employees, since the County does not appoint, remove, direct, control, compensate or provide office space for them. Rather, LACERA employees are made County employees by statute for rather limited purposes primarily relating to the manner of their appointment and their tenure. Being County employees also allows them to participate in the retirement system and to receive County fringe benefits unless other benefits are established by the LACERA boards. This is not an unusual situation. For example, Government Code Section 53200.3 provides that for purposes of participating in group insurance plans, judges are County employees.

Government Code Section 31522.1 provides:

"The board of retirement and both the board of retirement and the board of investment may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards. The appointments shall be made from eligible lists created in accordance with the civil service or merit system rules of the county in which the retirement system governed by the boards is situated. The personnel shall be county employees and shall be subject to the county civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees."

It is clear from Section 31522.1 that the LACERA boards are the appointing authority for LACERA employees, and that in making such appointments, they are bound by the County Civil Services rules, and that the employees have County civil service protection with regard to tenure.

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While Section 31522.1 is silent with regard to the classification of LACERA employees, it does provide that the LACERA boards "may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards." (Emphasis added.) Since the LACERA boards are presumably in the best position to judge the types of employees necessary to accomplish their work, we believe that the Legislature intended to leave the question of classification up to them. They are also in the best position to determine the compensation levels necessary to recruit and retain qualified employees.

In that regard, Government Code Section 31580.2 provides:

"In counties where the board of retirement and board of investment have appointed personnel pursuant to Section 31522.1, the respective boards shall annually adopt a budget covering the entire expense of administration of the retirement system which expense shall be charged against the earnings of the retirement fund. The expense incurred in any year shall not exceed eighteen-hundredths of 1 percent of the total assets of the retirement system."

Since LACERA and not the County compensates LACERA employees, we believe the Legislature intended the LACERA boards to set compensation levels for their employees. This is confirmed by the fact that Section 31522.1 requires that LACERA employees "be included in the salary ordinance or resolution adopted by the board of supervisors for the compensation of county officers and employees." If their classification and compensation was determined by the Board of Supervisors, they would automatically be included in the County salary ordinance or resolution and there would be no need for the quoted statutory language.

Since the Board of Supervisors plays no role in classifying LACERA positions or in setting LACERA salaries, and the language of Section 31522.1 is mandatory, we conclude that the Board has a ministerial duty to include LACERA classifications and compensation in the County salary ordinance.

Answering your second question, LACERA employees are subject to the County Civil Service system in the sense that they have Civil Service protection and must be appointed from eligible lists "created in accordance with the civil service or merit system rules of the county...."

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However, as noted above, they are not subject to the County's classification system and classification actions taken by LACERA are not subject to the approval of the Director of Personnel.

Answering your third question, LACERA has the latitude to independently modify the existing classification plan by establishing new classes that are unique to LACERA. In doing so, LACERA has no obligation to apply the County's classification policies and standards, but is free to establish its own policies and standards relating to the classification and reclassification of positions.

Answering your fourth question, LACERA has the latitude to establish separate pay rates for LACERA employees who hold positions in generic County-wide classes. However, to avoid confusion, we would recommend to LACERA that such positions be designated differently to distinguish them from their County counterparts. LACERA may also provide a different fringe benefit package for its employees, including members of generic County-wide classes. However, any changes in classification or compensation involving represented employees would require LACERA to meet and confer with employee representatives pursuant to the Meyers-Milias-Brown Act before taking any action. (We note that LACERA, as a separate entity, is not subject to ERCOM.)

Answering your fifth question, as noted above, the Board of Supervisors has no discretion with regard to the classification or compensation of LACERA employees, but merely has a ministerial duty to include them in the salary ordinance. However, if the Board of Supervisors feels that LACERA has abused its discretion in classifying or establishing compensation for LACERA employees, and that such action affects the County's contribution rate or is otherwise detrimental to the County, the Board of Supervisors may seek judicial review of the LACERA action.

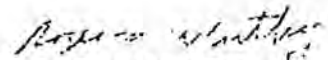
Answering your sixth question, the County could seek to amend the 1937 Retirement Law to provide that classification and compensation actions regarding LACERA employees are either performed by the County in the first instance or require the approval of the Board of Supervisors before they are implemented. However, LACERA would obviously oppose any such legislative changes, and if adopted, the courts might well hold that such requirements violate Proposition 162. Proposition 162

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vests "plenary authority" to administer the retirement system in the Board of Retirement, and the ability to classify and set compensation for employees may be inherent in that authority.

Very truly yours,

DE WITT W. CLINTON
County Counsel

By 
ROGER M. WHITBY
Senior Assistant County Counsel

APPROVED AND RELEASED:


DE WITT W. CLINTON
County Counsel

RMW:md

RMW6.1-96r-11.Lcr

LACERA

Management Appraisal and Performance Plan

Salary Ordinance

Note: Section 6.126.040 is provided in its entirety.

6.127.040 LACERA Tier I and Tier II Management Appraisal and Performance Plan.

- A. Purpose. The purpose of the Management Appraisal and Performance Plan is to improve LACERA's ability to employ executive, senior management, and management employees, to evaluate and compensate those employees for the contributions they make toward achieving LACERA priorities, and to motivate them to excel and achieve high efficiency, reduce costs, realize expected revenues, and deliver quality services to LACERA's members and beneficiaries.
- B. Definitions. The following terms when used in this Section 6.127.040 with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:
1. "Appointing Authority" means the retirement administrator as to Participants serving on the staff of the Los Angeles County Employees Retirement Association. The board of retirement and the board of investments jointly shall be the Appointing Authority for any person designated to act as retirement administrator pursuant to Section 6.127.020 of this code.
 2. "Control Point" means the midpoint of each Salary range as indicated in the Tier I Salary Structure. The Control Point for each Tier II Salary range shall be the same as the similarly numbered Tier I Salary range.
 3. "General Salary Adjustment" means an across-the-board adjustment in the actual base salaries of Tier I and/or Tier II Participants. A General Salary Adjustment may be implemented only by specific action of the board of supervisors as requested by the board of retirement and board of investments jointly and may or may not be accompanied by a concurrent adjustment in the Salary Structure.
 4. "Participant" means a person employed in a position in a class which has been approved by the board of supervisors as requested by the board of retirement and board of investments jointly for inclusion in the Management Appraisal and Performance Plan.

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- 1 5. "Plan" means the Management Appraisal and Performance Plan set forth in
2 this Section 6.127.040.
- 3 6. "Salary Structure" means the Tier I and Tier II Salary ranges specified in
4 Section 6.26.020 A.
- 5 7. "Tier I" means that part of the Plan that is applicable to ~~unclassified~~
6 ~~management positions and other~~ positions specifically designated as eligible
7 for Tier I by the board of supervisors as requested by the board of retirement
8 and board of investments jointly. Salary ranges applicable to Tier I Participants
9 are designated by the letters "LR" in Sections 6.28.050 and 6.26.020 A of this
10 code. Tier I Salary ranges are defined in terms of a minimum rate, a maximum
11 rate, and a Control Point and are divided into quartiles for salary administration
12 purposes in accordance with the provisions of Section 6.08.370.
- 13 8. "Tier II" means that part of the Plan that is applicable to all Participants other
14 than Tier I Participants. Salary ranges applicable to Tier II Participants are
15 designated by the letters "LS" in Sections 6.28.050 and 6.26.020 A of this
16 code. Tier II Salary ranges consist of 18 salary steps, with the first 12 being 3
17 percent apart and the last six steps being 1 ½ percent apart.
- 18 9. "Tier I Merit Adjustment" means movement through the applicable LR range
19 based on an evaluation of performance as provided for in the Plan and any
20 pertinent instructions issued by the retirement administrator. A Tier I Merit
21 Adjustment may range from zero to 5 percent with respect to any given rating
22 period.
- 23 10. "Tier II Step Advancement" means advancement to the next salary step in the
24 applicable LS range based on an evaluation of performance as provided for in
25 the Plan and any pertinent instructions issued by the retirement administrator.
- 26 11. "Y-Rate" means, for purposes of this Part 3, a special salary rate which entitles
27 a person to receive a salary at a rate higher than the maximum of the Salary
28 range for the position which the person holds.
- 29 C. Applicability of Section 6.127.040 provisions. Notwithstanding any other provision
30 of this Title 6, the salary of a person employed in a position assigned to a Salary
31 range in Tier I or Tier II of the Plan shall be determined pursuant to the provisions

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1 of this Section 6.127.040; provided, however, that the retirement administrator's
2 salary and benefits may be determined by written agreement between the board of
3 retirement and board of investments jointly and the retirement administrator. In the
4 event of any inconsistency between provisions of this Section 6.127.040 and such
5 written agreement, the provisions of the written agreement shall control.

6 D. Position assignment to the Management Appraisal and Performance Plan. Upon
7 the recommendation of the board of retirement and board of investments jointly, the
8 board of supervisors may by ordinance, assign classes or positions to the Plan.
9 The board of retirement and board of investments jointly shall recommend to the
10 board of supervisors a Salary range for each class or position.

11 Participants who would otherwise be eligible to receive benefits under Chapter 5.26,
12 5.27, and 5.28 of this code shall be eligible to receive benefits under Chapter 5.26
13 and the appropriate benefits of either Chapter 5.27 or Chapter 5.28 of this code. In
14 addition, Participants designated eligible to receive benefits under Subdivision 1 of
15 Chapter 5.27 or Subdivision 1 of Chapter 5.28 of this code shall be eligible to receive
16 up to eight days sick leave.

17 E. Performance management.

18 1. Performance rating categories and process.

19 The retirement administrator, or his/her designee, shall annually evaluate the performance
20 of each Participant, in accordance with guidelines and in a format established by the
21 LACERA director of human resources, which shall provide for an overall performance
22 rating based on the following five category rating scale:

- "Far Exceeded Expectations"
- "Exceeded Expectations"
- "Met Expectations"
- "Needs Improvement Meeting Expectations"
- "Failed to Meet Expectations"

23
24 The performance management process includes annually setting goals and defining
25 performance expectations developed jointly by the retirement administrator or his/her designee
26 and each Participant. The retirement administrator defines department values for the
27 performance management process. At the discretion of the retirement administrator,

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1 Participants on a leave of absence during the rating period are not required to have a
2 performance plan while on an approved leave of absence.

3 2. Rating period.

4 a. The rating period will be as designated by the retirement administrator.
5 However, the performance of each Participant will be reviewed
6 periodically by the retirement administrator or his/her designee during
7 the performance period. At the conclusion of the rating period, the
8 retirement administrator or his/her designee will review the performance
9 of each Participant and complete an evaluation form in the manner
10 established by the LACERA director of human resources. At the
11 discretion of the retirement administrator, an evaluation form may be
12 completed for those Participants with less than six months service in the
13 Plan. The retirement administrator or his/her designee shall have the
14 option of rating Participants on leave for more than six months of the
15 rating period. Participants on leave for less than six months shall be
16 given an overall performance rating except in the case where the
17 LACERA director of human resources has determined that unusual
18 circumstances exist. Where Participants on a leave of absence are
19 rated, any Tier I Merit Salary Adjustment or Tier II Step Advancement
20 may, at the discretion of the retirement administrator, be granted upon
21 the Participant's return to work. Participants who are not rated shall not
22 be granted a Tier I Merit Salary Adjustment or a Tier II Step
23 Advancement.

24 b. In the case of the retirement administrator, the evaluation shall be in
25 accordance with the procedures established by the board of retirement
26 and board of investments jointly.

27 3. Performance evaluation timeliness. Tier I Merit Salary Adjustments and/or Tier
28 II Step Advancements will be withheld for both the rater and employee being
29 rated if the performance evaluation has not been submitted on a timely basis in
30 accordance with timeframes established by the LACERA director of human
31 resources or by the retirement administrator or his or her designee. Upon

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1 submission of the performance evaluation, the employee being rated will be
2 eligible for a retroactive Tier I Merit Salary Adjustment or Tier II Step
3 Advancement based on his/her performance rating. However, in no case
4 where a performance evaluation was not submitted on a timely basis shall the
5 rater receive a retroactive Tier I Merit Salary Adjustment or Tier II Step
6 Advancement.

- 7 4. Performance rating transition. For Participants previously evaluated under Civil
8 Service Rule 20.04, the last performance evaluation rating under Civil Service
9 Rule 20.04 shall be used for all purposes on or after October 1, 2008 and
10 continuing only until a new performance rating is given under Tier I or Tier II of
11 the Plan. Performance evaluation ratings under Civil Service Rule 20.04 shall
12 be treated as they are the same as Tier I and Tier II Plan ratings as follows:

13 a. Permanent Employees.

"Outstanding"	= "Far Exceeded Expectations"
"Very Good"	= "Exceeded Expectations"
"Competent"	= "Met Expectations"
"Improvement Needed"	= "Needs Improvement Meeting Expectations"
"Unsatisfactory"	= "Failed to Meet Expectations"

14
15 b. Probationary Employees.

"Competent"	= "Met Expectations"
"Unsatisfactory"	= "Failed to Meet Expectations"

16
17 F. Appeal process.

- 18 1. Initial Review. In the case of a disputed individual performance evaluation and
19 rating, the affected Participant shall be afforded full opportunity to present, in
20 writing, his/her request for review and modification of the rating to the
21 Participant's immediate supervisor. Such requests shall be made within 10
22 business days of receipt of a performance rating. The decision of the
23 supervisor shall be final subject to review and reconsideration as outlined in
24 subsection 2 of this section. In the case of an assistant executive officer, such
25 presentation shall be made to the retirement administrator, whose decision
26 shall be final.

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1 2. LACERA Director of Human Resources Review. Within 10 business days of
2 receipt of the decision of the supervisor under subsection 1 of this section, any
3 affected Participant, except an assistant executive officer, may request review
4 by the director of human resources and reconsideration by the supervisor for a
5 performance rating of "Needs Improvement Meeting Expectations" or "Failed to
6 Meet Expectations." The director of human resources shall review the process
7 and submit recommendations to the retirement administrator, who will then
8 render a final decision on the evaluation and rating. The decision of the
9 retirement administrator shall be conclusive.

10 G. Tier I and Tier II Management Appraisal and Performance Plan General Salary
11 Adjustment provisions. The retirement administrator shall recommend, as appropriate,
12 and the board of retirement and board of investments jointly may approve General
13 Salary Adjustments for Participants. General Salary Adjustments are adjustments that
14 are across-the-board in nature and that affect the Salary Structure for Tier I and Tier II.
15 General Salary Adjustments, where implemented, are intended to keep pace with
16 external salary inflation and preserve internal pay relationships with other LACERA
17 employees who are not Participants. In recommending a General Salary Adjustment,
18 the retirement administrator shall consider both LACERA's operational needs, including
19 the need to recruit and retain quality personnel under the Plan, and LACERA's ability to
20 pay for the adjustments.

21 H. Tier I and Tier II Management Appraisal and Performance Plan basic salary structures.

22 1. Reassignment of Positions. The retirement administrator shall recommend to
23 the board of retirement and board of investments reassignment of positions to
24 higher or lower Tier I or Tier II Salary ranges when appropriate as necessitated
25 by external market conditions or changes in the duties and responsibilities of
26 affected positions.

27 2. Salary Rate Below the Minimum of the Salary Range. A Participant's salary
28 may fall below the minimum of the Salary range as a result of a Salary
29 Structure adjustment. In such case, there shall be no adjustment in the
30 Participant's salary absent specific authorization and instruction from the board
31 of retirement and board of investments jointly or the retirement administrator.

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1 When an employee's salary rate falls below the minimum of the Salary range,
2 it shall not constitute a demotion.

- 3 3. Placement or movement in Salary Range. By specific action, the board of
4 retirement and board of investments jointly or the retirement administrator may
5 provide for salary placement or subsequent movement of an employee at any
6 rate within the established Salary range for the position he/she holds.

7 Movement in the Salary range may result in either an increase or decrease to
8 a Participant's current salary.

- 9 4. Equivalency of Compensation. An employee who is receiving additional
10 compensation pursuant to Section 6.10.070, Section 6.10.073 A and B,
11 Section 6.44.015, Section 6.50.020, or Section 6.64.020 A of this code shall, at
12 the time his or her position is assigned to the Plan, be designated a salary rate
13 on the appropriate Salary range that is not less than his/her then current
14 salary, including such additional compensation.

- 15 5. Change of Status. When a person receives a change of classification, is
16 transferred, or is appointed from an eligible list to a position, such change of
17 status shall not be deemed a promotion or demotion when there is a difference
18 of less than 2.75 percent between the Control Point of the old Salary range
19 and the Control Point of the new Salary range or between the Control Point of
20 the new Salary range and the highest step of a position not designated for the
21 Plan. Said person will be placed within the Salary range at his/her then current
22 salary, or for Tier II, placed on the nearest step that does not result in a
23 decrease in salary for the participant. Where the new position is outside the
24 Plan, the employee's salary step placement shall be determined as otherwise
25 provided by this code.

- 26 6. Reduction of Salary Range. When a person continues to hold a position whose
27 Salary range is reduced or which is reclassified to a lower level, said person
28 will be placed within the new Salary range at his/her current salary, or for Tier
29 II, placed on the nearest step that does not result in a decrease in salary for
30 the participant. If the current salary is higher than the new salary range

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1 maximum, said person's rate of pay shall be identified as a Y-Rate, which shall
2 remain until such time as the Y-Rate is within the Salary range for the position.

- 3 7. Appointment to Lower-Level Position. When a person on a higher position is
4 appointed from an eligible list to a lower-level position, or is voluntarily
5 reduced, he/she shall be placed at any salary within the Salary range for the
6 lower-level position or his/her current salary, whichever is less.

7 Notwithstanding any other provision of this subsection 7, a person appointed
8 prior to completion of his/her probationary period on the higher position shall
9 be placed at a salary within the Salary range of the lower position, in
10 accordance with the provisions of Section 6.08.345.

- 11 8. Equivalency of Grade. A class in Tier I is deemed to be equal in grade to a
12 class in Tier II if the two Salary Ranges are equal in terms of the minimum and
13 maximum rates as indicated by the numeric designation assigned to the Salary
14 ranges. (A class compensated at LR10 in Tier I is, for example, equal in grade
15 to a class compensated at LS10 in Tier II). A class in Tier I or Tier II is deemed
16 equal in grade to a class paid in accordance with Chapter 6.08, Part 1 of this
17 title if the top step of the class compensated under Part 1 is less than 2.75
18 percent above or below the Control Point of the Salary range for the Tier I or
19 Tier II class as the case may be.

- 20 9. Exception for Certain Participants. The compensation of any Participant
21 employed in a class or position designated by an item sub other than "A" or "L"
22 pursuant to the provisions of Section 6.28.020 A shall be limited to that
23 provided by this subsection. Such Participant shall be compensated at a salary
24 rate not to exceed the Control Point of the Salary range or at any salary within
25 the Salary range, with the concurrence of the retirement administrator. The
26 salary rate for such Participants shall be adjusted in accordance with the
27 approved General Salary Adjustments provided the retirement administrator
28 certifies such Participant's performance is equivalent to "Met Expectations" or
29 better.

- 30 I. Demotion. Upon demotion of a Participant from a higher-level position to a lower-level
31 position the Participant's Salary shall be determined as follows:

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- 1 1. Permanent Status. Any person who has completed the probationary period for
2 the higher-level position and voluntarily demotes to another position on a lower
3 Salary range shall be placed at any salary within the lower Salary range,
4 provided said salary does not exceed the maximum of the new Salary range
5 for the lower-level position or his/her current salary, whichever is less. When a
6 person is involuntarily demoted for discipline or performance reasons, the
7 Appointing Authority may place said person at any place within the Salary
8 range of the lower-level position at a rate not to exceed his/her current salary.
- 9 2. Probationary Status. Any person demoted to another class prior to completion
10 of the probationary period for the higher-level position shall be returned to the
11 salary held prior to the promotion as though the person had never occupied the
12 higher-level position.
- 13 3. Demotion to Position Outside the Plan. Any person demoted to a class not
14 compensated pursuant to the provisions of this Section 6.127.040 shall be
15 placed at an appropriate salary in accordance with the provisions of Section
16 6.08.110 of Part 1 of this code.

17 J. Reinstatement, reemployment, and restoration.

- 18 1. Reinstatement. The Salary of a person reinstated to a Tier I position following
19 separation from County service will be determined in accordance with the
20 provisions of Section 6.127.040 M.1 and the salary of a person reinstated to a
21 Tier II position following separation from County service will be determined in
22 accordance with the provisions of Section 6.127.040 P.1, as if the person was
23 entering County service as a new hire. However, persons reinstated pursuant
24 to Government Code Section 31680.7 may be placed at any salary rate not to
25 exceed the salary paid to said person prior to retirement unless a higher rate is
26 specifically authorized by the retirement administrator.
- 27 2. Reemployment. A person reemployed under Civil Service Rule 19.08 to the
28 position held immediately prior to separation will be reemployed at the same
29 salary rate within the Salary range for the position held prior to separation or
30 the minimum of the Salary range, whichever is greater. A person reemployed
31 on a different position than that previously held prior to separation will be

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1 reemployed at the maximum of the Salary range for the new position or at the
2 same salary paid to said person prior to separation, whichever is the lesser. An
3 employees whose last performance rating was "Needs Improvement Meeting
4 Expectations" or "Failed to meet Expectations" shall not be reemployed.

- 5 3. Restoration. When a person is restored to a higher-level position in either Tier I
6 or Tier II, the person may be placed within the Salary range at his/her current
7 salary or his/her previous salary. If the salary falls below the minimum of the
8 Salary range for the restored position, the employee shall be placed at the
9 minimum of the Salary range for the restored position.

10 K. Special provisions. The provisions of Chapter 6.10 shall apply to Participants except
11 as modified, deleted, or supplemented below. Special rates shall not be included in
12 base salary for the purpose of calculating pay increases.

- 13 1. Temporary Assignments—Special Rate. Any Participant assigned to perform
14 all of the significant duties of a higher-level position in an acting or temporary
15 capacity during the absence from work of an incumbent of an included position
16 or when such position is vacant for 30 calendar days or longer, shall be
17 provided, during the term of the assignment, additional compensation of 5.5
18 percent. The retirement administrator may approve a higher amount that does
19 not exceed the maximum of the Salary range for the higher level position and
20 may waive the 30 day requirement based on the needs of the service.
- 21 2. Out-of-Class Assignments. The provisions of Section 6.10.040 shall not apply
22 to Participants.
- 23 3. Manpower Shortage Recruitment Rates. The provisions of Section 6.10.050
24 shall not apply to Participants.
- 25 4. Manpower Shortage Ranges. The provisions of Section 6.10.060 shall not
26 apply to Participants; provided, however, that in addition to all other
27 compensation provided by this code, the retirement administrator may adjust
28 the salary of one or more Participants up to 11 percent pursuant to provisions
29 in Section 6.10.060 when such adjustment is necessary to preserve
30 supervisory pay differentials or to maintain internal pay equity following
31 adjustments in pay for non-participants pursuant to Section 6.10.050 or

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1 Section 6.10.060. Such additional compensation may be discontinued by the
2 retirement administrator in the same manner and subject to the same terms
3 and conditions as such pay under Section 6.10.050 may be discontinued for
4 non-participants.

5 5. Additional Compensation for Supervisors. The provisions of Section 6.10.070
6 shall not apply to Participants; provided, however, that in addition to all other
7 compensation provided by this code, the retirement administrator may adjust
8 the salary of a Participant when such adjustment is appropriate to maintain a
9 supervisory differential of up to 5.5 percent between the Participant and his/her
10 highest paid subordinate providing such organization is permanent and has
11 been approved by the retirement administrator. Such additional compensation
12 may be discontinued by the retirement administrator in the same manner and
13 subject to the terms and conditions as such pay under Section 6.10.070 may
14 be discontinued.

15 6. Assignment of Additional Responsibility. The provisions of Section 6.10.073
16 shall apply to Participants except that such additional compensation authorized
17 in accordance with the provisions of Section 6.10.073 shall be up to 11 percent
18 of a Participant's current salary.

19 7. Merit Bonuses for Managers. The provisions of Section 6.10.075 shall not
20 apply to Participants.

21 8. Acting Department Head—Additional Compensation. Participants may be
22 provided additional compensation of 5.5 percent, unless a higher amount is
23 approved by the retirement administrator.

24 9. Standby Pay. The provisions of Section 6.10.120 shall not apply to
25 Participants.

26 L. Transition to Management Appraisal and Performance Plan - Tier I and Tier II.

27 1. Notwithstanding any other provision of this code, any employee who, on
28 September 1, 2008, was a Participant in the Plan and who, on October 1, 2008
29 is a Participant in Tier I of the Plan, as amended, shall receive no change in
30 salary on October 1, 2008 as a consequence of any amendments to the Plan

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1 which became operative on that date. The Participant's actual salary in such
2 case may or may not fall within the established Tier I Range.

- 3 2. Notwithstanding any other provisions of this code, any employee who, on
4 September 1, 2008, was a Participant in the Plan and who, on October 1,
5 2008, is a Participant in Tier II of the Plan, as amended, shall, effective
6 October 1, 2008, be placed on the Tier II salary step closest to the Participant's
7 September 1, 2008 salary that does not result in a decrease in salary.

8 M. Tier I establishment of salary upon appointment. A person appointed to a class or
9 position designated as participating in Tier I of the Plan shall be paid as follows:

- 10 1. Appointment of Persons Not Currently Employed by LACERA. The retirement
11 administrator may designate a salary at any rate within the first three quartiles
12 of the Salary range established for the position to which the person is being
13 appointed. Appointment at a salary rate within the fourth quartile of the Salary
14 range shall require prior approval by the board of retirement and board of
15 investments jointly.
- 16 2. Promotional Appointments. A person being promoted from another position in
17 county or LACERA service shall be compensated at a salary within the Salary
18 range of the higher position, except that such person shall receive an increase
19 of at least 5.5 percent, rounded to the nearest dollar, above his/her previous
20 base salary but not less than the minimum of the Salary range. Persons
21 compensated at a Y-Rate shall receive an increase of 5.5 percent, rounded to
22 the nearest dollar, over the maximum of the Salary range for the person's
23 present position. If the person would thereby suffer a reduction in salary, said
24 person will be placed at his/her current salary or at such higher salary as may
25 be specifically authorized by the retirement administrator.

26 N. Tier I General salary adjustment provision. General Salary Adjustments for Tier I
27 Participants will take the form of a percentage change in the LR-Range Salary structure
28 on specific dates approved by the board of retirement and board of investments jointly
29 with concurrent changes in the actual salaries of Participants. Only Tier I Participants
30 who have received a current performance evaluation of "Met Expectations" or better
31 shall receive a General Salary Adjustment.

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- 1
- 2 O. Tier I merit salary adjustment provisions. Annually, the retirement administrator shall
- 3 recommend to the board of retirement and board of investments jointly a Merit Salary
- 4 Adjustment, ranging from a minimum of zero percent to a maximum of 5 percent. Such
- 5 Merit Salary Adjustments shall be limited to Participants whose current performance
- 6 rating is "Met Expectations" or higher and shall take effect on October 1st of each year
- 7 except as otherwise provided by this Plan and provided further that such adjustment
- 8 shall be limited to Participants who have worked at least six months in the Tier I
- 9 position. Such adjustments may apply to and/or result in a salary that falls outside the
- 10 established Tier I Salary range.
- 11 P. Tier II establishment of step placement upon appointment. A person appointed to a
- 12 class or position designated as participating in the Tier II Management Appraisal and
- 13 Performance Plan shall be paid as follows:
- 14 1. Appointment of Persons Not Employed by the county or LACERA. For persons
- 15 not employed by the county or LACERA and who are appointed to positions
- 16 participating in the Tier II Management Appraisal and Performance Plan, the
- 17 retirement administrator may designate any step up to and including step 12 of
- 18 the Salary range established for the position to which the person is being
- 19 appointed, provided the retirement administrator makes a written finding based
- 20 on an analysis of factors to justify hiring above the minimum of the Salary
- 21 range. Appointment to a salary rate greater than step 12 shall require prior
- 22 approval of the board of retirement and board of investments jointly.
- 23 2. Promotional Appointments. A person being promoted from another position in
- 24 county or LACERA service shall be compensated at a salary within the Salary
- 25 range of the higher position, except that such persons shall receive an
- 26 increase of at least 5.5 percent, plus step placement, above his/her previous
- 27 base salary, but not less than the minimum of the Salary range. Promotional
- 28 increases greater than 5.5 percent, plus step placement, shall require the
- 29 approval of the retirement administrator. Persons compensated at Y-Rate shall
- 30 receive the salary within the Salary range of the higher-level Position which
- 31 provides an increase of 5.5 percent over the maximum of the Salary range for

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1 the person's present position. If the person would thereby suffer a reduction in
2 salary, said person will be placed at his/her current salary or as such higher
3 salary as may be specifically authorized by the retirement administrator.

4 Q. Tier II General salary adjustment provision. General Salary Adjustments for Tier II
5 Participants will take the form of a percentage change in the LS-Range Salary structure
6 on specific dates approved by the board of retirement and board of investments jointly
7 with concurrent changes in the actual salaries of Participants.

8 R. Tier II Step advancement provisions.

9 1. Subject to retirement administrator approval, each Tier II Participant may be
10 eligible on October 1st of each year for advancement to the next salary step on
11 the applicable Tier II LS Range. Such step advancement shall be limited to
12 Participants who have been MAPP participants prior to April 1st of the current
13 fiscal year and who otherwise meet the conditions for salary step advancement
14 set forth in the Plan.

15 2. Step Advancement up to and including step 12 requires, in addition to the
16 provisions of subsection A above, that a Participant have a current
17 performance rating of at least "Met Expectations."

18 3. Step Advancement beginning with Step 13 and above requires, in addition to
19 the provisions of subsection A above, that a Participant have a current
20 performance rating of at least "Exceeded Expectations" or better.

21

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1 *Note: Only relevant excerpts of Section 6.127.030 are provided below.*

2 **6.127.030 Additional information.**

3 A. Step Pay Plan. Notwithstanding Section 6.08.010, by specific action, any person
4 designated to act as Retirement Administrator pursuant to Section 6.127.020 of this
5 code may approve step placement of an employee of the Los Angeles County
6 Employees Retirement Association at any step within the salary range for the position
7 which he or she holds, provided that placements made pursuant to this section are
8 reported to the boards of retirement and investments on a periodic basis. The
9 succeeding step advancement in such a case will be made thereafter on a yearly basis
10 unless an exception is specifically authorized by the retirement administrator.

11 B. Retirement Administrator.

12 1. Compensation and Benefits. Notwithstanding any other provision of Title 6 of
13 this code, the salary and benefits for any person designated to act as
14 retirement administrator pursuant to Section 6.127.020 may be determined by
15 written agreement between the boards of retirement and investments and such
16 designated person. In the event of any inconsistency between the provisions of
17 Title 6 of this code and such written agreement, the provisions of the written
18 agreement shall control.

19 2. Exceptional or Extraordinary Service. Notwithstanding Section 6.08.360, a
20 person designated to act as retirement administrator pursuant to Section
21 6.127.020 of this code may receive additional compensation for future service
22 in the succeeding year, payable in one or more lump-sum payments and in
23 such manner as may be authorized by the boards of retirement and
24 investments. Such payment, if any, shall be granted in recognition of
25 exceptional or extraordinary service.

26 3. Salary Adjustment. Notwithstanding Section 6.08.330 E, adjustments to the
27 base salary of a person designated to act as retirement administrator pursuant
28 to Section 6.127.020 of this code may be made by the boards of retirement

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1 and investments and shall take effect when designated by the boards. Such
2 adjustments need not fall within the designated person's Salary Range.

3 C. Performance Compensation Program. The Boards of Retirement and Investments
4 may, by resolution, provide for a performance compensation program applicable to
5 designated participants.

6 D. 6.

7 a. In addition to any other compensation provided for in this code, any
8 person employed at LACERA in one of the following classes who
9 possesses a valid Chartered Financial Analyst certification from ~~the~~
10 ~~Association for Investment Management and Research~~ CFA Institute
11 shall be entitled to compensation at a rate two schedules higher than that
12 established for the class in Section 6.28.050 of this code.

Title:	Item No.
Chief Investment Officer, LACERA <u>(UC)</u>	0493
Finance Analyst I, LACERA	0767
Finance Analyst II, LACERA	0768
Finance Analyst III, LACERA	0769
Principal Investment Officer, LACERA	0495
<u>Principal Investment Officer, (UC)</u>	<u>0496</u>
Senior Investment Officer, LACERA	0492

13
14 b. Effective with the pay period ending April 15, 2012 and upon notification
15 to the board of supervisors by the chief executive officer that the human
16 resources management system implementing this provision is fully
17 operational, all provisions in Section 6.127.030, subsection D.6.a shall
18 remain in effect except that such persons meeting the aforementioned
19 requirements shall be entitled to compensation at a rate 5.6468 percent
20 higher than that established for the classification in Section 6.28.050 of
21 this code.

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1 **Note: Only relevant excerpts of Section 6.28.050 are reflected below.**

2 Section 6.28.050 **Table of Classes of Positions** is hereby amended to change only the

3 salary of the following classes.

Item No.	Title	Effective Date	Salary or Salary Schedule and Level	
<u>0778</u>	<u>ASSISTANT EXECUTIVE OFFICER, LACERA</u>	1/1/09	N23	LR14
		<u>1/16/14</u>	<u>N23</u>	<u>LR14</u>
		<u>1/1/15</u>	<u>N23</u>	<u>LR14</u>
		1/1/16	N23	LR14
		<u>10/1/15</u>	<u>N23</u>	<u>LS14</u>
		<u>1/1/16</u>	<u>N23</u>	<u>LS14</u>
<u>0792</u>	<u>ASSISTANT EXECUTIVE OFFICER, LACERA (UC)</u>	3/13/12	N23	LR14
		<u>1/16/14</u>	<u>N23</u>	<u>LR14</u>
		<u>1/1/15</u>	<u>N23</u>	<u>LR14</u>
		1/1/16	N23	LR14
		<u>10/1/15</u>	<u>N23</u>	<u>LS14</u>
		<u>1/1/16</u>	<u>N23</u>	<u>LS14</u>
<u>9203</u>	<u>ASSOCIATE STAFF COUNSEL, LACERA</u>	1/1/09	NMX	101L
		<u>1/16/14</u>	<u>NMX</u>	<u>103A</u>
		<u>1/1/15</u>	<u>NMX</u>	<u>104B</u>
		1/1/16	NMX	105C
		<u>10/1/15</u>	<u>N23</u>	<u>LS8</u>
		<u>1/1/16</u>	<u>N23</u>	<u>LS8</u>
<u>9215</u>	<u>CHIEF COUNSEL, DISABILITY LITIGATION, LACERA</u>	1/1/09	N23	LR18
		<u>1/16/14</u>	<u>N23</u>	<u>LR18</u>
		<u>1/1/15</u>	<u>N23</u>	<u>LR18</u>
		1/1/16	N23	LR18
		<u>10/1/15</u>	<u>N23</u>	<u>LS18</u>
		<u>1/1/16</u>	<u>N23</u>	<u>LS18</u>
<u>9216</u>	<u>CHIEF COUNSEL, LACERA</u>	1/1/09	N23	LR18
		<u>1/16/14</u>	<u>N23</u>	<u>LR18</u>
		<u>1/1/15</u>	<u>N23</u>	<u>LR18</u>
		1/1/16	N23	LR18
		<u>10/1/15</u>	<u>N23</u>	<u>LS18</u>
		<u>1/1/16</u>	<u>N23</u>	<u>LS18</u>
<u>0774</u>	<u>CHIEF, INTERNAL AUDITOR, LACERA</u>	1/1/09	N23	LR12
		<u>1/16/14</u>	<u>N23</u>	<u>LR12</u>
		<u>1/1/15</u>	<u>N23</u>	<u>LR12</u>
		1/1/16	N23	LR12
		<u>10/1/15</u>	<u>N23</u>	<u>LS12</u>
		<u>1/1/16</u>	<u>N23</u>	<u>LS12</u>

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Item No.	Title	Effective Date	Salary or Salary Schedule and Level	
0493	<u>CHIEF INVESTMENT OFFICER, LACERA (UC)</u>	1/1/09	N23	LR25
		1/16/14	N23	LR25
		1/1/15	N23	LR25
		1/1/16	N23	LR25
0780	<u>CHIEF QUALITY AND ASSURANCE & METRICS, LACERA</u>	1/1/09	N23	LS12
		1/16/14	N23	LS12
		1/1/15	N23	LS12
		1/1/16	N23	LS12
0793	<u>DIRECTOR, RETIREE HEALTH CARE, LACERA</u>	1/1/09	N23	LS12
		5/25/10	N23	LR14
		1/16/14	N23	LR14
		1/1/15	N23	LR14
		1/1/16	N23	LR14
		10/1/15	N23	LS14
		1/1/16	N23	LS14
0496	<u>PRINCIPAL INVESTMENT OFFICER, LACERA (UC)</u>	3/3/12	N23	LR23
		1/16/14	N23	LR23
		1/1/15	N23	LR23
		1/1/16	N23	LR23
0500	<u>PORTFOLIO MANAGER</u>	1/1/09	N23	R13
		1/16/14	N23	LR13
		1/1/15	N23	LR13
		1/1/16	N23	LR13
		10/1/15	N23	LS13
9213	<u>SENIOR STAFF COUNSEL, LACERA</u>	1/1/09	NMX	117D
		1/16/14	NMX	118E
		1/1/15	NMX	119F
		1/1/16	NMX	120G
		10/1/15	N23	LS16
9212	<u>STAFF COUNSEL, LACERA</u>	1/1/09	NMW	110L
		1/16/14	NMW	112A
		1/1/15	NMW	113B
		1/1/16	NMW	114C
		10/1/15	N23	LS12
		1/1/16	N23	LS12

August 5, 2015

TO: Each Member
Board of Retirement

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: August 13, 2015 Board of Retirement Meeting

SUBJECT: **Presentation by Christopher W. Waddell of Olson, Hagel & Fishburn LLP on the Voter Empowerment Act of 2016.**

Former San Jose Mayor Chuck Reed and five other proponents have filed a ballot initiative with the California Attorney General on June 5, 2015, called the "Voter Empowerment Act of 2016." The other proponents include the current mayors of Anaheim and Pacific Grove, the former mayor of San Bernardino, and two former members of the City Councils of Vallejo and San Diego.

The initiative seeks to amend the California State Constitution with regard to public sector compensation and retirement benefits. The provisions are comprehensive and affect plan eligibility, plan enhancements, collective bargaining, plenary authority of retirement boards, plan costs, and death and disability benefits.

Christopher Waddell is visiting LACERA to give a presentation on the provisions of the ballot initiative. Mr. Waddell is Senior Attorney with Olson, Hagel & Fishburn and leads the Public Retirement Law practice. Before moving into private practice, he was General Counsel for the California State Teachers' Retirement System and later for the San Diego City Employees' Retirement System. He was also Chief Counsel at the California Department of Finance and the California Department of Personnel Administration. He has spoken on topics such as pension governance, conflicts of interest, and securities litigation before local and national public retirement organizations.

The slides for Mr. Waddell's presentation are attached.

Reviewed and Approved:



Gregg Rademacher
Chief Executive Officer

Attachment



Law Offices of

OLSON

HAGEL &

FISHBURN

LLP

The Voter Empowerment Act of 2016 (Reed/DeMaio Initiative) A Synopsis and Status Report

LACERA Board of Retirement
August 13, 2015

Chris Waddell
Senior Attorney

Introduction—What We'll Cover

- Overview of California Vested Rights Doctrine
- Summary and analysis of the initiative's provisions
- Current status of the initiative
- “Rules of the Road”-- Fiduciary and other legal considerations while measure is pending

Overview of California Vested Rights Doctrine

- What is it?
- Where did it Come From?
- What are the Rules?
- How Have the Rules Been Applied?

What is the Doctrine?

- “Public employment gives rise to certain obligations which are protected by the **contract clause of the Constitution**, including the right to the payment of salary which has been earned.”
- “Accordingly,...since a pension right is an integral portion of contemplated compensation, it cannot be destroyed, **once it has vested**, without impairing a contractual obligation.”
 - *Miller v. California* (1977) 18 Cal. 3d 808, 815
 - *Citing Kern v. City of Long Beach* (1947) 29 Cal. 2d 848, 853
- **Brief** journey into the law of contracts required before delving into an examination of vested rights.

U.S. AND CALIFORNIA CONTRACT CLAUSES

- “No state shall...pass any...law impairing the obligation of contracts,...”
 - U.S. Constitution Art. II, §10, cl. 1
- “A... law impairing the obligation of contracts may not be passed.”
 - California Constitution Art. 1, §9

Where's the “Contract”

- Contracts may either be express or implied.
 - Cal. Civil Code §1619
- Express and implied contracts are of “equal dignity.”
- Most cases are based upon an *implied* contract.
 - “After services have been rendered by a public officer under a law specifying his compensation, there arises an *implied contract* under which he is entitled to have the amount so fixed. And the constitutional protection extends to such contracts just as it does to those specifically expressed”
 - *CTA v. Cory* (1984) 155 Cal. App. 3d 494, 505

“Once it has Vested....”

- “The right to pension benefits **vests** upon the acceptance of employment, even though the right to immediate payment of a full pension may not mature until certain conditions are satisfied.”

- *Miller* at 815

- “...vested right to a pension based on the system then in effect.”

- *Miller* at 81

If Vested, then What?

- Although vested, rights not set in stone;
 - “Reasonable modifications and changes” permissible;
 - “Necessary to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system and carry out its beneficent policy.”
 - *Miller* at 816, citing *Kern* at 854-55

What are “Reasonable” Modifications?

- The Courts decide.
- “Must bear some material relation to the theory of a pension system and its successful operation.”
- “Changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.”
 - Measure is the advantage or disadvantage to the particular employee whose own contractual rights, already earned, are involved.
 - Offsetting improvement must relate generally to the benefit that has been diminished.
 - *Miller* at 816; *Betts v. Board of Administration* (1978) 21 Cal. 3d 859, 863-865

Future Benefit Accruals— Legislature v. Eu

- Unanimous 1991 California Supreme Court upholding term limits.
- Legal challenge included federal contracts clause claim that the pension benefits impliedly promised to incumbent legislators included the right to earn future pension benefits through continued service based on terms in effect when they assumed office.
- Court said California cases confirmed both federal and state contracts clauses protected pension benefits of public officers.
- Court ruled that initiative's ban on future participation in the Legislator's Retirement plan impaired the vested rights of incumbent legislators to ***continue to participate*** in the Legislator's Retirement System.
 - *Legislature v. Eu* (1991) 54 Cal. 3d. 492, 528
- “We conclude that the incumbent legislators had a vested right to earn additional pension benefits through continued service....”
 - *Eu* at 530

Voter Empowerment Act of 2016 (Reed/DeMaio Initiative)--Timeline

- Submitted to California Attorney General for Title and Summary on June 5, 2015;
- Legislative Analyst's Office (LAO) fiscal analysis issued on July 27, 2015;
- Attorney General's Title and Summary due August 11, 2015;
- If requisite voter signatures obtained, will be on November 2016 General Election ballot;
- If voters approve, takes effect on day after election except for provisions that specify a different effective date.

Initiative—Findings and Purpose

- “Unfortunately, state and local governments face a severe financial crisis due to unsustainable compensation and retirement benefits granted to government employees by state and local politicians.”
- “...Without reform, California taxpayers face a future of a massive public debt requiring the elimination or reduction of even basic public services.”
- “Almost all of these disastrous financial decisions were made without the approval or consent of the voters.”
- “Consequently, the need to empower voters and clarify their rights with respect to compensation and retirement benefits for government workers is a matter of statewide concern.”
- “Therefore, the people hereby amend the Constitution to reserve to themselves the power to approve or reject compensation and retirement benefits of government employees.”

Would This Initiative Impair Vested Rights?

- Sec. 23 ***“Notwithstanding any other provision of this Constitution or any other law:***
 - (a) Voters have the right to use the power of initiative or referendum provided in Article II, to determine the amount of and manner in which compensation and retirement benefits are provided to employees of a governmental employer.
 -
 - (j) Nothing in this section shall be interpreted to reduce the retirement benefits earned by government employees for work performed.”

Does This Initiative Impair Vested Rights? (Cont'd)

- Combination of “notwithstanding” clause, (a) and (j):
 - Designed to eliminate California Rule protection for both current and future employees in event of voter-approved initiative or referendum affecting retirement (including health) benefits;
 - If measure passes, voters could pass an initiative that changes future benefit accruals for *existing* public employees.
 - (j) sufficiently vague that already-accrued benefits may not be protected under California Constitution if measure passes.
 - Potential exists that if the measure passes, voters could pass an initiative that reduces or eliminates already-accrued benefits (e.g., San Jose initiative’s COLA suspension for existing retirees).
 - What about the Federal Contracts Clause?

Impact of Section 23(a) Beyond Vested Rights

- Likely provides a legal basis for county voters to use an initiative to withdraw from CERL or to change its provisions without state authorization.
 - Would effectively overrule last year's court ruling in Ventura County that counties could not withdraw from CERL, close their DB systems to new employees, or make other changes without authorizing state legislation.
- Likely overrules longstanding case law holding that initiatives and referenda cannot be used if they would:
 - impair essential governmental functions;
 - unduly interfere with the executive authority of local governing boards; or
 - conflict with existing state law.

Voter Approval Required for Enhancement of Defined Benefit Pension Benefits

- Sec. 23 (b): “Government employers shall not enhance the pension benefits of any employee in a defined benefit plan unless the voters of that jurisdiction approve that enhancement.”
 - Effective day after measure’s passage;
 - Freezes benefit levels for defined benefit pension plans for **current** as well as new government employees unless voters approve the enhancement.
 - Even if part of a collectively-bargained package that decreases overall costs but combines a small increase in benefits with other significant benefit reductions.
 - Does not appear to affect **existing** plan provisions that provide enhancements; e.g., service credit purchases.

Closes Defined Benefit Plans to New Employees as of January 1, 2019 Absent Voter Approval.

- Sec. 23 (c): “Government employers shall not allow new government employees to enroll in a defined benefit pension plan unless the voters of that jurisdiction approve enrollment in such a plan for new employees.”
 - Since a “new government employee” includes any employee hired after January 1, 2019, irrespective of prior employment status (Sec. 23 (k)(1)), the existing system of reciprocity would be eliminated, as would the ability of an employee to retain their existing pension plan if changing employers within the same plan.
 - Huge disincentive for public employees to change employers;
 - Significant recruitment problems for governmental employers.

Closed Defined Benefit Plans: What Happens after January 1, 2019?

- If voters do not approve continued enrollment in defined benefit plans:
 - No alternative retirement plan specified or required by measure.
 - Governmental employer could establish a defined contribution plan (but not a cash balance plan) without voter approval.
 - Governmental employers **would have to** establish a plan for employees not covered by social security or enroll those employees in social security.

Does the Measure Impair the Ability of Retirement System Boards to Manage Plan Closures?

- Sec. 23 (g): “Retirement boards shall not impose termination fees, accelerate payments on existing debt, or impose other financial conditions against a government employer that proposes to close a defined benefit plan to new members unless voters of that jurisdiction or the sponsoring government employer approve the fees, accelerated payment, or financial conditions.”
 - Plan closure versus termination?
 - Closures by operation of measure (i.e., as of January 1, 2019) versus closures proposed by governmental employer?
 - Would future (20+years out) increased employer contributions resulting from more conservative asset allocation/lower assumed investment rates as closed plans mature constitute a “termination fee,” “accelerated payment on existing debt” or “other financial condition”?

50/50 Cost Sharing

- Sec. 23 (d): “Government employers shall not pay more than one-half of the total cost, including unfunded liability costs, of retirement benefits for new government employees unless the voters of that jurisdiction have approved paying that higher amount for such new employees.”
 - Only applicable to employees hired on or after 1/1/19, but:
 - What if voters approve keeping existing DB plan open but do not approve exception to employer cost limit?
 - Impact on new employee contribution rates in event unfunded liabilities develop.
 - Limit applies to employer contributions to defined contribution, deferred compensation and retiree health plans (Sec. 23 (k)(4).

Impact on Death and Disability Benefits?

- Sec. 23 (i): “Nothing in this section shall be interpreted to modify or limit any disability benefits provided for government employees or death benefits for families of government employees, even if those benefits are provided as part of a retirement benefits system. Nothing in this section shall be interpreted to require voter approval for death or disability benefits.”
 - Can existing death and disability benefit structure be replicated in the absence of an underlying DB plan?
 - At what cost? Significant plan design and potential adverse selection issues.
 - Unclear whether 50% employer contribution limit applies (Is a contribution limit a “limit on disability benefits?”)
 - If employer contribution limit applies, is result that all employees will be required to contribute towards benefits that many if not most will not receive?

Effect on Plenary Authority of Retirement System Boards

- “Notwithstanding” clause = significant carve-outs of retirement system board plenary authority under Article 16, §19 of the California Constitution (Proposition 162):
 - Section 23 (g): termination fees, etc.
 - Section 23 (e): “Government agencies **and retirement boards** must fully and faithfully implement voter approved initiatives that affect government employee compensation **and retirement benefits** approved by voters, whether placed on the ballot by a government agency or by voters.”
 - Creates conflict with board member exclusive duty of loyalty to system members, retirees and beneficiaries.
 - Could voters can change composition of retirement boards and/or remove Board from role as system administrator notwithstanding Proposition 162?

Compensation and Collective Bargaining— Current Law

- Existing law provides collective bargaining rights over terms of employment and compensation including retirement, retiree health and disability benefits.
 - Laws are administered and enforced by the Public Employment Relations Board.
- These laws limit the right of local voters to act by initiative or referendum:
 - Negotiated labor agreements not subject to referendum (*Voters for Responsible Retirement* (1994) 8 Cal. 4th 765).
 - Government employer may not place a measure on the ballot affecting terms of employment without first meeting and conferring (*People ex. Rel. Seal Beach* (1984) 36 Cal. 3d 591, 594).
 - Initiative or referendum may not be used if it would impermissibly interfere with the performance of essential government functions (*Totten* (2006) 139 Cal. App. 4th 826, 840 - 41).

Compensation and Collective Bargaining— Potential Impacts of Initiative

- Sec. 23 (f): “Challenges to the legality or application of an initiative or referendum affecting government employee compensation and retirement benefits may only be brought in the courts of California exercising judicial power as provided in Article VI or the courts of the United States.
 - Eliminates PERB jurisdiction over legal challenges that initiative or referendum violates collective bargaining laws.

Compensation and Collective Bargaining— Potential Impacts of Initiative (Cont'd)

- Sec. 23 (a): Affirmance of voters' right to act by initiative or referendum notwithstanding contrary provisions in state Constitution or statute:
 - Collective bargaining agreements subject to referendum?
 - Eliminate requirement of *Seal Beach* bargaining?
 - Eliminate “interference with essential governmental functions” challenge to an initiative or referendum that usurps governmental employer’s decision-making authority over compensation and retirement benefits?
 - Alternative processes to collective bargaining for determining compensation and benefits or no process altogether?

Existing Labor Agreements

- Sec. 23 (h): “Nothing in this section shall alter any provisions of a labor agreement in effect as of the effective date of this Act, but this Section shall apply to any successor labor agreement, renewal or extension entered into after the effective date of this Act.”
 - This measure does not include the prior initiative’s presumption of attempt to circumvent if labor agreement is renewed or extended within “window period” prior to measure’s effective date.

Current Status

- LAO summary of fiscal effects issued July 27:
 - “Significant effects—savings and costs—on state and local governments relating to compensation for governmental employees. The magnitude and timing of these effects would depend heavily on future decisions made by voters, governmental employers, and the courts.”
 - Depends on voter actions, outcome of legal challenges.
 - Could affect dynamics at collective bargaining table and result in different outcomes.
 - Future decisions by voters and governmental employers regarding death and disability could produce savings or costs.
 - Cost savings offset by offsetting costs related to closing DB plans and other compensation and benefits (e.g., disability).
- Title and Summary due from Attorney General on August 11.

“Rules of the Road”

Fiduciary Duty: Loyalty

- “A retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.” Cal. Const. Art. 16, §17 (b)
- Fiduciaries must discharge their duties:
 - Solely in the interest of the participants and beneficiaries;
 - For the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the system;
 - Impartially, taking into account any differing interests of participants and beneficiaries.

Duty of Loyalty: Cont'd

- If purpose is to enhance system's ability to operate in the current environment:
 - This is in the interests of participants and beneficiaries;
 - Tied to the purpose of providing benefits to participants;
 - A reasonable expense of administering the system (so long as duty of care fulfilled); *therefore:*
 - **Duty of Loyalty =**



“Rules of the Road”

Fiduciary Duty: Care

- Act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.
 - Follow the law
 - Follow a prudent process

Duty of Care: Cont'd

- Even if otherwise compliant with governing laws and plan document, must consider potential “extrinsic” legal constraints.
- Permissible uses of “public” funds:
 - State/local constraints on use of public funds for political purposes;
 - Potential 1st Amendment constraints.

“Rules of the Road”

Expenditures of Public Funds

- Public entity can take vote on whether to support or oppose a ballot measure (or remain neutral).
- Case law limits expenditure of public funds related to a ballot measure campaign:
 - Partisan campaign activity prohibited; “informational” activity permissible:
 - *Stanson v. Mott* (1976) 17 Cal. 3d 206; *Vargas v. City of Salinas* (2009) 46 Cal. 4th 1.
 - Often difficult to discern the difference
- Limits are on public entity/expenditure of public funds; not on right to speak/expend funds as an individual.

First Amendment Considerations

- “A fundamental precept of this nations democratic electoral process is that the government may not “take sides” in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country’s founders law in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of our democratic electoral process.” *Stanson v. Mott* (1976) 17 Cal. 3d 206, 217.

Partisan Campaign Activity Versus Informational Activity

- Look at style, tenor, timing and audience:
 - Does the communication look like traditional campaign communications (mailers; TV/radio/web ads; billboards; blast e-mails, etc.)?
 - Does the communication sound like campaign materials instead of relevant factual information?
 - Is the communication part of a regular agency form of communication (e.g., monthly newsletter, website)?
 - Is communication being sent right before the election?
 - Is the communication targeted to voters?

QUESTIONS?



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
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